

TEN EMPOWERING STRATEGIES FOR NONDIRECTIVE CLINICAL SUPERVISION

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Nondirective clinical supervision is the signature pedagogy of clinical teaching. It encourages students to take ownership over their cases and assume their role as attorneys through a supported process of decision-making. While the goals of non-directive supervision are well developed, there is less discussion of how to achieve those goals. The scant literature on non-directive methodology focuses on Socratic dialogue. Socratic questions can help students unpack their assumptions, but they can also reinforce an educational hierarchy and create anxiety for students. Accordingly, this article sets forth a varied menu of ten techniques to deploy during supervision meetings: (1) moots and role plays; (2) brainstorming roundtables; (3) writing workshops; (4) decision-making frameworks; (5) quick writes; (6) rule review; (7) online fact investigation; (8) video review; (9) critical theory application; and (10) guided reflection. These non-directive methods empower students by building their confidence and developing their critical skills to assess and challenge the social context facing their clients. In addition, they leave students feeling energized at the end of a supervision meeting and eager to move their cases forward, while also gaining transferable lessons that can be applied to other lawyering tasks and cases.

Nondirective supervision is the signature pedagogy of clinical teaching.¹ It is based on adult learning theory, which posits that “adults learn best from experience.”² Teachers using this pedagogy guide students to analyze problems and arrive at solutions without telling them the answers.³ Nondirective supervision can be a very powerful and

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¹ See Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLIN. L. REV. 49, 84-85 (2004); James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Education*, 3 B.U. PUB. INT. L.J. 35, 35 (1993) (“Many clinicians are committed to supervising nondirectly, giving students broad authority to plan and carry out lawyering tasks and to learn from their own performance.”).

² Frank Bloch, *The Andragogical Basis for Clinical Legal Education*, 35 VAND. L. REV. 321, 329 (1982).

³ See Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 316 (2006) (“Clinical legal education theory links nondirective supervision to role assumption, in which law students perform their lawyering roles as independently as possible at every step and thereby learn skills while feeling the full weight of the lawyering responsibility.”).

transformative experience for student attorneys. One clinic student wrote that her clinical professor's nondirective teaching style left her feeling "successful in developing not only my practical lawyering skills but also my self-reflection and analysis skills. This latter set of skills I am not sure I could have learned anywhere else."⁴ However, nondirective pedagogy is a challenging mode of education for both students and teachers. It is quite different from how lawyers are trained in practice, where new lawyers primarily learn by following directions and observing how senior lawyers carry out tasks.⁵

In several decades of training and observing new clinical teachers, I have watched them struggle with the transition to nondirective supervision. I have taught in litigation, transactional, and policy clinics,⁶ and my observations have revealed that nondirective supervision can often look and feel like a meandering series of Socratic questions, perhaps because clinical supervision lacks the built-in structure of the appellate case method that dominates in doctrinal courses. To be sure, Socratic questioning can be an effective method of nondirective supervision, but it is far from the only one. Yet clinical scholarship about pedagogy assumes it is the sole technique for supervision.⁷ There is ample clinical scholarship making a case for -- or against -- nondirective pedagogy. This debate helps teachers understand the theory underlying clinical supervision and refine their own teaching philosophy, but it is less helpful in giving teachers concrete tools for supervision. Clinicians have a rich theory of *why* nondirective supervision is effective, but little guidance in *how* to carry it out. Accordingly, this Essay seeks to fill the gap in this scholarship by providing new and experienced clinical supervisors with a menu of techniques to deploy during supervision meetings.

This Essay urges clinical professors to think about their supervision sessions as sites for varied and intentional modes of being nondirective. It is inspired by a rich literature offering concrete and detailed methods for building effective seminars⁸ and case rounds⁹ – the two other main

⁴ Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167, 208 (1995).

⁵ Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 199 (1989) (arguing that modelling can be a valid method of clinical supervision).

⁶ I also teach Evidence and Administrative Law and am thus familiar with the range of pedagogical approaches available to doctrinal professors.

⁷ Jane H. Aiken & Ann Shalleck, *The Practice of Supervision*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 205, 216-220 (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck eds., 2014) [hereinafter EDUCATION OF LAWYERS] (providing an example of a supervision session that uses Socratic dialogue exclusively).

⁸ DEBORAH EPSTEIN, JANE AIKEN & WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* (2014).

⁹ Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLIN. L. REV. 195, 197 (2007).

components of the clinical experience.¹⁰ By comparison, supervision pedagogy remains under-developed. The methods described below are all modes of being non-directive that are likely to leave students feeling energized at the end of a supervision meeting and eager to move their cases forward, while also gaining transferable lessons that can be applied to other lawyering tasks and cases. These strategies are equally effective in litigation, transactional, policy and other clinic models. This Article describes the following ten different non-directive supervision strategies: (1) moots and role plays; (2) brainstorming roundtables; (3) writing workshops; (4) decision-making frameworks; (5) quick writes; (6) rule review; (7) online fact investigation; (8) video review; (9) critical theory application; and (10) guided reflection. Ideally, this Article will spur other clinical professors to share their strategies for nondirective supervision so that the clinical community has a bank of nondirective teaching methodologies to draw from for the benefit of our students and clients. Part I provides a primer on clinical supervision theory. Part II delves into the ten techniques for nondirective supervision. Part III ends with a reflection on using Socratic questions effectively in supervision.

I. SUPERVISION THEORY

The over-arching goals of clinical legal education are for students to “understand the lawyer’s role, learn to reflect on their practice, and become personally committed to the ethical and practical requirements of a high standard of professionalism.”¹¹ Specific goals can include engaging in client-centered lawyering, developing a professional identity, nurturing a passion for social justice, reflecting critically on law and legal systems, building collaboration skills, refining decision-making skills, and more.¹² In a clinical course, there are three main sites of teacher-student interaction and instruction for achieving these goals: seminars, case rounds, and supervision. These sites reinforce and complement one another.¹³ In seminars, the professor defines learning goals and brings the entire class together to learn a mix of lawyering skills, theory, policy, and doctrine – “providing students with a vocabulary and framework

¹⁰ See Alina Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLIN. L. REV. 1, 41 n.23 and articles cited therein.

¹¹ Katz, *supra* note 3, at 342.

¹² For a thorough list of clinical teaching goals, see Susan Bryant, Elliot Milstein & Ann Shalleck, *Learning Goals for Clinical Programs*, in EDUCATION OF LAWYERS, *supra* note 7, Ch. 2.

¹³ See Bryant & Milstein, *supra* note 9, at 197 (“These pedagogical modes serve different purposes and, although they overlap, supplement and complement each other to maximize the educational benefits attainable from student practice.”).

for their real practice experiences.”¹⁴ Case rounds also occur with the full class and typically involve a structured and facilitated discussion format about casework.¹⁵ By contrast, in supervision, teachers typically meet with smaller groups of two to four students to talk specifically about their client-based work or projects.¹⁶

“Supervision is the essence of clinical education and all new teachers must learn appropriate intervention techniques to maximize student learning and client satisfaction.”¹⁷ Supervision meetings are central to the planning, performing, and reflection scaffolding on which clinical education is built.¹⁸ In this structure, students plan for an activity; they meet with their professor and teammates to review their preparation for the activity; they perform the activity; and then, as a team, they evaluate and reflect on that activity.¹⁹ This structure embodies metacognitive thinking, which Jaime Lee defines as “an intellectual strategy for mastering complex material that focuses on planning, performance, self-reflection, and self-correction.”²⁰ Nondirective teaching encourages metacognition. The idea is to help students take ownership over their cases and assume their role as attorneys through a supported process of decision-making under conditions of uncertainty.²¹ By pushing students to develop their decision-making skills, nondirective supervision results in transferable lessons that can apply well beyond the end of the semester into a student’s long-term legal career. This pedagogy is grounded in

¹⁴ Kate Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 33 (2013).

¹⁵ Bryant & Milstein, *supra* note 9, at 196.

¹⁶ See Paul Radvany, *Experiential Leadership: Teaching Collaboration Through a Shared Leadership Model*, 27 CLIN. L. REV. 309, 328 (2021) (“While many clinics routinely find that teams of two students work best, depending on the amount of work that needs to be accomplished for a particular case or project, a larger team is sometimes necessary.”).

