Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship

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Introduction

I met most of my clinic students for the first time at an informal coffee hour my colleague and I arranged at the beginning of the new semester, before the first clinic class. Although the event was designed to allow the students to meet each other, it seemed a little awkward because I was trying to meet the students for the first time also, and this was an unfamiliar role for me. I usually came to a new school year having at least met all of my clinic students, because I have been involved in selecting them to participate in the clinic, and the clinic's selection process includes a personal interview. I had not met most of these students, however, because I had been on maternity leave when they had been selected.

At the coffee hour one of the students asked about my baby, and I brought out my baby pictures. It seemed like a good icebreaker, and innocent enough. However, as each new student approached me, looked at the pictures of my daughter, and asked questions about her and my maternity leave, I felt increasingly awkward and exposed. I felt the students had come to me to learn how to be lawyers and here I was, relating to them as a mother. I felt I had been unprofessional.

My reaction was purely intuitive, but there is psychological literature which supports my feeling that I had compromised my image as a competent professional by this self-disclosure. Studies of therapeutic relationships, for example, reveal that while patients generally react

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positively to self-disclosure by their counselor, patients react disapprovingly to counselors who reveal too much, particularly in the initial counseling interview.

My discomfort also related to my perception that by revealing myself to my students as I was meeting them I may have been giving up some of the status which, because of my position as a law faculty member, I might otherwise have been accorded. Again, my intuitive recognition is supported in the psychological literature.[1]

Status is characterized by asymmetry in terms of address and asymmetry of patterns of self-disclosure.[2] Personal information generally flows in the opposite direction from the flow of authority, so that one generally reveals more to one's immediate superior than to one's immediate subordinate.[3] My early self-disclosure to the students reversed this pattern, and I feared I projected less authority as a result.[4]

Furthermore, when there is a clear difference in status between two persons, the right to initiate change to a more intimate form of relationship lies with the superior.[5] My discomfort was heightened by the sense that by my self-disclosure I had invited my students to engage in a more intimate relationship with me. In this respect, I am reminded of the value feminists place on women's connectedness while simultaneously fearing its invasive potential.[6]

Yet there is some sense in which clinical student-teacher relationships are, or at least may become, more intimate than those of traditional law school professors and students; my self-disclosure on meeting my clinic students was certainly less inappropriate than it might have been had I passed around pictures of my baby in a large lecture class.

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This article represents an attempt to understand the extent to which my relationships with my clinical students can fairly be characterized as

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1. *See, e.g.*, Randi L. Carter & Robert W. Motta, *Effects of Intimacy of Therapist's Self-Disclosure and Formality on Perceptions of Credibility in an Initial Interview*, 66 PERCEPTUAL AND MOTOR SKILLS 167, 172 (1988); Norman R. Simonson, *The Impact of Therapist Disclosure on Patient Disclosure*, 23 J. OF COUNSELING PSYCHOL. 3, 3-6 (1976); Mark J. Miller, *Beyond "Mm-Hm": The Importance of Counselor Disclosure*, 27 COUNSELING AND VALUES 90, 94 (1983).

2. Nancy M. Henley, *Power, Sex and Nonverbal Communication*, BERKELEY J. SOC. 1, 8 (1973).

3. *Id.*

4. My concern about projecting less authority may also have been related to the fact that I revealed myself in a less powerful role, i.e., that of a mother. (Mothers are generally perceived as less powerful than law professors.).

5. Henley, *supra* note 2, at 9.

6. *See, e.g.*, Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 4-42 (1988).

intimate, and the extent to which intimacy is a feature of clinical teaching relationships generally. I approach this task with a fair degree of trepidation, in part because I fear that my attempt to generalize about clinicians' relationships with students is bound to reflect, and therefore be limited by, my own experiences. I also fear that the more self-conscious we are about our interactions with students the more potential we have to manipulate those interactions. As clinicians, we may do too much of that already.

I am convinced, however, as I continue to talk with clinical teachers, that our relationships with our students present the greatest challenge in our work. I am also convinced that attempts to be more self-conscious about our relationships with students, like our efforts to theorize about lawyering skills, are valuable. This may be so particularly because relationships consume much of clinical teachers' energy. I try, for example, to help students negotiate the boundaries of their relationships with clients, adversaries and each other as I simultaneously, and very visibly, balance my own relationships with clients, adversaries, students and colleagues.

