



---

2015

## **Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating from Case to Social Justice**

Becky Jacobs

*University of Tennessee, [jacobs@utk.edu](mailto:jacobs@utk.edu)*

Follow this and additional works at: [https://trace.tennessee.edu/utk\\_lawpubl](https://trace.tennessee.edu/utk_lawpubl)



Part of the [Law Commons](#)

---

### **Recommended Citation**

Jacobs, Becky L., Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating from Case to Social Justice (March 20, 2015). 21 CLINICAL L. REV. 371 (2015); University of Tennessee Legal Studies Research Paper No. 273. Available at SSRN: <https://ssrn.com/abstract=2628745>

This Publication is brought to you for free and open access by the Law at TRACE: Tennessee Research and Creative Exchange. It has been accepted for inclusion in College of Law Faculty Scholarship by an authorized administrator of TRACE: Tennessee Research and Creative Exchange. For more information, please contact [trace@utk.edu](mailto:trace@utk.edu).

# CULTIVATING PURPOSEFUL CURIOSITY IN A CLINICAL SETTING: EXTRAPOLATING FROM CASE TO SOCIAL JUSTICE

BECKY L. JACOBS\*

*Curiosity is an essential component of intellectual development. Not surprisingly, recent data indicate that curious students perform better academically than those who do not exhibit this personality trait. Thus, law professors should harness and nurture this characteristic in our students to improve their learning experiences. This essay considers a three-step pedagogical approach to curiosity as it relates to developing lawyering skills and social justice awareness and to the expansion of access to justice.*

*It is a miracle that curiosity survives formal education.*  
Albert Einstein<sup>1</sup>

## INTRODUCTION

Einstein's cynical observation aside,<sup>2</sup> curiosity is an essential component of intellectual development that should be fostered within the

---

\* Professor of Law, University of Tennessee College of Law. Email: jacobs@utk.edu.

<sup>1</sup> Many sources have attributed this quote to Albert Einstein, although the original source is unknown. See, e.g., Peter Gärdenfors, *Understanding Cultural Patterns*, in *LEARNING IN THE GLOBAL ERA: INTERNATIONAL PERSPECTIVES ON GLOBALIZATION AND EDUCATION* 68 (Marcelo M. Suárez-Orozco ed., 2007). The probable source for the sentiment, if not the precise quote, appears in Einstein's Autobiographical Notes, in which he contends that "[i]t is, in fact, nothing short of a miracle that the modern methods of instruction have not yet entirely strangled the holy curiosity of inquiry; for this delicate little plant, aside from stimulation, stands mainly in need of freedom; without this it goes to wreck and ruin without fail." Albert Einstein, *Autobiographical Notes*, in *ALBERT EINSTEIN: PHILOSOPHER AND SCIENTIST* 17-19 (3rd ed. 1969).

<sup>2</sup> Einstein's disdain arose from his own educational experiences. The Nobel Prize-winning physicist dropped out of the German equivalent of high school, and only after failing an entrance examination to a Zurich technological institute did he return to and graduate from a Swiss high school. See Clayton A. Gearhart, *The Education of Albert Einstein*, SJU Faculty Colloquium 1, 1-2 (January 1992), available at [http://employees.csbsju.edu/cgearhart/courses/honors210/einstein/ein\\_symp92.pdf](http://employees.csbsju.edu/cgearhart/courses/honors210/einstein/ein_symp92.pdf). His diploma allowed him to enroll in his preferred technological institute in Zurich. *Id.* at 1. While he did graduate from the institute, he apparently did not distinguish himself academically, and he was not immediately successful in locating a university position. *Id.* Einstein expressed great distaste for formal education that was based upon "drill, external authority, and ambition," *id.* at 4 (quoting LEWIS PYENSON, *THE YOUNG EINSTEIN* 6 (1985)), and exhorted that "[i]t is a very grave mistake to think that the enjoyment of seeing and searching can be promoted by means of coercion and a sense of duty." *Autobiographical Notes*, *supra* note

learning environment. According to influential psychologist and theorist Dr. Silvan S. Tomkins, “the interrelationships between the affect of [curiosity] and the functions of thought and memory are so extensive that . . . [its] absence . . . would jeopardize intellectual development no less than destruction of brain tissue.”<sup>3</sup>

The concept of curiosity has been pondered by philosophers, religious leaders, poets, and psychoanalysts, some of whom have characterized it as a virtue, some of whom have condemned it as a vice.<sup>4</sup> While most of us would agree that we know what curiosity is, we likely would value, define, and measure it somewhat differently.

Perhaps this ambiguity explains why curiosity has inspired an entire field of theoretical inquiry; there are as many definitions and constructions of curiosity as there are scholars studying it. Generally, curiosity may be defined as “an intense, intrinsically motivated appetite for information.”<sup>5</sup> Research has explored both the psychological aspects of curiosity as well as its measurement and assessment.<sup>6</sup> Psychologically, curiosity scholars have sought to define the term and to identify its dimensionality, generating “diverse theoretical views and contradictory empirical findings.”<sup>7</sup> These theories range from instinct versus acquired drive doctrines considering whether curiosity is an innate characteristic or whether it arises from the need to satisfy internal biological needs. Optimal stimulation theories, among others, also have been posited, holding that organisms are motivated by a need to maintain an optimal level of arousal.<sup>8</sup>

---

1, at 17-19.

<sup>3</sup> SILVAN S. TOMKINS, *AFFECT IMAGERY CONSCIOUSNESS: THE COMPLETE EDITION* 188 (2008). *But see* Korydon H. Smith, *Curiosity and Pedagogy: A Mixed-Methods Study of Student Experiences in the Design Studio* (doctoral thesis 2010) (thesis research indicated that, in architecture, interior design, and landscape architecture studio settings, no significant relationship existed between curiosity and academic achievement, no significant difference existed in curiosity levels between female and male design students, and no significant difference in curiosity levels across various year levels or age groups existed), available for purchase at <http://search.proquest.com/docview/305185216>.

<sup>4</sup> Aristotle and Cicero celebrated the intrinsic love of learning; St. Augustine, on the other hand, described curiosity as a “vain. . . longing for knowledge” against which he railed in *Confessions*. See George Loewenstein, *The Psychology of Curiosity: A Review and Reinterpretation*, 116 *PSYCHOLOGICAL BULL.* 75, 76 n.2 (1994) (citations omitted). Galileo’s curiosity resulted in wondrous discoveries and was lauded; that of Pandora and Eve resulted in tragedy and still serves as a moral tale. *Id.* at 76.

<sup>5</sup> See Loewenstein, *supra* note 4, at 77.

<sup>6</sup> Cf. Todd B. Kashdan, Paul Rose & Frank D. Fincham, *Curiosity and Exploration: Facilitating Positive Subjective Experiences and Personal Growth Opportunities*, 82 *J. PERS. ASSESSMENT* 291, 301 (2004) (the authors develop the Curiosity and Exploration Inventory (CEI) “within the context of a new theoretical framework”).

<sup>7</sup> Charles D. Spielberger & Laura M. Starr, *Curiosity and Exploratory Behavior*, in *MOTIVATION: THEORY AND RESEARCH* 221 (Harold F. O’Neil, Jr. & Michael Drillings eds., 2009). See also Loewenstein, *supra* note 4, at 75-77.