¹⁷ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 517 (2012).

¹⁸ Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 169, 192 (“Both teacher and student experience supervision largely through the concrete, regular form of meetings.”). Although this article focuses on supervision meetings, there are many other encounters where supervision occurs, such as brief and unscheduled encounters, through written feedback on writing, email exchanges, and more. See Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301, 302 (1986).

¹⁹ William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 477 (1995). See also Jaime A. Lee, *Legal Education and the Metacognitive Revolution*, 12 DREXEL L. REV. 227 (2020) (describing the clinical model as a “cycle of ‘plan, do, and reflect.’”); Kimberly E. O’Leary, *Evaluating Clinical Law Teaching – Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 419 (2002) (“All clinical teaching involves some form of experiential learning that can be described in a three-step process: 1) the student learns to formulate an action plan; 2) the student enacts that plan through a structured experience; and 3) the student reflects about the experience and modifies future action accordingly.”).

²⁰ Lee, *supra* note 19, at 229.

²¹ Dunlap & Joy, *supra* note 1, at 67.

adult learning theory (also called andragogy), which recognizes “adults as self-directing learners”²² who learn best through experience rather than as passive recipients of teacher-generated information.²³ In the supervision context, this means that “[r]ather than telling a clinic student what to do, clinical methodology calls for asking the student what he or she thinks needs to be done and why.”²⁴ By contrast, “If supervisors just tell students what to do, they will not act for themselves or learn that effective action comes from thought and judgment.”²⁵ Gautam Hans helpfully describes the supervisor’s role as distinct from other models that students and faculty may have experienced; clinical supervisors combine a non-directive approach with a level of intimacy to guide students.²⁶

While the nondirective model is an ideal,²⁷ it is also overly simplistic. It often comes into tension with the goal of providing high quality legal assistance to clients, as it is an inefficient means of practicing law.²⁸ Thus, most clinical professors – regardless of their pedagogical

²² Bloch, *supra* note 2, at 338.

²³ Anna Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLIN. L. REV. 39, 65 (2013). Adult learners are self-directed, have personal experience that serves as a basis for learning, are ready to learn when their performance is related to their role, and seek knowledge for immediate, rather than future, benefit. See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 38 (1995) (summarizing tenets of andragogy as set forth by Malcolm Knowles).

²⁴ Dunlap & Joy, *supra* note 1, at 67. See also Yael Efron, *What is Learned in Clinical Teaching?*, 29 CLIN. L. REV. 259, 265 (2023) (clinical education “is not limited to transferring knowledge from the lecturer to the student, but bases its pedagogy on creating a direct experience for the learners, through which they are expected to put the knowledge to use.”).

²⁵ Aiken & Shalleck, *The Practice of Supervision*, in EDUCATION OF LAWYERS, *supra* note 7, at 205.

²⁶ G.S. Hans, *Supporting Roles*, CLIN. L. REV. (forthcoming).

²⁷ Carpenter, *supra* note 23, at 67 (“Non-directive supervision has been described as ‘clinical orthodoxy.’”).

²⁸ Stark et al., *supra* note 1, at 50. The authors report on a survey of clinical professors: “Most respondents agreed that directiveness should vary based on a student’s ability, the length of time a student has been in the clinic, the complexity of the case, and whether the case is new or ongoing. Concern for client interests helps explain each of these responses.” *Id.* The perceived rigidity and dominance of the non-directive model has received pushback. See Katz, *supra* note 3, at 320-21 (“Although the superiority of nondirective supervision is asserted, some clinical scholars have also long acknowledged its limits on theoretical, educational, or practical grounds.”). Scholars writing in the formative era of clinical education often envisioned a co-counsel role for students and teachers and highlighted the virtues of this collaboration. See *id.* at 322-23 (discussing the collaborative models described by Gary Palm and Frank Bloch). Similarly, in examining how novices learn from experts in professional settings, Brook Baker recommended “a model of guided participation in apprentice-like opportunities” as the best form of experiential education for new lawyers. Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1, 7 (1999). Harriet Katz, based on her experience overseeing externships, has argued for a greater role in clinics for modelling by and collaboration with experienced attorneys as effective supervision techniques. See generally Katz, *supra* note 3. Likewise, Minna Kotkin has also queried the centrality of role assumption to clinical education, arguing that some students might need to first observe and “critically examine”

commitments -- will use more directive methods at certain touchpoints, such as early in the semester when students are acclimating to law practice, or when an emergency deadline is pending, or if a student is struggling with a certain task.²⁹ Relatedly, Peter Hoffman recommends thinking about supervision in stages, where over the course of the semester or year, a teacher shifts gradually from directive to nondirective pedagogy as students gain experience and confidence.³⁰ Even the most devoted practitioner of nondirective pedagogy must acknowledge that all supervision is directive in the sense that the teacher must plan for and guide supervision with defined goals in mind.

Anna Carpenter reminds us that non-directiveness is not a goal in itself; rather, the goal “is to maximize student learning.”³¹ Thus, “we can make intentional choices about when and how to ask questions that guide students down a path of learning and realization, giving students as much room as possible to uncover insights on their own.”³² She adds, “The most important teaching method a supervisor can employ is to identify his or her goals for the student and map out a path that will lead to achievement of the goal, rather than worrying about using a particular supervision style or tactic.”³³ Accordingly, it can be more helpful to view supervision along a spectrum of directiveness. As Wally Mlyniec explains: “[I]n truth, all teaching is directive and it should be. That is why teachers exist... How a student is led to the knowledge or resolution involves the degree, not the existence, of directiveness . . . Experienced clinical teachers continue to act with that understanding, but now respond in ways that do not easily fit into the directive/non-directive dichotomy.”³⁴ In other words, experienced clinical teachers understand that the goal is not being non-directive, but to identify how best to teach the student in front of them.

Recognizing a spectrum of directiveness also invites a reconsideration of supervision techniques. Socratic questioning is the dominant technique discussed in clinical literature.³⁵ Done well

their supervisors engaging in lawyering tasks before they are able to act in role. Kotkin, *supra* note 5, at 187.

²⁹ See Dunlap & Joy, *supra* note 1, at 85.

³⁰ See generally Hoffman, *supra* note 18.

³¹ Carpenter, *supra* note 23, at 69.

³² *Id.*

³³ *Id.*

³⁴ Mlyniec, *supra* note 17, at 518.

³⁵ See Katz, *supra* note 3, at 321 (“descriptions of how to implement nondirective supervision sometimes reveal a directive agenda implemented by means of Socratic-style dialogue between student and supervisor.”); Dunlap & Joy, *supra* note 1, at 85 (supervision is “the manifestation of the Socratic method within clinical teaching.”). Written depictions of clinical supervision are typically in the form of a Socratic colloquy, see generally Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 154 (1993-94).

and with transparency, an intentional series of Socratic questions can help students uncover new ideas, reconsider assumptions, and reflect on all aspects of a representation. Done poorly, it can be stressful and unrewarding for students, akin to unpleasant experiences they may face in their doctrinal courses.³⁶ Simply put, it might not always be the best tool for all supervision objectives. It certainly should not be offered to new clinical teachers as the only tool for supervision. Notably, doctrinal pedagogy has undergone reforms in recent years, with an emphasis on bringing experiential tools into the classroom, largely influenced by clinical pedagogy.³⁷ It is somewhat ironic then that clinical supervision meetings have remained in their traditional conception.

There are at least six reasons to explore a variety of techniques for non-directive supervision. To begin with, varying teaching methods can increase student engagement, especially in an era where students have shorter attention spans due to the rise of social media and other technologies.³⁸ Clinical professors tend to spend a lot of time thinking about interactive and experiential methodologies in the seminar portion of their courses, but seemingly less so in the supervision component of the clinical experience. Using a variety of teaching modes raises the energy in the room, whether in the larger seminar group or the smaller supervision unit.