Moreover, as clinicians mature, it may be useful to remind ourselves what it is about our relationships with students that enhances our effectiveness as teachers. In this regard, as a young clinical teacher, I think I was often guilty of overidentification with my students (*i.e.*, too much intimacy). The challenge for the future, as age and other factors make me less like many of my students, is to be able maintain a sufficient degree of connection with them to be effective.[7]

In this Article, I will assert three theses about intimacy between clinical teachers and students. First, clinical teaching is, potentially at least, a more intimate form of teaching than traditional teaching, and disclosure plays an important role in making the clinical relationship more intimate. Second, though often problematic and complicated, clinical teaching's greater potential for intimacy is a positive thing. Intimacy creates dilemmas for clinical teachers and students, most of which center around issues of power and control. Third, there are analogies between the issues of intimacy and distance in the clinical relationship and the themes of connection and separation which recur in feminist scholarship. The feminist search for the proper accommodation of connection and

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7. *See* Carol D. Ryff & Susan Migdal, *Intimacy and Generativity: Self-Perceived Transitions*, SIGNS 470, 477-78 (Spring 1984). The psychologist Erik Erikson theorized that intimacy is more important in young adulthood, and generativity becomes more important as one ages. Erik Erikson, *Identity and the Life Cycle*, 1 PSYCHOL. ISSUES 120 (1959). Ryff and Migdal tested Erikson's thesis on a sample of young and middle aged women, and largely replicated Erikson's findings.

separation is helpful to a clinical teacher in negotiating the boundaries of her relationships with her students.

In Part I of this Article, I will explore the concept of intimacy in clinical law teaching, its value and the dilemmas it poses. Part II will explore the literature on clinical supervision with reference to the range of choices clinicians make about disclosure in their supervision and the issues this poses. Part III will discuss the themes of connection and separation in feminist scholarship and suggest ways in which these themes may illuminate the problems of distance and intimacy in the clinical relationship.

I. Intimacy, Law School Methodology, and the Dilemmas for Relationships

A. Defining Intimacy and its Limits in Clinical Teaching

Defining the intimacy of which I speak is a delicate task. As I have discussed this project with other clinical teachers, a number have suggested that, although relationships between clinical students and teachers are different and perhaps closer than those between most traditional law teachers and students, there is nothing particularly intimate about these relationships. Some have suggested, for example, that because the term intimacy often includes a sexual component, it is not an appropriate term to describe the relationship between law teachers and law students.[8] This is not, however, the sense of intimacy I mean to convey.[9]

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8. Martha Fineman, *Intimacy Outside of the Natural Family: The Limits of Privacy,* 23 Conn. L. Rev. 955, 970 (1991) (criticizing the traditional view of intimacy between men and women for its emphasis on sexual affiliation); *see* Stephen Thayer, *Close Encounters: Silent But Powerful, A Touch Can Comfort, Greet, Persuade, Inflame,* Psychol. Today, Mar. 1988, at 30.

9. My definition of intimacy is somewhat more expansive than that provided in the legal literature on privacy. Julie Inness, for example, identifies two ways in which intimacy may be defined. Julie C. Inness, Privacy, Intimacy, and Isolation 74-94 (1992). The first is from a "behaviourist" direction, by finding the characteristics of the behavior constituting intimate acts and activities. The second is in "motivational" terms, i.e. by finding some aspect of the motivations demanded by certain acts and activities that could identify them as intimate. Inness rejects the behaviourist definition, arguing that behaviors depend for their meaning on the motivations attached to them, which may vary depending on the culture. Thus, a kiss, or a tap on the shoulder may or may not be an expression of intimacy, depending on the motivations of actors, and the cultural meanings attached to these behaviors. Inness adopts a motivational definition of intimacy as that deriving its meaning and value from the agent's love, liking or care. *See also* Charles Fried, *Privacy*, 77 Yale L.J. 475, 484 (1968) ("[I]ntimacy is the sharing of information about one's actions, beliefs, or emotions which one does not share with all,

There are other qualities normally associated with the term intimacy that don't translate comfortably into the relationship between clinical teachers and students. For example, the common notion of intimacy conveys a sense of exclusivity.[10] My most intimate relationships are with individuals who, like my spouse and my child, have the potential to make claims on my time and myself exclusive of all other claims. I certainly cannot describe a similar relationship with my students. Yet I strive with each of my students to know them personally and closely while not letting my relationships with any of them exclude any other of my students.

Despite the term's imperfection, I remain convinced that intimacy is the right word, and that relationships between clinical students and teachers are at least somewhat more intimate than those between traditional teachers and students. Thus, the clinical relationship is characterized by a potential for intimacy. I recognize, however, that intimacy is a loaded term and requires some effort at definition.

My concept of intimacy is characterized by four features: proximity, mutuality, trust and self-disclosure.[11] Because the qualities are themselves so interconnected, it is difficult to discuss separately how each of these aspects of intimacy relate to clinical supervision. Nevertheless, I will attempt to do so in what follows.