<sup>8</sup> Spielberger & Starr, *supra* note 7, at 221-29.

R

R  
R

Multiple methods and approaches have been developed and deployed to measure and assess curiosity. Some measures observe behavior in various circumstances and environments,<sup>9</sup> while others utilize personality questionnaires or peer and teacher surveys that ask about a subject's feelings and actions in different circumstances.<sup>10</sup> The resulting data reveal that curiosity is associated with attention to, or an orientation toward, the object of one's curiosity and with exploratory behavior, such as seeking new experiences and reacting positively to new elements and variation in one's environment.<sup>11</sup>

In an academic setting, curiosity has been identified as one of the most important determinants of educational attainment.<sup>12</sup> Research indicates that students exhibit curiosity when they display an interest in new or complex topics or subjects in the classroom; when they ask questions, conduct research, or engage in other exploratory behavior, often beyond that assigned; and when they persist in this questioning, research, and exploration in order to continue to learn.<sup>13</sup> Not surprisingly, recent data suggest that curious students perform better academically than those who do not exhibit this trait.<sup>14</sup>

If one accepts the accuracy of these data, how then do we, as law professors, harness and nurture this characteristic in our students to improve their learning experiences? These tasks may be particularly challenging if, as some have suggested, the level of student curiosity has declined over the past two decades.<sup>15</sup>

<sup>9</sup> See, e.g., Jamie Jirout & David Klahr, *Children's Scientific Curiosity: In Search of an Operational Definition of an Elusive Concept*, 32 DEV. REV. 125 (2012).

<sup>10</sup> *Id.* See also R. Langevin, *Is Curiosity a Unitary Construct?*, 25 CANADIAN J. PSYCH. 360-374 (1971).

<sup>11</sup> See Jirout & Klahr, *supra* note 9, at 9; Kenneth R. Olson & Cameron J. Camp, *Factor Analysis of Curiosity Measures in Adults*, 54 J. PSYCHOL. REP. 491, 491 (1984). Much of the data seeking to identify specific student traits or factors associated with "curiosity" has focused on school-age children, but there is data that suggests that findings from the study of the psychology of curiosity may be utilized in a range of educational contexts, including university settings. See, e.g., Graham Pluck & Helen Johnson, *Stimulating Curiosity to Enhance Learning*, GESJ: EDUCATION SCIENCES & PSY. 2, 26-29 (2011).

<sup>12</sup> See Loewenstein, *supra* note 4, at 75. See also Sophie von Stumm, Benedikt Hell & Tomas Chamorro-Premuzic, *The Hungry Mind: Intellectual Curiosity Is the Third Pillar of Academic Performance*, 6 PERSP. ON PSYCHOL. SCI. 574 (2011).

<sup>13</sup> Cf. H.I Day, *Curiosity and the Interested Explorer*, 21 PERF. & INSTR. 19, 21 (2007).

<sup>14</sup> See Stumm et al., *supra* note 12, at 574-88.

<sup>15</sup> Accounts of declining curiosity among student populations appear to be anecdotal. For example, in a publication entitled, *Academic Literacy: A Statement of Competencies Expected of Students Entering California's Public Colleges and Universities*, a survey of college faculty expressed concerns that first-year college students "are more diligent than in the past, but less able to tackle difficult questions, and much less curious." INTERSEGMENTAL COMMITTEE OF THE ACADEMIC SENATES OF THE CALIFORNIA COMMUNITY COLLEGES, THE CALIFORNIA STATE UNIVERSITY, AND THE UNIVERSITY OF CALIFORNIA, ACADEMIC LITERACY: A STATEMENT OF COMPETENCIES EXPECTED OF STUDENTS ENTERING CALIFORNIA'S PUBLIC COLLEGES AND UNIVERSITIES 14 (2002). Other educators have

R

R

R

In this essay, I will reflect upon my pedagogical approach to curiosity. There are many directions into which curiosity might be harnessed, and law schools surely do much already to stimulate and channel curiosity in their students. For instance, many law professors introduce material in a variety of ways in order to engage the various learning styles of, or methods of processing stimuli by, students, who may be visual, auditory, reading-writing preference, or kinesthetic learners.<sup>16</sup> Instructors may organize group projects, assign novel or complex activities, and engage in exercises that employ the strategies that I discuss herein.<sup>17</sup>

My reflections, however, will focus on the *purposeful* cultivation of curiosity as it relates to developing lawyering skills and social justice awareness in law school mediation<sup>18</sup> and environmental clinics.<sup>19</sup> These deliberate pedagogical methods are relevant beyond these specific clinical experiences and can be applied to other clinics and throughout the law school curriculum.<sup>20</sup>

---

expressed similar sentiments. “Students are indeed changing, some speakers said. Their level of curiosity has declined over the past two decades, said Clayton M. Christensen, a professor of business administration at the Harvard Business School.” Dan Berrett, *Harvard Conference Seeks to Jolt University Teaching*, CHRON. HIGHER ED. (Feb. 5, 2012), available at <http://chronicle.com/article/Harvard-Seeks-to-Jolt/130683/>. For more anecdotal commentary, see Gary R. Gruber, *The American Curiosity Crisis*, THE HUFF POST ED. BLOG, (Jan. 9, 2015), [http://www.huffingtonpost.com/gary-r-gruber-phd/-the-american-curiosity-cr\\_b\\_5121743.html](http://www.huffingtonpost.com/gary-r-gruber-phd/-the-american-curiosity-cr_b_5121743.html).

<sup>16</sup> WALTER L. LEITE, MARILLA SVINICKI & YUYING SHI, ATTEMPTED VALIDATION OF THE SCORES OF THE VARK: LEARNING STYLES INVENTORY WITH MULTI-TRAIT–MULTIMETHOD CONFIRMATORY FACTOR ANALYSIS MODELS 2 (2009). While fascinating, a discussion of the effectiveness and critiques of learning style theory is beyond the scope of essay. For those whose curiosity is sparked by the topic, see Harold Pashler, Mark McDaniel, Doug Rohrer & Robert Bjork, *Learning Styles: Concepts and Evidence*, 9 PSYCHOL. SCI. PUB. INT. 105 (2008) and, with a less academic tone, Julie Henry, *Professor Pans “Learning Style” Teaching Method*, THE TELEGRAPH, July 29, 2007.

<sup>17</sup> See Chris Guthrie, *I’m Curious: Can We Teach Curiosity?*, in RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 63, 66 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009).

<sup>18</sup> For a discussion of the basic skills and competencies required by mediators and of some of the challenges of teaching these skills, see James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLIN. L. REV. 457 (1996).

<sup>19</sup> Caveat: I explicitly acknowledge that the nature and definition of the concept of justice “reeks of oft maligned metaphysics [and is] fraught with the vagaries and polemics of religion and propaganda.” David Barnhizer, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 285, 286-87 (1992). Despite this ambiguity, I defend my choice to include the concept in my curricular design, a choice that supports the MacCrate Report’s call for law school instruction in the values of the legal profession, including the promotion of “Justice, Fairness and Morality.” ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 138-140 (1992) (hereafter cited as “MacCrate Report”).