Second, using a variety of teaching methods helps to reach a broader range of students, as they have varying learning styles.³⁹ Supervision is a space where “practice and learning can be tailored to the individual capacities and needs of each student.”⁴⁰

³⁶ See Howard, *supra* note 4, at 173-74 (“Not only is the focus of the Socratic classroom painfully distant from the world of practice, but the psychological impact of this form of teaching simultaneously injures students and distorts their preparation for the interpersonal requirements of practice.”).

³⁷ See Judith A. Frank, *Lessons and Ideas: Skills Instruction in Large Law School Classes*, 3 T.M. COOLEY J. PRAC. & CLINICAL L. 307, 318 (2000); Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 122 (2015).

³⁸ On teaching to Gen Z students, see Olivia R. Smith Schlinck, *OK, Zoomer: Teaching Legal Research to Gen Z*, 115 L. LIBR. J. 269, 280 (2023) (“Task-switching or multitasking has an impact on the attention span; the average Gen Z attention span is about eight seconds. This results in students who struggle to focus on long lectures or complex problems and may leave students struggling to prioritize their work.”).

³⁹ See O’Leary, *supra* note 19, at 495 (“Moreover, learning does not happen in the same way for all people. Individuals have different approaches to learning that influence how they learn most optimally. Good teachers, then, provide context-based learning opportunities, allow students to direct themselves and provide different kinds of learning environments”). Ian Weinstein writes about understanding different personality types to help reach students in supervision settings. Ian Weinstein, *Learning and Lawyering Across Personality Types*, 21 CLIN. L. REV. 427 (2015).

⁴⁰ Susan Bryant, Elliott Milstein & Ann Shalleck, *The Whole Is Greater Than the Sum of Its Parts: Clinical Methodologies and Perspectives*, in EDUCATION OF LAWYERS, *supra* note 7, at 9.

Third, many clinical professors want students to develop a passion for social justice and a true path of enjoyment and fulfillment in the law.⁴¹ At the same time, many clinic cases raise serious deprivations of human and civil rights. They can be emotionally draining and even result in vicarious trauma.⁴² Socratic questioning can be less effective at bringing joy into supervision than alternate teaching methods because of its hierarchical nature in which the teacher drives the shape of the dialogue.⁴³

Fourth, there are a variety of teaching techniques that advance the goal of teaching collaboration skills. Many clinics purposefully supervise students in teams (even if students are working on cases independently) to share client workloads, increase brainstorming capacity, and hone collaboration skills.⁴⁴ By working in teams, students can draw upon a greater range of life experiences and be exposed to more cases than if they were working alone.⁴⁵ Collaboration is a critical lawyering skill, as Susan Bryant states, it can “increase professional satisfaction and improve legal work product.”⁴⁶ Moreover, “with the changed demographics of the profession, collaboration provides a process for integrating diverse people and their perspectives.”⁴⁷

Fifth, using a variety of teaching styles is more interesting and engaging for the teacher and pushes us to think more fully and intentionally about meeting our teaching goals. Regardless of teaching technique, all clinical supervision should be driven by specific teaching goals.⁴⁸

Sixth, the supervision techniques described below are generally more student-driven than Socratic questioning, thus facilitating greater role assumption by students. They center the student as the generator

⁴¹ See Deborah A. Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLIN. L. REV. 123, 125 (2000).

⁴² Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLIN. L. REV. 359, 368 (2016) (“Vicarious traumatization refers to harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients.”).

⁴³ Jeannie Suk Gerson writes that “the professor as Socratic questioner risks coming across like the ultimate arbiter of what is right or who is smart, ranking and sorting students into hierarchical statuses.” Jeannie Suk Gerson, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2343-44 (2017) (reflecting on how to make Socratic pedagogy inclusive and collaborative to meet the learning needs of diverse student bodies).

⁴⁴ Bryant, Milstein & Shalleck, *The Whole Is Greater Than the Sum of Its Parts: Clinical Methodologies and Perspectives*, in EDUCATION OF LAWYERS, *supra* note 40, at 9 (supervision involves “regular meetings between teachers and students, who work alone, in pairs, or in small groups.”).

⁴⁵ David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199, 213 (1994).

⁴⁶ Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 463 (1993).

⁴⁷ *Id.*

⁴⁸ See *infra* notes 52 to 56 and accompanying text.

of ideas and driver of the agenda. Most clinical professors require their students to prepare an agenda for their supervision meeting.⁴⁹ Handing agenda-setting over to students supports ownership over their cases and teaches them how to prioritize pending issues in their cases. The strategies discussed below can be adapted to multiple agenda items and treats students as partners in seeking justice.

Overall, these methods are empowering to students both at the individual and social level.⁵⁰ As Ruthy Lowenstein Lazar explains, “the term empowerment raises a variety of associations: power, strength, change of consciousness, critical attitude, visibility, self-motivation, the ability to change, solidarity, community spirit, and sense of belonging, among others.”⁵¹ At the personal level, students move from uncertainty to building “confidence and trust in their ability to make decisions and exert influence, develop a critical sense toward the social, political, and economic reality in which they live, and are able to act accordingly.”⁵² These methods envision students as learners and questioners and actively engage them in their own knowledge and skill building. This builds student confidence, trains them to become independent problem-solvers, and generates transferable lessons for post-graduation. At the social level, clinical supervision generates student empowerment by guiding them to challenge norms and assumptions and to develop critical frames for transforming institutions and society. Students become situated to “challenge the existing power differences between various groups” and to identify “social, cultural, and economic power [structures] that serve as barriers.”⁵³

II. SUPERVISION STRATEGIES FOR NONDIRECTIVE TEACHING

The techniques described below are methods for engaging in non-directive supervision beyond Socratic questioning. It is essential to select a technique that is tied to and in service of a specific teaching and learning goal. As Wally Myleniec explains, “supervision is not a random process,” rather, “all interventions should be planned to achieve a specific outcome and that the method chosen for the intervention should be specific to the context in which it occurs.”⁵⁴ In their guide to supervision, Ann Shalleck and Jane Aiken describe how supervisors should be attuned to the arc of student learning and consider that trajectory

⁴⁹ Shalleck & Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 197.

⁵⁰ Ruthy Lowenstein Lazar, *Interdisciplinary Clinical Education — On Empowerment, Women, and a Unique Clinical Model*, 23 CLIN. L. REV. 429, 442 (2016).

⁵¹ *Id.*

⁵² *Id.* at 444.

⁵³ *Id.* at 445.

⁵⁴ Mlyniec, *supra* note 17, at 518.

within three frames: the specific matter assigned to the student; the student experience across all the clinic cases and projects they handle; and the supervision meeting.⁵⁵ Decisions about what to teach in the supervision meeting should be intentional, based on considerations about student capacities, the goals of supervision, and the need to manage meeting time – all of which fluctuate and change throughout the semester.⁵⁶ They further suggest organizing supervision meetings into discrete segments, which can reflect “a fundamental value, a theme of the clinic, an essential concept, or any other supervisory focus that the teacher wants to supervise.”⁵⁷ The idea of breaking up a meeting into segments linked to specific goals also fits the idea of rotating different teaching techniques to serve those goals. Selecting among competing goals is the teacher’s most important job in clinical supervision;⁵⁸ the techniques below are simply ways to advance those goals for student empowerment. These techniques are not inherently non-directive – all of them can be deployed along the spectrum from directive to non-directive. However, they are all suited to non-directiveness because they allow students to learn from experience.

1. *Moots and Role Plays*

An essential way to prepare for major lawyering tasks is to prepare for a moot, conduct a moot, to reflect on the moot, and to revise based on feedback. Typically, a clinic moot is a full or partial enactment of an upcoming lawyering experience with students and faculty playing the roles of different parties to the activity and staying in role before debriefing

⁵⁵ Shalleck & Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 172-73.

⁵⁶ *Id.* at 172. They state, “[f]ulfilling the immediate objectives of the meeting while attending to broader lawyering and learning within the frames of the case or project and the student’s complete clinic experiences requires careful thought and planning.” *Id.* at 195.

⁵⁷ *Id.* at 196.