1. Proximity.—There are two senses in which a clinical teacher's relationship with her students is characterized by proximity. The first refers to physical closeness or nearness. Most clinical teachers interact with their students more frequently, and work with them more closely than traditional law teachers. My students, for example, spend roughly twenty hours each week working just outside my office. I rely on this proximity in supervising my students, in having them sufficiently near to know how their casework is progressing, and to observe their inter-

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and which one has the right not to share with anyone.").

In the discussion of intimacy which follows, I adopt a more behaviourist definition and am content to do so. Because I argue not that clinical teaching is an inherently intimate enterprise, only that it is more intimate than traditional law teaching, the behaviourist definition is less problematic for me than for Inness (who is trying to determine the parameters of privacy to be accorded intimate actions.). Thus, as a kiss — regardless of its cultural meaning, regardless of what motivates it — is a more intimate interaction than passing another on the street, so clinical teaching (for the reasons which follow) is a more intimate form of teaching than traditional law teaching, regardless of whether clinical teaching is, in some absolute sense, an intimate act.

10. Fried, *supra* note 9.

11. Intimacy has also been described as "sharing, taking into confidence and trusting." Marilyn P. Mindingall, *Characteristics of Female Clients That Influence Preference for the Socially Intimate and Nonintimate Female Psychotherapists*, 41 J. OF CLINICAL PSYCHOL. 188, 189 (1985).

actions with partners, office staff, and clients. Similarly, my students rely on the accessibility that my proximity allows. Their questions can be answered when they need them answered, and they have a role model whose behavior they can consider.

It is not only in the confines of the law office that clinical students and teachers share close quarters. Clinical supervision forces students and teacher into close, often intense interaction under stressful conditions. Students and teachers, for example, appear together in court, and together attend depositions, counsel clients and negotiate with adversaries. These shared activities require students and teachers to plan and strategize together, to often travel together, to wait together in courthouses for cases to be called, and even to eat meals together.

The other sense of proximity is that a clinician's relationship with her clinical students is generally closer and more familiar than a traditional law teacher's relationship with most of her students. One reflection of this closer relationship is the way clinical teachers and students address one another. Unlike the formal modes of address that are often featured in the traditional law school classroom, where the teacher addresses the students by title (Mr. or Ms.) and last name, and the students address the teacher similarly by title (Professor) and last name, patterns of address in the clinic are generally much less formal. In the clinical setting, students and teachers most often address each other by their first names.[12]

Although certainly some self-disclosure results from proximity, there may also be an inverse relationship between proximity and self-disclosure. For example, we sometimes reveal more about ourselves to telephone acquaintances or to strangers than to our neighbors. Proximity has a way of raising the stakes for making disclosure, knowing that one will be interacting closely with the individual on a daily basis.[13]

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12. In my experience, even clinical teachers have more formal relationships with their non-clinical students. For the past several years, I have taught a non-clinical course in Law and Poverty. I have noticed how much less close my relationships with the Law and Poverty students are than my relationships with my clinical students. They are less proximate in both of my senses. I see them much less (two hours each week, versus roughly twenty hours each week that I see my clinical students); most venture near my office rarely, if ever, whereas the clinical students are in or near my office most every day. Law and Poverty is also a larger class than the clinic that I teach (35 Law and Poverty students versus 12 clinic students.) Thus, I know each student in my Law and Poverty class less well, and we are much more formal with each other. Most of my Law and Poverty students call me "Professor Sullivan;" few of my clinical students do.

13. The necessary connection between proximity and self disclosure is reflected in a conversation I had with a non-clinical female colleague. She does not invite her students to use her first name, preferring to be called "Professor." She believes this makes her better able to be more open about her feelings in class.

It may also be a reflection of, or a consequence of, proximity or maybe just the quirkiness of my own experience that the door to a clinician's office is often left unlocked when the clinician is not present. I happen to reflect on this because I sometimes have an office in the "traditional" faculty wing in addition to my clinic office and have observed that many of my traditional colleagues keep their doors locked when they are not around. It may be, as has been suggested to me, that clinicians do not lock their doors because they have nothing worth stealing. I suspect, however, that clinicians' unlocked doors also reflect an acknowledgement that the clinic is a place of greater proximity and lesser privacy than the traditional faculty wing.

Clinicians' proximity to their students is not always completely voluntary. There are times, for example, when I long for an opportunity to retreat to the traditional faculty wing. There are times when I feel like I am being followed too closely, even "hounded" by my students.

Proximity can be even less voluntary for students, because teachers have the power to insist upon it. If my students are not spending sufficient time in the office, I think something is amiss. It concerns me when a student is not around even in the odd situation where the student is not falling behind in her casework.[14]

Distance is the opposite of proximity. Perhaps because clinical legal education is a methodology developed and implemented by law teachers within institutions steeped in rules and hierarchy, and which value autonomy, independence, written communication and abstract thought, the relationship between clinical law students and teachers is also characterized by distance.