<sup>20</sup> My comments were first aired at the 2012 SALT teaching conference and were im-

## I. CURIOSITY TO AVOID PREMATURE DIAGNOSIS

Lawyers are taught in law school, and sometimes learn the hard way in practice, how dangerous it is in any legal setting to rush to judgment on possibly incomplete facts. Such “premature diagnosis”<sup>21</sup> can result in an incomplete, erroneous, or oversimplification<sup>22</sup> of the client’s problem, sometimes with disastrous results. Linda Smith identifies the potential dangers that may result from a rush to judgment in her article on client interviewing.<sup>23</sup> She describes an interviewer who incorrectly focuses initial interview questions based upon an understanding that the client wanted to discuss an “employment matter.”<sup>24</sup> As a result, the interview generated a somewhat jumbled account of the facts and delayed the discovery of all of the client’s possible claims.<sup>25</sup> Premature legal diagnoses can silence a client narrative with “interpretive violence[.]”<sup>26</sup>

Incorrect or incomplete diagnoses may result in even more severe repercussions for a client. For example, a lawyer who focuses solely on the criminal aspects of a drug-related charge without more fully exploring the client’s non-legal circumstances may erroneously advise a guilty plea, after which the client or his or her family may suffer serious housing/eviction and immigration consequences.<sup>27</sup>

Interviews require significant “preparation, curiosity and respect,”<sup>28</sup> as does case development. Curiosity emends this rush to judgment as it requires the interviewer to converse broadly with the client to elicit all of the relevant facts and to inquire about goals or intentions; rather than to presume to know them.

This “curious” mindset can be a skill and technique that is a use-

---

proved with the input of my co-panelists, Deirdre Bowen, Colin Crawford, and Elizabeth MacDowell. See Program, 2012 SALT Teaching Conference at 15, available at [http://www.saltlaw.org/userfiles/SALT%20Conference%20Program%20brochure%202012\\_final\(2\).pdf](http://www.saltlaw.org/userfiles/SALT%20Conference%20Program%20brochure%202012_final(2).pdf).

<sup>21</sup> Edward J. Imwinkelried, *The Development of Professional Judgment in Law School Litigation Courses: The Concepts of Trial Theory and Theme*, 39 VAND. L. REV. 59, 65 (1986) (citing DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977)).

<sup>22</sup> See Kandis Scott, *Non-Analytical Thinking in Law Practice: Blinking in the Forest*, 12 CLIN. L. REV. 687, 690 (2006).

<sup>23</sup> Linda F. Smith, *Client-Lawyer Talk: Lessons from Other Disciplines*, 13 CLIN. L. REV. 505 (2006).

<sup>24</sup> *Id.* at 524-28.

<sup>25</sup> *Id.* at 528.

<sup>26</sup> See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2125-31 (1991).

<sup>27</sup> See, e.g., 2 U.S.C. § 1437f(d)(1)(B)(iii) (public housing consequences of certain criminal activities); 8 U.S.C. § 1227(a)(2)(B) (immigration consequences of drug convictions).

<sup>28</sup> Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLIN. L. REV. 573, 581 (2006).

ful lawyering skill generally; for fact investigation, legal research, theory development, negotiations, ethical issue analysis; and useful across legal practice topical concentrations and settings. For students, this mindset can be invoked in doctrinal courses as well as in the clinical setting by reiterating that, often, “clients come to lawyers, not to get answers to routine legal questions, but to get help solving problems that are deeply embedded within particular contexts.”<sup>29</sup> As Edward Imwinkelried suggests, “[t]he best way to avoid [premature diagnosis] is to subject the facts to the imaginative, precise analysis modeled in substantive law courses. By teaching students to engage in creative, exacting factual analysis, the substantive law teacher sets the stage for advocacy courses.”<sup>30</sup> Inspiring students to approach doctrinal material curiously and creatively will shape the template for their academic and professional experiences. In clinics and other practice settings, students then can apply these curiosity-building skills in live client situations rife with nuance, complexity, and indeterminacy.

## II. CURIOSITY WITHIN THE CURRICULUM

*The whole art of teaching is only the art of awakening the natural curiosity of the mind for the purpose of satisfying it afterwards.*

Anatole France<sup>31</sup>

While the current American Bar Association standards governing legal education (“ABA Revised Standards”)<sup>32</sup> do not explicitly identify curiosity as a core legal skill, ABA Standard 302 requires each law school to establish learning outcomes that shall, at a minimum, in-

<sup>29</sup> Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369, 374 (2006).

<sup>30</sup> Edward J. Imwinkelried, *In Achieving Synergy in the Law School Curriculum*, 66 NOTRE DAME L. REV. 739, 751 (1991). Professor Imwinkelried’s article provides several specific case examples that doctrinal law instructors can utilize to demonstrate the interface between substantive law and creative advocacy, including “[s]eminal cases such as *Henningsen v. Bloomfield Motors, Inc.* [32 N.J. 358, 162 A.2d 69 (1960)].” *Id.* at 747-48. He also describes a fact pattern in which a case raises a novel theory for which a trial judge cannot rely on a pattern instruction. “Rather, the attorney urging the theory must draft a special instruction for the judge. To generate the . . . instruction, the attorney must be able to predict the policy concerns that will motivate the court to change the law. Further, the attorney must be able to identify the facts to be listed in the instruction to implicate those policies.” *Id.* (citations omitted). In addition to reinforcing the relationship between doctrine and practice, I submit that these tools intrigue students and stimulate their curiosity.

<sup>31</sup> ANATOLE FRANCE, *THE WORKS OF ANATOLE FRANCE IN AN ENGLISH TRANSLATION* 198 (Lafcadio Hearn trans., 1920) (translating France’s *THE CRIME OF SYLVESTRE BONNARD* (1894)).

<sup>32</sup> ABA Revised Standards for Approval of Law Schools (August 2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_book\\_marked.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_book_marked.authcheckdam.pdf).

clude competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.<sup>33</sup>

The ABA's interpretation of this standard identifies several other professional skills for which law schools might establish competencies, including "skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation."<sup>34</sup> Curiosity contributes to the acquisition and mastery of all of these specific competencies, by piquing interest, improving engagement, inviting doubt, inspiring exploration of and the formulation of questions, and then by providing the persistent mindset required to seek information about, answer, and reflect upon the answers to those questions and to strive for constant improvement.<sup>35</sup>

As part of my teaching package, I direct an environmental practicum and two mediation clinics, one with a general civil focus and one focused on family mediation. Thankfully, the majority of students who enroll in these courses have exhibited what some have called "dispositional" or "trait" curiosity, which refers to an individual's inherent tendency to experience interest or curiosity.<sup>36</sup> Indeed, at least

---

<sup>33</sup> *Id.*, § 302.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, Interpretation 302-1. The cultivation of curiosity also supports the development of the ten fundamental lawyering skills identified in the influential MacCrate Report: (1) Problem Solving; (2) Legal Analysis and Reasoning; (3) Legal Research; (4) Factual Investigation; (5) Communication; (6) Counseling; (7) Negotiation; (8) Litigation and Alternative Dispute Resolution Procedures; (9) Organization and Management of Legal Work; and (10) Recognizing and Resolving Ethical Dilemmas. MacCrate Report, *supra* note 19, at 138-40. Further, my pedagogical approach to the encouragement of a curiosity habit is consistent with the MacCrate Report's four fundamental values of the legal profession: (1) Provision of Competent Representation; (2) Striving to Promote Justice, Fairness and Morality; (3) Striving to Improve the Profession; and (5) Professional Self-Development. *Id.* at 140-41. Curiosity also would promote a student's approach to, and integration of, the three apprenticeships recommended in the 2007 Carnegie Report: the intellectual or cognitive apprenticeship, the apprenticeship of practical skills, and the apprenticeship of identity and purpose. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007).