⁵⁸ Aiken and Shalleck list the following “macro” goals for supervision:

- Students will have sufficient knowledge of the law to provide appropriate client representation.
- Students will begin to appreciate their roles as professionals.
- Students will listen to clients’ stories from the perspective of the client.
- Students will learn to reflect meaningfully on their experience.
- Students will elicit feedback on their performances and demonstrate personal awareness of their strengths and weaknesses.
- Students will refine their ability to identify ethical issues and begin to know how to address them.
- Students will learn to exercise judgment.
- Students will learn to generate and evaluate strategies.
- Students will develop interpersonal, relationship-building skills.
- Students will recognize lawyering as a process of representing a client, not just a composite of skills.

Id. at 209.

on the performance. Supervisors can use moots to help students practice and refine countless lawyering skills. A litigation clinic might schedule several moots before a trial, with students playing the roles of judges, witnesses, and opposing counsel. A transactional clinic might moot a counseling session with an organizational client or a presentation to a board of directors on recommended legal steps, with teammates playing the client role. A legislative clinic might moot a legislative hearing with fellow students acting in the role of legislators. Moots are valuable in preparing for the upcoming event, anticipating likely scenarios, sharpening lawyering skills and case theory, and building student confidence. Roleplaying “foster[s] learning by putting students in active roles, engaging them in the messiness of facts, and requiring them to make decisions,” and these learning opportunities benefit all participants.⁵⁹ For all these reasons, moots are a regular part of supervision sessions in many clinics.⁶⁰

Role playing can be equally useful for less performative and more routine lawyering tasks as well. For example, many members of Gen Z are very nervous and inexperienced in making phone calls, and yet handling their cases may demand phone skills.⁶¹ So, spending time in supervision meetings role playing a call to opposing counsel or to a potential witness or a government agency can help ease student anxiety and help them develop a working agenda for the call. Early in the semester, many students benefit simply from mooting their initial call to a client to set up the client interview. This can be a way to begin thinking about how to apply client-centered lawyering to real-world situations.⁶² Teachers can assign students to different roles – as the client, the lawyer, and the “critiquer” of the moot. Students can rotate through different roles to experience multiple perspectives.

Student attorneys can also moot upcoming negotiations to test out their personal negotiating styles and to put them in the mindset of an opponent, which is a key part of negotiation strategy. Similarly, students can benefit from role plays involving all or portions of client interviews

⁵⁹ Binny Miller, *Teaching Case Theory*, 9 CLIN. L. REV. 293, 325 (2002).

⁶⁰ Quigley, *supra* note 19, at 478 (“there often should be some form of practice, simulation or walk-through of the activity planned by the student with the teacher’s participation.”). Clinics also regularly engage in simulations in the seminar component of the course; these simulations are generally not focused on real cases. See *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511, 513 (1992). Helen Kang recommends bringing role playing into case rounds. Helen Kang, *Use of Role Play and Interview Mode in Law Clinic Case Rounds to Teach Essential Legal Skills and to Maximize Meaningful Participation*, 19 CLIN. L. REV. 207 (2012).

⁶¹ Schlinck, *supra* note 38, at 292 (“Gen Z students ‘find email ‘burdensome’ and voice calls anxiety inducing.”).

⁶² DAVID A. BINDER, PAUL BRUCE BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004).

and counseling sessions, particularly segments that might involve emotional, personal, or sensitive information. Many students are nervous when it comes to talking to clients about financial matters, even where that information can be essential to shaping case theory or negotiation strategies, such as in family or consumer law matters. Practicing these conversations beforehand, and taking feedback from the team, can help student attorneys ease their jitters and understand the propriety of these areas of inquiry. Almost any aspect of the client representation that is making a student anxious can be mooted beforehand. Moots serve many teaching goals, particularly engaging students in role assumption; developing and synthesizing legal skills; refining skills of giving, receiving, and incorporating feedback; building student confidence; gaining awareness of the interests of multiple parties engaged in a case or project; and generating and evaluating strategic choices.

2. *Brainstorming Roundtables*

One of the most helpful aspects of the team structure for supervision is the advantage of having multiple perspectives available for problem-solving. The adage of “two brains are better than one” comes to life in the team setting. Thus, the clinical teacher can call on all the team members to help students generate ideas at decision points throughout their cases. Studies of brainstorming “suggest that most people enjoy the process, believe it to be effective, and are more satisfied with their own performance than when working as individuals.”⁶³ It has benefits “beyond merely generating ideas, in building group cohesion and increasing commitment to decisions that are made.”⁶⁴ In brainstorming roundtables, the supervisor sets forth the brainstorming proposition and then calls on students to offer their insights – moving back and forth among team members also has the benefit of including all students in the discussion. A key aspect of brainstorming is throwing out ideas without pre-judging them. This frees students from worrying about the validity of their suggestions. They can generate ideas first, and then sort through the options as a team. For students struggling to move their cases forward, it can be very energizing to walk out of a supervision session armed with new ideas and options.

Consider these examples. A student who is preparing an interview agenda can benefit from a supervision session in which the entire team brainstorms about possible areas of inquiry for the interview and the reasons for exploring each topic. After an interview, students

⁶³ James H. Stark & Douglas N. Frenkel, *Changing Minds: The Work of Mediators and Empirical Studies of Persuasion*, 28 OHIO ST. J. ON DISP. RESOL. 263, 333 (2013).

⁶⁴ *Id.*

can brainstorm about possible claims or defenses worthy of further research. In terms of research strategies, students can toss out ideas for tackling a novel area of the law – from using Google, to treatises, to legal encyclopedias, to searching cases for certain terms in databases and more. Throughout this discussion, the supervisor (informed by their knowledge and experience) can guide students to consider the strengths and weaknesses of various research strategies, and the various phases of the case in which certain strategies might be more beneficial. As legal research develops, the supervisor might engage the team in listing various legal claims/defenses on the whiteboard and thinking about what facts support or undermine various claims. In developing a factual investigation strategy, the supervisor can ask the team to brainstorm various sources for finding facts to support different claims and theories.

There is almost no lawyering task in which the brainstorming process will not work. Students can test run case theories. They can brainstorm negotiation strategies; counseling options; persuasive arguments; anticipated arguments from the other side; and predict client reactions to different legal options. Brainstorming is also great for engaging students in parallel universe thinking, which Susan Bryant and Jean Koh Peters recommend for helping students seek “multiple explanations for a client’s – or any other professionally significant person’s – words or actions before planning an action strategy.”⁶⁵ This is very powerful for questioning assumptions about clients, particularly negative ones, and is an important dimension of cross-cultural lawyering, “reminding the lawyer to suspend judgment and even interpretation of behavior about which she has insufficient information.”⁶⁶ Overall, brainstorming serves the clinical teaching goals of collaboration; problem-solving; critical thinking; and learning for transfer.

3 Writing Workshops

Supervision meetings are an excellent opportunity to engage students in peer review on written drafts. Reviewing writing in a non-directive mode is challenging for many supervisors; often far more so than other lawyering tasks.⁶⁷ It is tempting to “red line” a document (or

⁶⁵ Susan Bryant & Jean Koh Peters, *Reflecting on the Habits: Teaching About Identity, Culture, Language, and Difference*, in *EDUCATING LAWYERS*, *supra* note 7, at 351-52.

⁶⁶ *Id.* at 352.

⁶⁷ Tamar Ezer, *Teaching Written Advocacy in a Law Clinic Setting*, 27 *CLIN. L. REV.* 167, 168-69 (2021) (“written advocacy in the law clinic setting highlights a central tension faced by clinical faculty: balancing responsibility to students with that to clients or partners.... clinicians tend to be more ‘interventionist’ and directive than for other aspects of the clinic work.”). *See also* Cheri Wyron Levin, *The Doctor is In: Prescriptions for Teaching Writing in a Live-Client In-House Clinic*, 15 *CLIN. L. REV.* 157, 180-83 (2008) (describing how, as a clinical legal writing teacher, she chooses between directive and nondirective methods).

to write a memo to the student or use comment bubbles) to move it efficiently toward a final draft. However, this can undermine a student's learning process of refining their own work through multiple drafts. Thus, an advantage of inserting a peer review stage in the writing process is to break the direct line between the student attorney and the supervisor. Engaging students in the editing process benefits not only the author(s), but also the peer editors, who gain the opportunity to critically assess and improve written work, as "[s]tudents are better able to see gaps in writing when it is not their own."⁶⁸ In addition, "through their roles as readers and editors, students learn to focus on the needs of their audience, a sensitivity essential for successful writing to the courts, other lawyers, and clients."⁶⁹ Peer review also reinforces lessons about giving and receiving feedback that permeate clinical courses; "two of the greatest benefits are exposing students to collaborative work and providing them with tools for self-empowerment."⁷⁰ It prepares students for law office practice given that lawyers regularly review and comment on their colleagues' written work.⁷¹ Putting students in the role of teacher is another way to cement learning.