<sup>36</sup> Guthrie, *supra* note 17, at 65 (referencing several personality and psychological studies relating to curiosity).



at institutions that do not require clinical experiences, I suspect that all clinical law students may be inherently somewhat more curious than their counterparts who do not enroll in clinical courses.<sup>37</sup> These self-selected students are curious about the practice of law, and they are seeking answers to their questions about how the doctrinal material to which they are exposed in the classroom is applied in the “real world.” Clinical instructors accordingly are uniquely poised to take advantage of our students’ “readiness to learn and orientation to learning,” which are critical components of the andragogical learning theory.<sup>38</sup>

However, not all students enroll in a legal clinic with a conscious interest in the wider issues of “justice” embedded in their clinical experiences.<sup>39</sup> Instead, they may be more focused on the skill-building, career-enhancing potential that clinics provide. The question is how clinical law professors so inclined can channel the curiosity and enthusiasm of clinical students for the real world experience into a commitment to individual clients and parties and to the exploration of themes of social, economic, and other modes of systemic injustice? And, for those students who do not exhibit dispositional curiosity,<sup>40</sup> is it possible to improve their “situational” curiosity and increase their interest in specific tasks or circumstances?<sup>41</sup> How can instructors sensitize students to the fact that the clinical experience is, as Ian Weinstein so eloquently stated, “not just about winning a case, or getting a good grade; it is about responsibility to and for another human being”?<sup>42</sup>

Consider my experience in the mediation clinics that I direct. The students in these courses generally enroll to train to become

---

<sup>37</sup> I suspect this with absolutely no authoritative references.

<sup>38</sup> Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 343 (1982).

<sup>39</sup> While still debated spiritedly, most clinicians agree that one “broad goal of traditional clinical pedagogy is to teach, or at least expose students to, concepts of social justice.” Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 495 (2013).

<sup>40</sup> There also are those students who exhibit excessive curiosity, a circumstance equally challenging for clinicians. These students sometimes are unable to distinguish relevant information and can confuse clients, co-counsel, and opponents. As mediators, they are in a privileged position to satisfy their unbridled curiosity, often to the disadvantage of the parties and the process, losing sight of the parties’ interests while advancing their own. When these circumstances arise, there are a number of effective approaches that one can employ to curb or focus one’s curiosity more effectively, one of which is a self-reflection device that asks whether the student’s inquiry advanced the process or advanced the student’s curiosity, or if it interjected the student into the process. Doctrinal professors too have experience with excessively curious students whose sometimes off-topic inquiries may disrupt or interfere with the class and confuse other students.

<sup>41</sup> Cf. Guthrie, *supra* note 17, at 65-66.

<sup>42</sup> Weinstein, *supra* note 28, at 576.

mediators.<sup>43</sup> Thus, they are eager to master mediator skills, one of which is “a commitment to curiosity and exploration[.]”<sup>44</sup> In order to perform effectively, mediators need to understand the parties’ motivations, perspectives, and underlying interests, and a “stance of curiosity” facilitates the acquisition of this understanding.<sup>45</sup> While it is simple to encourage students to be curious as they study and practice their skills as mediators, it is much more difficult from a practical perspective to teach the “skill” of being curious.<sup>46</sup>

As an initial matter, because the majority of clinical students are truly eager to acquire the skills to become successful in practice, clinical faculty have their attention and can motivate them to cultivate the skills, including curiosity, that are the hallmarks of the most effective and respected lawyers. As with most young (and old) professionals, students tend to be impressed with the wisdom espoused by those whom they deem to be at the top of their field. Accordingly, I begin my “curiosity cultivation” by reporting data designed to stimulate this “admiration/emulation motivation.” The data demonstrate that curiosity is one of the most common values that top lawyers, judges, and clients associate with excellence in the performance of legal duties.<sup>47</sup>

For example, reports indicate that, “[i]n recruiting, law firms across the country are looking for such attributes as *intellectual curiosity*, initiative, resiliency, ability to work in a team, communication and interpersonal skills, leadership, and maturity.”<sup>48</sup> Further, Cynthia Batt and Harriet Katz found that externship supervisors defined their expectations about professional development around the concepts of conscientiousness, curiosity and empathy, and appropriate behavior.<sup>49</sup>

---

<sup>43</sup> The University of Tennessee’s two mediation clinics satisfy the training requirements associated with becoming Rule 31 certified mediators in Tennessee. See TENN. SUP. CT. RULE 31 (2005).

<sup>44</sup> MICHAEL D. LANG & ALISON TAYLOR, *THE MAKING OF A MEDIATOR: DEVELOPING ARTISTRY IN PRACTICE* (2000) (advising experienced mediators how to achieve artistry in their practices, described as a commitment to curiosity and exploration, to excellence and learning).

<sup>45</sup> See generally DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 167 (1999) (discussing the communication skills that are essential to successfully resolve awkward or painful interpersonal conflicts).

<sup>46</sup> Chris Guthrie, *Be Curious*, 25 NEG. J. 401, 402 (2009).

<sup>47</sup> Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 CLIN. L. REV. 581, 593 (2004).

<sup>48</sup> Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409, 420 (2012). Professor Scott also supplies this quote from a law firm attorney: “We look for someone who’s smart, personable, and interesting—someone who has intellectual curiosity that goes beyond the mundane. [W]e also look for nonlegal achievement—what their greater interests are, leadership roles they’ve had.” *Id.*

<sup>49</sup> Batt & Katz, *supra* note 47, at 585.

Supervisors report that their best interns are openly curious about the lives, needs, and perspectives of clients and others and appreciate the impact of the law on society and the wider ramifications of the legal system, beyond the immediate legal problem.<sup>50</sup> In this study, supervisors linked curiosity to empathy, to creativity in problem-solving, and to improved professional “diagnostic” accuracy, all of which are acknowledged to be essential qualities for good lawyering.<sup>51</sup>

In addition, “passionate curiosity” is one of the five essential qualities that most successful C.E.O.’s value and that distinguishes future professional stars.<sup>52</sup> This conclusion is based upon a series of interviews of CEO’s who discussed the personal characteristics and values to which they attribute their success and for which they look in others.<sup>53</sup> Professor Todd Kashdan similarly reports that, in adults, “higher curiosity is regularly tied to greater analytic ability, problem-solving skills and overall intelligence” and “high curiosity and high intelligence . . . characterizes the best students, workers, managers, scientists, artists, and other luminaries who contribute so much to the people and world around them.”<sup>54</sup>

Once students are (hopefully) sufficiently motivated, the question becomes how best to help them develop this skill. As many have noted, it is incredibly challenging to mentor professional development values like curiosity.<sup>55</sup> However, research indicates that it is possible to “consciously adopt and implement curiosity- or interest-enhancing strategies to heighten . . . curiosity.”<sup>56</sup>

Accordingly, positing curiosity as a learnable skill, or at least as a learnable, disciplined habit, I have adopted a number of strategies and techniques to help students develop this skill or habit, including three strategies that Vanderbilt’s Dean Chris Guthrie has suggested are effective to enhance an individual’s situational curiosity.<sup>57</sup> In the context of negotiation teaching, Dean Guthrie describes these three “promising” strategies as the challenge strategy, the purpose strategy, and the variety strategy.<sup>58</sup> These approaches adapt well outside the negotiation context.

---

<sup>50</sup> *Id.* at 591, 595-97.

<sup>51</sup> *Id.* at 595-97.

<sup>52</sup> See generally ADAM BRYANT, *THE CORNER OFFICE: INDISPENSABLE AND UNEXPECTED LESSONS FROM CEOs ON HOW TO LEAD AND SUCCEED* 11 (2011).

<sup>53</sup> *Id.*

<sup>54</sup> TODD KASHDAN, *CURIOS?: DISCOVER THE MISSING INGREDIENT TO A FULFILLING LIFE* 40 (2009).

<sup>55</sup> See Batt & Katz, *supra* note 47, at 595-97.

<sup>56</sup> Guthrie, *supra* note 17, at 66.

<sup>57</sup> *Id.* at 63-64.

<sup>58</sup> *Id.* at 66.

### Strategy 1: The Challenge Strategy

Researchers have reported that individuals who set goals to challenge themselves are more likely to sustain their curiosity and their interest levels in tasks<sup>59</sup> and to outperform peers who do not set goals.<sup>60</sup> A sense of autonomy as well as competence-related beliefs are correlated with enhanced curiosity.<sup>61</sup> Those who set and achieve goals gain confidence that they can interact more effectively in the relevant environment, which increases their desire to do so.<sup>62</sup> Accordingly, interviewers, counselors, and mediators whose attention is waning can heighten their curiosity by setting listening or other goals for themselves, as can students attending a doctrinal lecture.

Incorporating the Challenge Strategy into course design is consistent with clinical pedagogical methods.<sup>63</sup> Goal-setting helps students

---

<sup>59</sup> *Id.*

<sup>60</sup> D. Scott Ridley, Paul A. Schutz, Robert S. Glanz & Claire E. Weinstein, *Self-Regulated Learning: The Interactive Influence of Metacognitive Awareness and Goal-Setting*, 60 J. EXPERIMENTAL EDUC. 293, 293-306 (1992).

<sup>61</sup> Todd B. Kashdan & Frank D. Fincham, *Facilitating Curiosity: A Social and Self-Regulatory Perspective for Scientifically Based Interventions*, in POSITIVE PSYCHOLOGY IN PRACTICE 482, 484-86 (P. Alex Linley & Stephen Joseph eds., 2004).

<sup>62</sup> *Id.*

<sup>63</sup> Batt & Katz, *supra* note 47, at 607-609. See also Jane H. Aiken, David A. Koplow, Lisa G. Lerman, J.P. Ogilvy & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047, 1048-53 (1985) (discussing use of a learning contract to encourage individualized learning, in which a student identifies and articulates personal learning goals). For examples of how clinical programs integrate student goal-setting into course design, see *id.* at 581-83, 590-93, 607-609; Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing, and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. L. REV. 1, 26-28 (2010). As many believe that “clinical teaching is goal driven and based on backward design,” Wallace J. Mlyniec, *Where to Begin, Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 510 (2012), there appears to be much more scholarly material on faculty goal-setting in the context of course and curricular design than there are references with a focus on student goal-setting. For a sample of this material, see ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 28-67 (2007); Robert Dinerstein, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511-17 (1992). See also Susan Bryant & Elliott Milstein, *Rounds: A “Signature Pedagogy For Clinical Education?”*, 14 CLIN. L. REV. 195, 200-15 (2007). The theory of backward design holds that instructors should identify goals or outcomes then design courses to achieve those objectives. See GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (2d ed. 2005). For an interesting discussion of the role of goal-setting for Millennial students in the law school clinical setting, see Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLIN. L. REV. 1, 1, 20 (2013) (“Millennials welcome being held to high standards and pursuing ambitious goals. . . . Millennial students may be inclined to spend as little time as possible to successfully complete a single task. A measured approach may be frustrating. The reflective learning process itself, which requires the student to pause and reflect, is often a foreign practice.”). This is consistent with the perception that law students increasingly are resistant to reflective assignments. See, e.g., *Panel Discussion on Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U.L. REV. 337, 344, 357 (1987).

develop “a rigorous methodology to examining how they approach their professional lives so as to achieve their own objectives.”<sup>64</sup> It allows supervisors to assess student development, to personalize and adjust content and learning processes to accommodate varying stages of development among students, and to reinforce with students the importance of continuing to set professional objectives and reflect upon progress.

Some specific examples from my teaching may be illustrative. In my clinics, I ask students to set at least three personal goals for each of their client or party encounters, whether simulated or live client. Suggested goals might include recording dates for every relevant action or event during an interview, attempting to ask at least one to two follow-up questions in response to each of their interviewee’s responses or comments, or probing for experiences or anecdotes that might increase empathy. In the past, students have been very creative in this regard, setting goals to listen in a mediation without interrupting unless there is an egregious violation of a mediation ground rule; to attempt to reframe, to rephrase, or to summarize a certain number of statements; or, in a mediation, to seek at least one common interest between or amongst the parties to the dispute.

I also assign students a Challenge Goal to imagine themselves in the role of the client, the mediation parties, or a counterpart and to monitor and evaluate their own performance from that perspective. While being objective about one’s own performance is difficult, it encourages self-reflection and adaptation.

I then hold students accountable for achieving their goals. When students prepare journal entries or when we debrief simulations or engage in clinical rounds, I ask not only about substantive outcomes but also about student listening and information-gathering, including whether students met the goals that they established in advance of the interview or mediation. Based upon student reports, the Challenge Strategy does appear to be an effective way to stimulate and maintain interest and curiosity during the interview and mediation process.

Further, I have found that, from a pedagogical perspective, regularly including a discussion of accountability in student debriefing enhances our learning dialogues, promotes skill development and mastery, and instills in students a habit of self-reflection, the life-long practice of which I believe is essential for the self-improvement of all legal professionals, including academics. Reflection is not only a canonical methodology in clinical pedagogy,<sup>65</sup> it also is required in the

---

<sup>64</sup> Batt & Katz, *supra* note 47, at 607.

<sup>65</sup> Victor M. Goode, *There Is A Method(ology) to This Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223, 259 (2000).