To review writing in a supervision meeting, it is usually preferable if students can circulate and read the draft in advance of the meeting and come prepared to provide feedback. Teachers can provide the peer editors with a checklist to guide their feedback, and they might assign certain segments of the checklist to different students to focus their attention and allow them to go deeper in their comments.⁷² The advantage of a group discussion over providing solely written comments is

⁶⁸ Ezer, *supra* note 67, at 183. See also Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLIN. L. REV. 285, 343–44 (2010) (noting the benefits for both the author and the critiquer); Sheila Rodriguez, *Letting Students Teach Each Other: Using Peer Conferences in Upper-Level Legal Writing*, 13 FLA. COASTAL L. REV. 181, 186 (2012).

⁶⁹ Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 1, 2 (2003). See also Patricia Grande Montana, *Peer Review Across the Curriculum*, 91 OR. L. REV. 783, 785 (2013) ("Through peer review, students improve their legal analysis and writing, enhance their editing skills, learn to cooperate with others, manage and evaluate constructive criticism, and develop a deeper appreciation of audience."); Cassandra L. Hill, *Peer Editing: A Comprehensive Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEVADA L.J. 667, 673 (2011) ("Students also open their minds to other possibilities when they see how different writers approach and analyze the same problem or task.").

⁷⁰ Kowalski, *supra* note 68, at 343-44.

⁷¹ Montana, *supra* note 69, at 787-88 ("Attorneys will review and comment on all types of writing, including correspondence with clients or opposing attorneys, internal office memoranda, and procedural or substantive motions to a court. The reason is simple: writing is not a solitary activity, but a social collaborative one.").

⁷² Hill, *supra* note 69, at 689. Hill provides sample peer editing checklists in Appendices B to D. *Id.* at Apps. B-D.

that the format lends itself to dialogue and allows the author to ask questions and clarify comments. Almost any draft is ideal for the workshop format, particularly in its early stages. A litigation clinic might review counseling letters to clients, demand letters to opposing parties, interrogatories and other discovery documents, motions, and briefs. A transactional clinic might review counseling letters to clients, a 501(c)(3) application, bylaws, contracts, employment agreements, and other corporate documents. A policy clinic can circulate white papers and policy analyses for peer input. By the end of the peer review, the author(s) will have ample feedback to improve a subsequent draft – all without direct editing by the supervisor. This nondirective and collaborative process moves the writing forward while improving the writing and editing skills of all participants.

4. Decision-Making Frameworks

Much of lawyering involves exercising judgment in conditions of uncertainty.⁷³ This is one of the most challenging and destabilizing aspects of the clinic for student attorneys, who often either bemoan their lack of legal experience or are overconfident in thinking there is a fixed “answer” to their questions. Clinical teachers help students “recognize decision moments they had not seen and to propose a course of action even though information is imperfect and the complexity of the variables sometimes difficult to grasp.”⁷⁴ Learning to make decisions in a structured way is one of the greatest tools students gain from their clinical experience. In clinics, students learn to make decisions by (1) ascertaining goals; (2) identifying options to achieve those goals; (3) comparing strengths and weaknesses of options, including consideration of non-legal and ethical factors; (4) predicting outcomes; (5) generating factual and legal areas for further inquiry; and (6) selecting an option. This exercise of judgment involves a blend of “interrelated considerations including knowing about client goals, legal rules, legal institutions contexts within which problems arise, opponents’ goals, and making predictions about how people and institutions will respond to taking or withholding action.”⁷⁵ This structured format is particularly helpful after a more free-flowing brainstorming session.

Using the whiteboard or a large piece of paper or a computer-displayed document to help students visualize and keep track of the decision-making framework is a powerful, in-person tool that creates a “takeaway” for student attorneys. They will likely leave the

⁷³ Robert D. Dinerstein & Elliott S. Milstein, *Learning to Be a Lawyer: Embracing Indeterminacy and Uncertainty*, in EDUCATING LAWYERS, *supra* note 7, at 327.

⁷⁴ *Id.* at 328.

⁷⁵ *Id.*

supervision meeting with various legal and factual issues to investigate to further refine the options. Their decision-making will be improved by fleshing out alternatives and outcomes they may not have initially identified. Most importantly, they will gain a sense of control over a previously chaotic situation.⁷⁶ Further, the entire team will have gained a transferable skill to deploy for the rest of their legal careers that will improve their decision-making in a range of settings.⁷⁷

Kris Henning recommends walking through the framework with students early in the semester, and then as the semester progresses, expecting them to apply the framework on their own so that they arrive at a supervision meeting with a proposed plan of action.⁷⁸ Through this process, “Teachers ... empower students with the tools they need to make good decisions on their own.”⁷⁹ Notably, this structured process of decision-making is similar to how lawyers counsel clients, and a client counseling chart can also be generated in this model in the supervision setting. Using the decision-making framework teaches problem-solving, collaboration, critical and creative thinking, and transferable legal skills.

5. *Quick Writes*

Quick writes involve having students write a short response to a prompt and then sharing their ideas with the larger group.⁸⁰ Many clinicians use quick writes in the seminar portion of the course, and this tool is increasingly used in doctrinal courses as well. It works just as well in the smaller, more intimate setting of a supervision meeting. The benefit of a quick write is that it gives students time to gather their thoughts and think through an answer before speaking. This reduces student anxiety and improves the quality of the discussion. It also provides a quiet space for reflection in a group setting, which helps to vary the pace and energy of a supervision meeting. It permits a quieter or slower processing student to participate at the same rate as their louder and faster processing colleagues.

⁷⁶ Kristin Henning, *Combating Decision Fatigue in Supervision*, in EDUCATING LAWYERS, *supra* note 7, at 233. She states that “[a]n effective decision-making framework also reduces the student’s anxiety and builds the student’s confidence in dealing with the unknown.” *Id.* at 240.

⁷⁷ It is important to teach for transfer, i.e., to “improve your teaching so that your students will understand, remember, and be able to later use what you teach them.” Shaun Archer, James P. Eyster, James J. Kelly, Jr., Tonya Kowalski & Colleen F. Shanahan, *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 259 (2014).

⁷⁸ Henning, *supra* note 76, at 236.

⁷⁹ *Id.* at 235.

⁸⁰ Danxi Shen states that “[a] quick write is a ‘brief written response to a question or probe’ that requires students to rapidly explain or comment on an assigned topic.” Danxi Shen, *Quick Write*, HARVARD U. <https://ablconnect.harvard.edu/quick-write>.

Quick writes are ideal for generating focused, and short responses. In teaching for transfer, Shaun Archer and his co-authors suggest quick writes to plan for lawyering tasks. For example, to prepare for a client interview, they pose quick write questions to students that draw on students' prior experiences in building rapport with new people.⁸¹ Sample questions include: "Think of a recent situation in which you met someone new. What did you do to begin to establish a connection with that person? What did that person do to begin to establish a connection with you?"⁸² After writing down their responses, the students share their recollections and discuss how those experiences can inform their client interviews.⁸³

There are countless points where a quick write can be useful. It can be used to kick off a brainstorming session. Students might engage in a quick write to suggest language for the scope of representation in a retainer agreement, and then the team can discuss which version is most clear and accurate from the client's perspective. Student attorneys can generate a quick write setting forth a case theory, and then the team can compare and contrast their case theories and discuss their strengths and weaknesses. Student attorneys might draft a sample by-law or interrogatory and compare the effectiveness and precision of the different versions. Prior to a negotiation, students can be asked about various strategic choices, such as whether they want to make the first offer or have the opponent put down the first offer, along with a sentence explaining their preference. The team can then debrief the various strategic choices. By the end of the discussion, the lead student attorneys will have seen and debated a range of options, which in turn, will help them with decision-making. Quick writes help students slow down their thought processes and prepare before speaking. They help vary the tempo of a meeting and ensure that all students respond to a prompt, which can also bolster the confidence of quieter or less assertive students.