ABA accreditation standards pertaining to clinics<sup>66</sup> and externships.<sup>67</sup>

### *Strategy 2: The Purpose Strategy*

“Like the challenge strategy, researchers have found that people are more likely to remain interested in a task when they focus on the purposes served by performing it.”<sup>68</sup> Individuals who perceive the value of the task can connect with it more deeply. This feeling of “relatedness” or investment also appears to increase curiosity.<sup>69</sup> In professional settings, interviewers, counselors, and mediators who find themselves losing focus on, or uninterested in, the subject of the interview, counseling session, or mediation should concentrate on the purposes served by exercising their curiosity.

Identifying this “purpose” in an interview or mediation setting is not as simple a task as one might imagine. When I instruct my students to define in writing the purpose or purposes served by being curious and listening carefully in an interview or mediation,<sup>70</sup> I always receive very interesting responses. For mediations, the most common, and obvious, purpose is generally described as some variation of “helping the parties to resolve their dispute.” More nuanced responses mention discovering information that provides a clearer understanding of the problem to help craft a more effective settlement,<sup>71</sup> facilitating collaboration, revealing shared interests, and producing creative or win/win results. Environmental practicum students have opined that they might discover information that helps clarify the le-

---

<sup>66</sup> A.B.A. Standards and Rules of Procedure for Approval of Law Schools, Standard 305(e)(7) (2014-15). *See also* Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLIN. L. REV. 517, 517-19 (2013) (this article describes “Adaptive Clinical Teaching” (ACT), a six-step system, abbreviated as ADAPTS: 1) articulate the situation, 2) define the expectations, 3) analyze the contributing factors, 4) ponder potential strategies, 5) take action, and 6) shape future choices through reflection); Mlyniec, *supra* note 63, at 526-28; Bryant & Milstein, *supra* note 63, at 213-16; Susan Bryant & Elliot S. Milstein, *Reflections Upon the 25th Anniversary of The Lawyering Process: An Introduction to The Symposium*, 10 CLIN. L. REV. 1, 16 (2003) (“[Gary Bellow and Bea Moulton’s ‘The Lawyering Process: Materials for Clinical Instruction in Advocacy’ consciously promoted a new approach of reflecting on and talking about moral, ethical decisionmaking and its connection to professional satisfaction.”); 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. 491, 495 (2002) (author describes the clinical method as 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).

<sup>67</sup> A.B.A. Standards and Rules of Procedure for Approval of Law Schools, Standard 305(e)(7) (2014-15).

<sup>68</sup> Guthrie, *Be Curious*, *supra* note 46, at 404.

<sup>69</sup> *Cf.* Kashdan & Fincham, *supra* note 61, at 486-87.

<sup>70</sup> *See* Guthrie, *supra* note 17, at 67.

<sup>71</sup> *Cf.* Batt & Katz, *supra* note 47, at 610.

gal problem, and ultimately, results in a more refined legal argument to present to the court or to produce a more effective settlement.<sup>72</sup>

However, I am often surprised and thrilled when students identify less generic purposes, such as showing respect, focusing on the parties' interests and not those of the student, inspiring trust and confidence, empowering the parties, and modeling mediation behavior or conduct. Of course, every individual has his or her own purpose for assuming the lawyer or mediator mantle, but I believe that we all aspire to provide assistance to parties in conflict. The data, and the musings of my students, indicate that, as lawyers and mediators, we may be more likely to stay engaged and to help the parties reach agreement if we focus on the purposes of the process.<sup>73</sup>

As part of the Purpose Strategy learning, I also ask students to consider the subject of their cases and mediations from a foundational—terminological perspective.<sup>74</sup> This requires that they consider what is at issue in a particular matter for the parties and for the larger society and to reflect upon what purpose curiosity might serve in developing this analysis.<sup>75</sup> The curious seek to discover how the law might help or exacerbate problems and to explore non-law solutions for the client as well as for others similarly situated.

### *Strategy 3: The Variety Strategy*

Interviewers and mediators who find their attention straying can reengage their curiosity if they vary their routine.<sup>76</sup> Curiosity is directly influenced when tasks or activities capitalize on novelty and variety.<sup>77</sup> Individuals may stimulate their curiosity by introducing variety into their practices.

This is a relatively easy strategy to implement for students in UT's Mediation Clinics. While the interview and mediation processes typically proceed through a series of distinct stages,<sup>78</sup> professionals

---

<sup>72</sup> *Cf. id.*

<sup>73</sup> *Cf. id.*

<sup>74</sup> Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEG. L. REV. 97, 139 (2001).

<sup>75</sup> *Id.*

<sup>76</sup> See Guthrie, *supra* note 17, at 67.

<sup>77</sup> *Cf. Kashdan & Fincham, supra* note 61, at 490.

<sup>78</sup> Mediation is a very flexible process, but it generally does follow a fairly consistent, predictable pattern, whether described as a 3- to 7-step model. See, e.g., HAROLD I. AB-  
RAMSON, *MEDIATION REPRESENTATION: ADVOCATING IN A PROBLEM-SOLVING PROCESS* 12-13, 53-89 (2004). Step one is the opening statement of the mediator, followed by the opening statements of parties. Next come discussions in joint sessions and caucuses, in which options are first generated then evaluated, after which the mediation session is concluded, either by agreement or upon impasse. *Id.* at 12-13. These stages often overlap or are repeated, giving the process a very fluid form. *Id.* at 89-90. The same can be said for the negotiation process. See RICHARD G. SHELL, *BARGAINING FOR ADVANTAGE: NEGOTI-*

take a nearly infinite variety of approaches to these processes,<sup>79</sup> and they can never be characterized as “routine” between matters and clients.

For example, I require students to prepare a “cheat sheet” to take with them into interviews and mediations that reminds them to utilize a wide array of active listening and information-gathering techniques, such as the use of open, closed, leading, and rhetorical questions; re-framing, summarizing, and mirroring; silence; caucuses; and the like. I also ask students to consider every matter using a variety of entry points, the Aesthetic, the Narrative, the Logical/Quantitative, the Foundational, and the Experiential.<sup>80</sup> Everyone processes information in a unique way, thus, by utilizing these diverse entry points, students might connect more profoundly with the subject matter and broader societal implications and encounter issues from multiple perspectives. There are any number of exercises that allow, or require, students to analyze a topic from these varied entry points, such as crafting a narrative, deeply contextualized story of the facts; imagining a logically-based deductive version of the situation; or creating aesthetic representations of a case or matter, such as timelines, organizational charts, or maps.<sup>81</sup> Both students and lawyers preparing or debriefing cases can employ these different approaches to allow for a more personalized experience of the situation, as can mediators, students, or professionals who are debriefing or are attempting to help parties develop perspective or generate and evaluate options for resolving their disputes.

### III. CURIOSITY AND REFLECTION

After considering the “how” of curiosity skill/habit development,

---

ATION STRATEGIES FOR REASONABLE PEOPLE ix, 115 (1999). Described as having multiple steps, negotiation requires parties, in one form or another, to prepare their strategies, to exchange information, to open and make concessions, then to close and gain commitment. *See id.*

<sup>79</sup> Mediators come in all shapes and sizes and adopt a number of styles, including facilitative, evaluative, transformative, therapeutic, and narrative. For a thorough analysis of mediator approaches and orientations, see Leonard L. Riskin, *Decision-Making in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1, 1-52 (2003). *See also* Leonard L. Riskin, *Mediator Orientations, Strategies and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 7-51 (1996). Likewise, there are differing negotiation orientations, i.e., adversarial and problem-solving. *See* Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 754-64 (1984).