6. Rule Review

Lawyers operate in a system of rules and laws. All lawyers work subject to the rules of professional conduct for their jurisdiction. For litigators, there are also cross-cutting rules of procedure and evidence, as well as statutory substantive laws setting forth possible claims and defenses. Statutes also govern how various real estate and transactional deals must be conducted. There are laws that are the basis for reform

⁸¹ Archer et al., *supra* note 77, at 284.

⁸² *Id.*

⁸³ *Id.*

in legislative clinics. In training student attorneys, we should emphasize the importance of reading rules carefully and closely. Guessing at or paraphrasing rules and laws can be a quick path to malpractice. Still, students can be tempted down these paths because much of the doctrinal curriculum hinges on having them memorize and regurgitate legal principles on exams. Thus, clinics are an important space for emphasizing the centrality of legal text to legal reasoning, which “is a subtle thinking process in which legal rules, as extrapolated from case law, are applied to facts, real or hypothetical, to predict outcomes.”⁸⁴

Thus, in supervision meetings, students can (and should) be pulling out paper or electronic copies of the relevant laws, rules, and cases under discussion and reading and analyzing them closely. The opportunities for reviewing legal texts are endless in clinical supervision. An emphasis on text can also surface whether students are struggling to find the relevant rules and laws. In turn, this is an opportunity to guide students in the importance of indexes and tables of contents to find rules efficiently, which is a transferable lesson in legal research skills.

Once a rule, law or case is identified, the team can parse the text, identify grey areas for further research and advocacy, and consider next steps. If an ethical issue is on the agenda, such as the propriety of contacting an unrepresented party, the entire team can identify and read relevant rule and commentary and analyze the proper course of action. If a complaint is about to be filed, the team can review the service rules and discuss and choose among options for serving a complaint. As a case theory is being developed, students can examine the substantive law to identify each element of a claim or defense. If students are considering how to get an out of court statement admitted at trial, they can parse the evidence rules to identify the hearsay rule and its exceptions. Students can benefit from discussing the governing rules in an IRAC format that transfers their legal writing instruction to the clinical setting – identifying the legal issue at stake, reading the text of the rule as a group, applying the rule, and arriving at a conclusion.

At the same time, law is often indeterminate. Rule analysis can help the team identify gaps and ambiguities in the law and think creatively how to use these grey areas for advocacy to benefit their clients. In short, every time case representation requires rule application, the students can pull out and examine the rules and work from the text. Rule review is a form of nondirective modelling that students will take with them into their careers.

⁸⁴ Jess M. Krannich, James R. Holbrook & Julie McAdams, *Beyond Thinking Like a Lawyer and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 385 (2009).

7. Online Fact Investigation

Clinics are the main site in law school where students learn about fact investigation and the importance of facts to building a case. Carolyn Grose and Margaret Johnson highlight to students how facts “are the essential pieces of a coherent and compelling story,”⁸⁵ and “most case outcomes are driven by the facts.”⁸⁶ Yet the rest of the law school curriculum focuses almost exclusively on analyzing law.⁸⁷ In reading appellate cases, students are handed the facts on a silver platter as if the facts were preordained. With this approach, students do not gain an appreciation of how the factual record was generated; the facts that the lawyers found informally or through discovery; the facts the lawyers never found because they failed to look or ask; and the facts that the lawyers discarded or emphasized as they shaped their case theory. Clinics are where students gain an appreciation for how facts win and lose cases; influence negotiation outcomes; set the terms of a transactional deal; and persuade legislators.

In the modern era, many facts can be found online. A supervision meeting can be a setting for exploring informal avenues for fact investigation, which also have the benefit of being cost-free and efficient as compared to discovery, FOIA requests, or other formal mechanisms for gathering information. If the team meets in a space with a computer and a screen, the student attorneys can brainstorm about the types of facts that can be found through internet sleuthing. They can look up an opponent’s prior litigation history, examine a contested property on Google satellite, locate corporate records of an opponent or other parties, identify possible contacts on a government organization chart, peruse the social media accounts of witnesses, and explore all sorts of other freely available information on the internet. Finding and displaying this information to the team can generate a jolt of energy to a supervision meeting and spur a discussion for further avenues for factual investigation. In a litigation context, students can discuss what can be located via informal discovery and what requires formal discovery mechanisms. They can also begin a discussion of whether the evidence they locate on-line will be admissible in court. Conducting joint fact investigation as a team has the additional benefit of moving the case forward and propelling the student attorneys to develop a full factual investigation plan.

⁸⁵ CAROLYN GROSE & MARGARET E. JOHNSON, *LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS* 128 (2nd ed. 2023) (describing the law school curriculum’s failure to teach students about the importance of facts).

⁸⁶ *Id.* at 125.

⁸⁷ *Id.* at 127.

8. Video Review

Many clinics take advantage of recording technology to have students tape various real and simulated aspects of their clinic experience. Videos can be helpful tools for students to observe their own performances and to reflect on their strengths and weaknesses. Students might record client interviews (with client permission) to have a full record of the interview and to gain feedback, especially if they conduct interviews without a faculty member present.⁸⁸ Simulations might be recorded, such as trial advocacy exercises.⁸⁹ At the intersection of real and simulated, the clinic might record moots for trials or counseling sessions. Videos can be excerpted and shared in a supervision meeting for reflection. Further, post-pandemic technology makes excerpting and sharing video clips easier than ever.

Beryl Blaustone recommends a flexible six-step model for providing students with feedback that can be utilized for video review in a supervision meeting.⁹⁰ She cautions that feedback should be a “planned professional choice rather than a reactive choice made in moments of dissatisfaction or disappointment.”⁹¹ Bringing a video excerpt into a supervision meeting guarantees that the feedback will be planned. Her steps are as follows: (1) “the student identifies the strengths of the performance;” (2) “the peer or supervisor responds solely to those items raised by the feedback recipient;” (3) “the peer or supervisor identifies other strengths of the performance;” (4) “the student identifies difficulties and/or changes to be made;” (5) “the peer or supervisor responds to the identified difficulties;” and (6) “the peer or supervisor indicates additional difficulties.”⁹² The model is designed to help students learn to engage in self-critique and to emphasize moments of mastery given that “[s]olid areas of work need reinforcement if they are to be consciously used again in the further construction of the scaffolding for any lawyering activity.”⁹³ The rigor of the feedback model helps counter the risk

⁸⁸ Carolyn Grose, *Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinical Supervisors at Initial Client Interviews*, 14 CLIN. L. REV. 415, 417 (2008) (describing the reasoning for attending or not attending client interviews and noting that many professors who choose not to attend interviews will have student attorneys tape the interviews).

⁸⁹ Video review is a core component of many trial advocacy courses. See Christopher Behan, *From Voyeur to Lawyer: Vicarious Learning and the Transformational Advocacy Critique*, 38 STETSON L. REV. 1, 13 (2008).

⁹⁰ Beryl Blaustone, *Reflection on Supervision in Feedback Interactions: Reinforcement of Some Fundamental Themes*, in EDUCATING LAWYERS, *supra* note 7, at 223. See also Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLIN. L. REV. 317, 339 (2014) (recommending video performance review as part of a formalized process of reflection).

⁹¹ Blaustone, *supra* note 90, at 224.

⁹² *Id.* 225-26.