<sup>80</sup> *See generally* HOWARD GARDNER, *THE UNSCHOOLED MIND: HOW CHILDREN LEARN AND HOW SCHOOLS SHOULD TEACH* (1991). Howard Gardner’s Theory of Multiple Intelligences posits that all humans possess and exhibit seven intelligences that influence the process by which they learn. *Id.* at 244-48.

<sup>81</sup> *See* Menkel-Meadow, *supra* note 74, at 139-40.



the “when” is the next consideration. I introduce these concepts, strategies, and techniques in the clinics’ basic training to emphasize that skilled lawyers and mediators must cultivate their natural curiosity and must be open to new perspectives, unfettered by limiting assumptions.<sup>82</sup> Throughout the semester, I reinforce these ideas during individual student conferences, group clinical rounds, and in-class simulations. I also utilize individual and group projects and assignments to ask not only about substantive outcomes on client matters or mediations, but also about student progress toward the goals that they set for each strategy. Students reflect upon their goals, how and why they defined them in a certain way, why they might define them differently going forward, and whether they missed opportunities or options, and if so, why?<sup>83</sup> These are opportunities to nurture student development of “conscious, rigorous self-evaluative methodologies for learning from experience.”<sup>84</sup>

I carefully and cautiously plan within the framework of Frank Bloch’s andragogical basis of clinical legal education in order to foster an atmosphere of mutual joint inquiry in which students are self-directed learners and are engaged in, relate to, share, and reflect upon their own experiences.<sup>85</sup> I also draw upon the rich and deep literature on reflective practice in the law school clinic for theory,<sup>86</sup> methodologies and processes,<sup>87</sup> exercises,<sup>88</sup> and insights.<sup>89</sup>

---

<sup>82</sup> See generally LANG & TAYLOR, *supra* note 44.

<sup>83</sup> See, e.g., Anthony Amsterdam, *Clinical Legal Education — A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984).

<sup>84</sup> *Id.*

<sup>85</sup> Bloch, *supra* note 38, at 338-42. As I plan my courses and individual class sessions, I heed scholarly warnings that Professor Bloch’s model is “aspirational . . . for a clinical teaching environment,” Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLIN. L. REV. 317, 331 (2014), because there sometimes is a disconnect between the theory of adult learning and the reality of teaching law students. *Id.* at 327-31 (discussing Linda Morton, Janet Weinstein & Mark Weinstein, *Pedagogy: Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469, 470-71 (1999), in which the authors discuss andragogical theory and conclude that, because students have not always reached the stage of “adulthood,” it does not provide the unifying theory for clinical legal education we had once hoped).

<sup>86</sup> See generally DONALD SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. ST. L. REV. 287, 292, 333-48 (1994) (“challeng[ing] . . . clinical experiential theory concerning the centrality and place of theory and reflection in the so-called experiential ‘learning cycle[ ]’ and proposing ‘a ‘post-modern’/ cognitive understanding of theory and reflection”).

<sup>87</sup> See Casey, *supra* note 85 at 331-48 (setting forth a six-step Stages of Reflection model); Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN. L. REV. 143, 154-63 (2006) (describing a six-step feedback model designed to engage law students in self-analysis).

<sup>88</sup> See Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18 CLIN. L. REV. 283, 283

R

R

R

Reflection can transform disappointing experiences into openings for personal and professional growth and service. Nancy Cook describes a case in which a clinic discovers that police virtually ignored their client's rape claim when arresting her for disorderly conduct.<sup>90</sup> With the support of her supervisor and her clinic classmates, the student assigned to defend their young, single, black client developed a strong racist-sexist theory of the case based upon witness statements, other evidence, and the reputation of a police department already under public scrutiny.<sup>91</sup> The client, however, had no interest in pursuing a larger "social structure" as a defense, and she did not want to be involved in a larger law reform effort.<sup>92</sup> While frustrated, the student concluded the case successfully on the client's terms, but she also independently, and without compromising her obligations to her client, found a way to pursue the larger justice issue by volunteering her services to a related local effort to address police policy reform.<sup>93</sup> These experiences allow students to de- and re-construct a particular result for a specific client into an opportunity to address issues impacting larger groups and communities.

While student conferences provide openings for meaningful conversations involving themes of social, economic, and other modes of systemic injustice, it is in clinical rounds where I find more opportunities to channel the natural curiosity of the group about particular student experiences into a dialogue about the more general social justice issues implicated in individual mediations and cases. I aspire to be, like Jane Aiken, a "provocateur of justice"<sup>94</sup> who helps students chal-

---

(2011) ("This article explores how the integration of storytelling into law school clinics can help law students move through the six levels of cognition identified in Bloom's taxonomy of educational objectives in order to become more practice-ready, and how listening to student stories can help faculty deepen their understanding of students and cases."). See also generally J.P. Oglivy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996).

<sup>89</sup> See Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 CLIN. L. REV. 1, 4-6, 46-53 (1996) (the author charts a year away from the academy as an Assistant United States Attorney in a reflective journal and evaluates several learning theories to determine their relevance to the experience). Professors Benfer and Shanahan discuss the Millennial law student's attitude toward reflective practice: "Self-reflection, which requires pausing to take stock of performance, is challenging for millennial students who demand immediacy and have short attention spans. For many, the exercise of reflection may seem like 'busy work' without a purpose or relationship to the end goal. Millennial students' main objective is to complete the assignment as quickly as possible." Benfer & Shanahan, *supra* note 63, at 26-27.

<sup>90</sup> Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 CLIN. L. REV. 41, 47-51 (1994).

<sup>91</sup> *Id.* at 49-53.

<sup>92</sup> *Id.* at 52-53.

<sup>93</sup> *Id.* at 53-55.

<sup>94</sup> Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 287-90 (2001).

lence the assumption that law is neutral and understand how oppression manifests itself in our system.<sup>95</sup> I model curiosity in rounds by asking perspective questions that surface implicit assumptions and improve the practice of self-awareness: is your proposal consistent with the client's interests, what values are reflected in your theory or in the relevant rule of law, how did existing institutional and societal structures affect your choices and performance, what other choices or options are available and what client and community interests do each serve?<sup>96</sup> My inquiries seek to build context into student analysis, "to understand a situation in its historical context, to view it in longitudinal perspective[. . .] [to map] the web of relationships in which the problem arises[. . .] and to examine the role and effects of larger societal structures of power."<sup>97</sup> I also hope to promote the parallel universe<sup>98</sup> thinking developed by Susan Bryant and Jean Koh Peters that calls on students to create several parallel universes that offer different reasons to explain the client's conduct. Round conversations expand student capacity for contextual analysis and perspectival problem-solving.<sup>99</sup>

My questions also are designed so that students must consider

---

<sup>95</sup> *Id.* at 297-98.

<sup>96</sup> *See id.* *See also* Kruse, *supra* note 29, at 262 ("The practice of self-awareness encourages lawyers to adopt an attitude of vigilance toward the ways in which their personal interests may be affecting the representation, and to evaluate the appropriateness of that influence.").