⁹³ *Id.* at 229.

that video performance review will focus on superficial critiques, such as style over substance.⁹⁴

9. Critical Theory Frames

Ann Shalleck and Jane Aiken write that “fostering critical perspectives on how law functions [is] one of the goals of clinical education.”⁹⁵ Supervision meetings can be an ideal space to bring critical theory frames to bear on casework.⁹⁶ While this can also be done in seminars and case rounds, there may be situations in which a specific student or team would benefit from situating a client representation within a larger social and cultural context.⁹⁷ In addition, students can benefit from reflecting on how their own identities impact their lawyering choices. “[T]his combination of conceptual thinking and practical action fosters integrative learning.”⁹⁸ In recent years, clinicians have increasingly brought critical theory into the classroom,⁹⁹ such as critical race theory,¹⁰⁰ narrative theory,¹⁰¹ feminist legal theory,¹⁰² movement lawyering,¹⁰³ rebellious lawyering,¹⁰⁴ cultural humility,¹⁰⁵ and more. Alina Ball explains how bringing critical legal theory into clinical teaching facilitates “interdependent pedagogical goals: (1) contextualizing client

⁹⁴ Behan, *supra* note 89, at 13.

⁹⁵ Shalleck & Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 190.

⁹⁶ Alina Ball states that “critical legal theory explains and theorizes how subordination of classes of people is perpetuated even absent formal systems of intentional discrimination.” Ball, *supra* note 10, at 24. Shalleck & Aiken suggest bringing a frame of “inequality, injustice, or exclusion” into supervision meetings. Shalleck & Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 179-80.

⁹⁷ *Id.* at 179 (“While the seminar is often designed to build understanding of at least some of these [critical theory] issues, the context of each case or project invariably requires particular work in supervision.”).

⁹⁸ *Id.* at 181.

⁹⁹ Ball, *supra* note 10, at 28. On clinical professors bringing theory into their scholarship, see Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLIN. L. REV. 81 (2019).

¹⁰⁰ See Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLIN. L. REV. 149 (2021); Anne D. Gordon, *Cleaning up Our Own Houses: Creating Anti-Racist Clinical Programs*, 29 CLIN. L. REV. 49 (2022).

¹⁰¹ See generally GROSE & JOHNSON, *supra* note 85. See also Shalleck & Aiken, *Supervision: A Conceptual Framework*, in EDUCATION OF LAWYERS, *supra* note 7, at 181.

¹⁰² See Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER & SOC. POL'Y & L. 161 (2005); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991).

¹⁰³ See Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLIN. L. REV. 663 (2017).

¹⁰⁴ See Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLIN. L. REV. 775 (2017).

¹⁰⁵ GROSE & JOHNSON, *supra* note 85, at 47-65.

work; (2) encouraging creativity; (3) promoting higher order thinking; and, (4) developing professional character and an ethical compass.”¹⁰⁶

In the supervision setting, the teacher can identify a relevant critical theory frame that would help a student or students contextualize their case. The teacher can assign excerpts of foundational readings to students before a supervision meeting and then engage the students in a discussion of how the theory better informs their understanding of the client’s situation and can shape their lawyering. I have previously written about the ways that clinical professors are a vital link between legal scholarship and law practice. By sharing theory in a live client context, we send our students into the world with more sophisticated understandings of the structural underpinnings of the law and its impact on the lives of marginalized communities.¹⁰⁷ I described bringing into my supervision of public benefits cases Martha Fineman’s theory of vulnerability as a shared human condition warranting greater state support.¹⁰⁸ Her theory sheds light on the harmful “welfare queen” stereotype that limits our clients’ access to public benefits and stigmatizes single mothers of color. In bringing this theoretical frame to bear on real cases, “students can articulate why society has a shared responsibility to support families that do not conform to the patriarchal, marital household model. In turn, students can craft case theories and narratives that shift the fact finder’s gaze away from individual blame and into a larger social context that stresses collective responsibility.”¹⁰⁹ This has as a ripple effect outside the classroom; “as these students move into law practice and policymaking positions, they are able to apply these theoretical insights to other problems and to influence the course of public debate.”¹¹⁰ I teach in a general practice clinic, so while the entire class would have certainly benefitted from exposure to Fineman’s theory, seminar time is limited, and it was particularly salient for a specific team handling a welfare benefits case.

Eduardo Ferrer and Kristin Henning explain how they use explicit critical frames to infuse every aspect of their juvenile justice clinic.¹¹¹ The chosen frames – adolescence; race; trauma; and sexual orientation, gender identity, and gender expression¹¹² -- provide a foundation for the course “through which students are encouraged to intentionally and

¹⁰⁶ Ball, *supra* note 10, at 23.

¹⁰⁷ Michele Gilman, *The Future of Clinical Legal Scholarship*, 26 CLIN. L. REV. 189, 198 (2019).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 199.

¹¹⁰ *Id.*

¹¹¹ Eduardo R. Ferrer & Kristin N. Henning, *Critical Clinical Frames: Centering Adolescence, Race, Trauma, and Gender in Practice-Based Pedagogy*, 30 CLIN. L. REV. 113 (2023).

¹¹² *Id.* at 140.

critically examine and interpret everything they encounter in furtherance of their representation of their clients' expressed interests."¹¹³ They selected the frames based on their personal and clinic values, as well as the frames' relationship to the clinic's advocacy.¹¹⁴ They set forth the frames in the syllabus and cover them in seminar assignments and seminar discussions. In terms of supervision, the frames allow for critical reflection in which students can unpack their assumptions about clients and the law.¹¹⁵ The supervision setting allows for an "explicit, intentional, and extensive analysis of the frames,"¹¹⁶ in which students relate their casework "back to the research and theory they have learned."¹¹⁷ Importantly, the frames allow for self-directed learning: "while the various pedagogical frames may aid the student with their analysis, it is ultimately the student who is directing the process."¹¹⁸ Supervisors can also engage students in assessing the legitimacy or applicability of the frames and encourage additional or alternate frames to understand their practice area. In short, in making decisions about where to bring theory into the clinic, it is important to recognize supervision as an additional and appropriate site.

10. Guided Reflection

The metacognitive approach of clinical supervision stresses planning, doing, and reflecting.¹¹⁹ The reflection stage can be done independently (such as through journaling), in the seminar (such as through case rounds), and in supervision, taking advantage of the team structure. The teacher can guide students through a reflection on the performance of their lawyering tasks. Tim Casey states that "[a] conscious and deliberate analysis of a lawyering performance can provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation."¹²⁰ Casey suggests a framework by which a teacher can guide the students through six stages of reflection that "move the student from an objective perspective to a relativistic perspective, and ultimately, to a contextual perspective."¹²¹

¹¹³ *Id.* at 118. In this way, the use of pedagogical frames itself becomes a meta-frame – a methodology for confronting the false claims of neutrality, certainty, and replicability of the law and the systems and people that enforce it. *Id.* at 122.

¹¹⁴ *Id.* at 142.

¹¹⁵ *Id.* at 147.

¹¹⁶ *Id.* at 146.

¹¹⁷ *Id.* at 147.

¹¹⁸ *Id.* at 121.

¹¹⁹ Lee, *supra* note 19.

¹²⁰ Casey, *supra* note 90, at 319.

¹²¹ *Id.* at 321-22.

Casey also provides specific prompts for each stage of reflection.¹²² These questions help students develop “professional judgment” while building the life-long skill of “reflective practice.”¹²³ These prompts are not driven by any particular answer or outcome, and thus differ from a more Socratic approach.

Students should also engage in guided reflection on their roles in the justice system and the larger social context in which we practice law.¹²⁴ This helps students better represent their low-income clients and to engage as policy advocates in the future.¹²⁵ Spencer Rand warns that merely representing poor people will not open students minds to social justice imperatives; rather, “We must make clear to our students ... that social justice means more than just giving the poor access to counsel. We must teach them a model by which they can practice in a way that brings social justice into their practice.”¹²⁶ Jane Aiken details a model of “justice readiness,” which involves helping “students learn how to reflect on their experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role they play in either unearthing hierarchical and oppressive systems of power or challenging such structures.”¹²⁷ To help students understand “how oppression manifests itself in the law,” she poses open-ended questions to them in supervision such as, “Where do you see resistance to the solution you seek for your client?” and “Who benefits if this solution is denied?”¹²⁸ She explains that this guided reflection “should be directed toward encouraging the student to think about a situation in a new way, thus creating some kind of disorientation and opening the way

¹²² *Id.* at 349. Casey states that “[i]n the first stage of reflection, the student must compare her performance to the standard of professional competence.” *Id.* at 334. “In the second stage of reflection,” Case continues, “we ask the student to identify different, equally successful ways to accomplish the lawyering performance.” *Id.* at 338. In the third stage, “the student considers why she made a specific choice.” *Id.* at 339. In the fourth stage, “the focus of attention shifts from internal context to external context. Students must be aware of the preferences, experiences, biases and characteristics of the other people involved in the lawyering performance.” *Id.* at 341. “In the Fifth Stage,” Casey states, “students consider not only case-specific factors that influenced their performance, but also systemic power dynamics, political and social realities, and economic forces that affect their decisions.” *Id.* at 344. Finally, “at the Metacognitive [Sixth] Stage, we ask the student to consider how they think. Specifically, we ask them how they think differently, or, how their thinking process has changed, as a result of reflection on the lawyering activity.” *Id.* at 346.

¹²³ *Id.* at 319.

¹²⁴ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 38 (1995).

¹²⁵ *Id.*

¹²⁶ Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work’s Empowerment Approach*, 13 CLIN. L. REV. 459, 461 (2006).

¹²⁷ Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 296–97 (2001).

¹²⁸ *Id.* at 305.

for new meaning schemes.”¹²⁹ As teachers, we “pull[] back the curtain and dethrone[] neutrality,” and “[it] is then up to them what choices they make about the kind of lawyers they want to be.”¹³⁰

III. SUPERVISION AND SOCRATIC QUESTIONING

Existing models of clinical supervision in the pedagogical literature assume a Socratic dialogue. Without a doubt, there is a place for Socratic questioning in clinic supervision meetings. While this Essay strives to broaden our nondirective supervision toolkit, it is worth highlighting the advantages and disadvantages of the Socratic tradition in supervision meetings.

The Socratic method is the core pedagogy of legal education.¹³¹ In most doctrinal classrooms, it involves a professor asking a selected student questions “to articulate gradually deeper understandings of a legal doctrine or theory.”¹³² The Socratic method, especially as it is used in the doctrinal classroom, has been heavily critiqued¹³³ for causing students psychological distress;¹³⁴ reifying race, class, and gender hierarchies;¹³⁵ being disconnected from lawyering skills and client representation;¹³⁶ turning the rest of the class into vicarious learners;¹³⁷ and fostering the notion that legal questions have single answers.¹³⁸ However, the Socratic method also has its defenders.¹³⁹ Beth Wilensky acknowledges that the Socratic method is “tremendously painful when done poorly,” but has “tremendous value when done well...[I]t insists that students do the

¹²⁹ *Id.*

¹³⁰ *Id.* at 289.

¹³¹ Elizabeth G. Porter, *The Socratic Method*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 101 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015).

¹³² *Id.*

¹³³ Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118 (1999) (summarizing various critiques).

¹³⁴ See Howard, *supra* note 4, at 173-74 (“Not only is the focus of the Socratic classroom painfully distant from the world of practice, but the psychological impact of this form of teaching simultaneously injures students and distorts their preparation for the interpersonal requirements of practice.”).

¹³⁵ See Gerson, *supra* note 43, at 2327; Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL ED. 591 (1982).

¹³⁶ Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education's Signature Pedagogy*, 84 IND. L.J. 589, 602-03 (2009) (recommending a variety of teaching methods to supplement the Socratic method).

¹³⁷ Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory & Instructional Design Can Inform & Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 351 (2001).

¹³⁸ Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Realist Pedagogy*, 60 VAND. L. REV. 483, 494 (2007).

¹³⁹ Porter, *supra* note 131, at 101.

thinking themselves, as a means of learning how to think. At its best, engaging in Socratic dialogue requires students to reason through difficult propositions, confront inconsistencies in their conclusions, and rethink their prior stances.”¹⁴⁰ Jeanne Suk Gerson explains how the Socratic method can model dialogue outside the classroom setting; it “should enable rigorous exploration of high stakes issues and disagreements through the reexamination of reflexive reactions, and nurture an attitude that is questioning and self-critical — the kind of civil discourse that would benefit our democracy.”¹⁴¹

In a doctrinal course, Socratic questioning is generally about an appellate case. In a clinic, the client representation is the text. This dilutes many of the critiques of the Socratic method, which are also tied to the Langdellian method of case analysis.¹⁴² In a clinic, the teacher is more likely attuned to downplaying professional hierarchies, centering student well-being, and teaching a wide range of lawyering skills. Thus, a Socratic dialogue in the clinic setting can achieve many goals of supervision. Still, the *exclusive* use of Socratic questioning in the clinic setting raises some critiques. Even in a small group setting, it centers the teacher in a hierarchical relationship. Under questioning, students often feel that the professor is “hiding the ball,” and that they must guess a proper answer. It puts team members in role as subjects rather than collaborators. Moreover, it can be tedious to teach and learn through only one methodology, which is of course the reason that many doctrinal professors are borrowing from their experiential colleagues and expanding their techniques for classroom teaching. Thus, as with any teaching methodology, Socratic supervision can be done well or poorly, and even at its most skillful, it has its benefits and downsides.

Ann Shalleck provides a model for Socratic dialogue in supervision.¹⁴³ In a foundational article on clinical supervision, she provides a scripted colloquy of a supervision meeting in a domestic violence case and then explains intentional choices the teacher makes, as well as options the teacher considers and rejects. She describes the benefits and

¹⁴⁰ Beth Hirschfelder Wilensky, *Dethroning Langdell*, 107 MINN. L. REV. 2701, 2709 (2023).

¹⁴¹ Gerson, *supra* note 43, at 2342.

¹⁴² On the history of this dominant form of legal education, see Rachel Gurvich, L. Danielle Tully, Laura A. Webb, Alexa Z. Chew, Jane E. Cross, & Joy Kanwar, *Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. REV. FORUM, 118, 129–31 (2023). The authors explain that Langdell chose Socratic questioning to be more interactive form of instruction than a lecture format. *Id.* at 130.

¹⁴³ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 112 (1993–94) (Shalleck states that “[i]t is not an ‘ideal’ supervision, a model toward which to strive, nor a ‘typical’ supervision, a realistic portrayal of an actual supervisory experience. Rather, it is an heuristic device, providing a focus for discussing the fundamental concepts, techniques, and assumptions of supervision.”).

costs of each teaching goal. This demonstration of Socratic questioning affirms the importance of connecting teaching goals to teaching strategies. It also reaffirms that nondirective teaching is a misnomer. “While any given interaction between teacher and student may have become very nondirective—either in the sense of being very free flowing, without a structured or predefined agenda, or in the sense of not leading to a particular answer or way of looking at things—the teacher was nonetheless both defining the educational agenda and making decisions in a self-conscious, directed manner.”¹⁴⁴ In short, Shalleck provides a compelling demonstration and analysis of goal-driven, Socratic-style supervision. There are many situations in which Socratic questioning can help expand students’ thinking and allow them to find their own path and identity as lawyers. It is one of many tools in our expansive teaching toolbox.

CONCLUSION

Supervision meetings are a core component of a student’s clinical experience. They are a space where a teacher helps students question assumptions, build lawyering skills, learn to collaborate effectively, engage in strategic decision-making, consider critical perspectives on law, and prepare for lawyering tasks and reflect upon them. A nondirective teacher aims to achieve these goals by guiding student to find answers on their own, rather than providing them. Most new clinical teachers are instructed to use Socratic dialogue to achieve nondirective supervision goals. Yet there are multiple teaching techniques available to supervisors for advancing nondirective teaching objectives and using the small group format effectively. The ten teaching methods discussed in this article reach students with differing learning styles, center students in their own learning, raise the energy in meetings, and fit within the metacognition learning model that is the core of clinical teaching. These techniques should be selected and tied to specific teaching and learning goals and varied throughout the semester. A wide-ranging teaching methodology makes supervision meetings more engaging and enjoyable for teachers and students alike. As creative teachers, we can develop creative lawyers.

¹⁴⁴ *Id.* at 179.