<sup>97</sup> Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 *CLIN. L. REV.* 427, 498-990 (2000). In this article, Professor Piomelli opines:

[p]utting a problem in its full context is, in my view, a call to investigate that problem rigorously. This investigation is more than an exploration of the ways in which the problem is unique; it is also an examination of what the problem has in common with other contexts, problems, and potential solutions. Fundamentally, the call to context is a call to draw connections to other bodies of knowledge, other ways of interpreting a situation. It is most often a reminder to bring other theories to bear, to explore additional dimensions of a problem, to make other aspects of a situation relevant. It is a call to view and interpret a situation by considering it along with other information. For those comfortable with literary metaphors, it is a call to read two texts together to create meaning or, more simply, a call to read one text in light of another. Most significantly for the response to the critics of collaborative lawyering, putting a problem in context is also a call to explore its structural and institutional dimensions.

*Id.* at 488-89. The self-awareness demanded for contextual analysis involves cultural competency, *see* Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering In Indigenous Communities*, 5 *CLIN. L. REV.* 557, 565-601 (1999), as well as an understanding of the impact of social and cognitive psychology in personal information processing. *See* Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 *CLIN. L. REV.* 369, 373-75, 391-403 (2005).

<sup>98</sup> Susan J. Bryant & Jean Koh Peters, *Habit Four, Working with Interpreters and Other Mindful Approaches*, in *AFFECTIVE ASSISTANCE OF COUNSEL: THE LAW AS A HEALING PROFESSION* 183 (Marjorie Silver ed., 2007).

<sup>99</sup> Bryant & Milstein, *supra* note 63, at 199.

R

R

individual problems foundationally or terminologically, such as asking what is at issue for the parties and for society at large.<sup>100</sup> And I encourage students to recognize commonalities and themes that are present in multiple cases, many of which lead to, in the vernacular of Sue Bryant and Elliot Milstein, purposeful conversations<sup>101</sup> about the consequences of poverty, race, gender, and class. For example, student mediators are trained to be alert and respond to power imbalances between the parties. These situations provide fertile ground in which to explore dominant societal discourses that create and perpetuate systems of oppression.

I also seek to sustain student curiosity about the more systemic societal issues by assigning a variety of tasks, such as storytelling projects in which students rewrite party narratives or craft them into a movie or documentary. “As Derrick Bell, Bruno Bettelheim, and others show, stories can shatter complacency and challenge the status quo.”<sup>102</sup> I also ask students to identify a recurring societal or institutional injustice theme that evolved from their clinical experiences and to propose a law reform or other response/solution. For another project, students interview policymakers and social activists who are associated with the issues we are exploring in our clinics. Exercises such as these can provide vehicles for, in the terminology of Edward J. Imwinkelried, fulfilling “[o]ne of [a clinician’s] principal educational tasks[, which] is to give the students a phenomenology of the legal system[.]” and to help them “consider proposals for systemic reform in a more informed fashion” through the lens of their clinical experiences.<sup>103</sup> This pedagogical approach need not be a purely clinical one. Its use throughout the curriculum supports one of the four fundamental values of the legal profession as identified in MacCrate Report.<sup>104</sup>

#### CONCLUSION

*Curiosity killed the cat, but for a while I was a suspect.*

Steven Wright<sup>105</sup>

To conclude, when most of us hear the word “curiosity,” we think

<sup>100</sup> See Menkel-Meadow, *supra* note 74, at 139-140.

<sup>101</sup> Bryant & Milstein, *supra* note 63, at 209-10.

<sup>102</sup> Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2414 (1989).

<sup>103</sup> See Imwinkelried, *supra* note 30, at 749-50.

<sup>104</sup> MacCrate Report, *supra* note 19, at 140.

<sup>105</sup> EDDIE TAFOYA, *THE LEGACY OF THE WISECRACK: STAND-UP COMEDY AS THE GREAT AMERICAN LITERARY FORM* 168 (2009).

of the proverbial dead cat.<sup>106</sup> Despite its ubiquity, there appears to be very little formalized research into how to teach curiosity, in or out of the academic setting, and it is a challenging skill or habit to cultivate or evaluate.<sup>107</sup>

However, the three curiosity-enhancing strategies discussed above can stimulate curiosity<sup>108</sup> and need not be bound by course designation or subject matter. In the context of legal clinics and in much broader contexts, there are numerous opportunities to employ these strategies, and to do so in a way that inspires and nurtures a “critical consciousness” in our students.<sup>109</sup> As Jerome Frank suggested, students should “be made to see, among other things, the human side of the administration of justice.”<sup>110</sup>

Clinical experiences are human experiences of the law. Clinics are dialogic learning laboratories in which students often begin to develop a passion for the practice of law. It is not uncommon for clinical experiences to produce “disorienting moments”<sup>111</sup> and to be perspective shifting. The experiences force students to confront, perhaps for the first time, their privileged position in society<sup>112</sup> and to acquire an “honesty of identity.”<sup>113</sup> This sometimes painful or confusing confrontation is an opportunity for clinicians to inspire a broader interest in exploring the creation and perpetuation of that privilege ampliatively.

As academics, we have an obligation to be models for and inspire our students. We can avoid the rigid educational model that Einstein abhorred and stimulate the “the holy curiosity of inquiry . . . in need

---

<sup>106</sup> “Curiosity killed the cat.” JAMES ALLAN MAIR, A HANDBOOK OF PROVERBS: ENGLISH, SCOTTISH, IRISH, AMERICAN, SHAKESPEREAN, AND SCRIPTURAL; AND FAMILY MOTTOES 34 (1873).

<sup>107</sup> Batt & Katz, *supra* note 47, at 605.

<sup>108</sup> Guthrie, *supra* note 17, at 65-68.

<sup>109</sup> See Nikki D. Thanos, *A Handbook for Social Justice Activists Taking on Law School*, 14 LOY. J. PUB. INT. L. 405-441 (2013) (referencing IRA SHOR & PAULO FREIRE, A PEDAGOGY FOR LIBERATION: DIALOGUES ON TRANSFORMING EDUCATION 8 (1987)).

<sup>110</sup> Jerome Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907, 908 (1933).

<sup>111</sup> Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 60-61 (1995). Jane Aiken discusses how these disorienting moments provide opportunities for engaging in conversations about the role of the lawyer in advancing justice, Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV. 1, 23-30 (1997), and for teaching students to be “justice ready.” Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 240-46 (2012).

<sup>112</sup> *But see* Thanos, *supra* note 109, at 416.

<sup>113</sup> See Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 374 (2008).

Spring 2015]

*Cultivating Curiosity*

391

of freedom.”<sup>114</sup> By cultivating student curiosity about individual live matters and by inspiring a passion for their clients or mediation parties, we help students connect abstract inquiries to their particular experiences; to exhibit curiosity about larger issues in the law and its institutions, systems, and structures; and to develop a passion for social justice.<sup>115</sup>

---

<sup>114</sup> Einstein, *Autobiographical Notes*, *supra* note 1, at 17-19.

<sup>115</sup> One hopes that this passion also might translate into a professional commitment to public interest and pro bono service. See Steven Lubet, *Professionalism Revisited*, 42 EMORY L.J. 197, 198-200 (1993).