I consider grading the ultimate distancing process for a clinical teacher.[15] In contrast to the face-to-face evaluation which most clinical teachers also employ,[16] the student is excluded from the grading process.[17]

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14. This discussion of voluntariness is somewhat false because, of course, one chooses generally to be a clinician and generally one chooses to be a clinical student. On the other hand its not clear from my conversations over the years with clinical students and clinical teachers that anyone ever really thinks about these issues before deciding to become a clinical student or clinical teacher.

15. *See* GEORGETOWN UNIVERSITY CENTER FOR APPLIED LEGAL STUDIES OFFICE MANUAL, ch. 9, 1-15 (1984) [hereinafter CALS MANUAL]. I support grading in the clinic with the same reservations as described in the CALS Manual. I believe grading clinic work gives positive messages to students about the value of clinical work as compared to other coursework.

16. *See* note 47 and accompanying text.

17. Teachers of Women's Studies remind us that this is not necessarily so. Frances Maher, *Classroom Pedagogy and the New Scholarship on Women*, *in* GENDERED SUBJECTS: THE DYNAMICS OF FEMINIST TEACHING 29, 44-45 (Margo Culley et al. eds. 1985); Contract grades, self grading, and group grading are common within women's studies courses. We

Law teachers grade students privately, even secretly, and are loathe to reveal their process to students. Not surprisingly, grading is the prerogative of the teacher which gives her the most power over her students, and is fraught with potential for harm. My colleagues and I at Brooklyn Law School, and most clinicians I know, devise methodologies to further distance ourselves from the process of grading in an effort to secure fairness in the process.[18]

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have never adopted any of these methodologies in the clinical program I teach, nor do I necessarily advocate doing so. I had only one experience with self-grading as a student, and I gave myself an A, though I doubted I deserved one.

However, in the clinical program I teach, we did experiment one semester, with giving the students the opportunity, if they wished, to grade themselves for their clinic work. We asked the students to write down, if they wished, the grade they felt they deserved for their clinic work, to put what they had written in a sealed envelope and leave it for us. We indicated we would not look at the student's self-grade until we had completed our grading that semester, and that we certainly would not lower a student's grade based on what they had given themselves. Very few students (only two of twelve) took us up on our offer. Neither student's grade was effected by the grade he gave himself.

18. *See* Patricia Cain, *Good and Bad Bias: A Comment on Feminist Theory and Judging*, 61 S. CAL. L. REV. 1945, 1946 (1988) (suggests that such methods spare us the pain of judging).

I keep charts of my students' attendance in the clinic seminar and records of their homework assignments, which I scrupulously assign values to. I review my student's time sheets each week. I keep records (some of my colleagues keep journals) of my supervisory interactions with students, and my colleague and I have developed a chart which includes the qualities we value, weighted accordingly, and scrupulously fill in the chart as part of our grading protocol at the end of each semester. Furthermore, I personally supervise only half the students in my clinic; my colleague supervises the other half. Thus, each of us brings a more "distant" perspective to the other's students, which we call on to help us in interpreting supervisory encounters and in evaluation.

While none of these techniques makes for a perfect grading process, they do offer a more distant perspective on our students which serve the values of fairness, equality, freedom from bias and coercion which unchecked proximity might otherwise imperil. Traditional legal scholars rely on rules to achieve the same result, while liberal feminists argue that an integration of rule-based and care-based reasoning has a better chance of doing so. RAND JACK & DANA CROWLEY JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 41 (1989) [hereinafter MORAL VISION]; Judith Resnick, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 S. CAL. L. REV. 1877, 1922-23 (1988).

Similarly, the proximity between clinical students and teacher helps break down hierarchy and empower the student's voice. This in turn creates dialogue which exposes the values of legal education, and informs the grading process by sensitizing us to the power we hold over our students, the extent to which we accept the values which dominate evaluation in traditional legal education, and requires us to refine the terms and criteria we use in the "distancing methodologies" described above. One of the things I learned about our grading process, for instance, is that we often valued students with strong abstract reasoning and written communication skills more highly than we valued students with strong interpersonal skills. Once this bias was revealed, we tried to compensate for it.

As grading imposes distance, it inhibits the development of intimacy. Grading may affect the trust a student is willing to place in his teacher. Having discussed grades with both clinical and nonclinical students, my clinical students are more likely to interpret a disappointing grade as a breach of trust. Grading also complicates self-disclosure. Students worried about a "good grade" may be less willing to be critical of themselves, the teacher or the clinic for fear of reprisal.

2. Mutuality.—By mutuality I mean that there is generally an element of reciprocity in clinicians' relationships with their students, more so than in most relationships between traditional teachers and students. For example, a clinician may not only refer to students by their first names, but permit students to call her by her first name as well, even in an environment where most non-clinical teachers are referred to as "Professor." Similarly, clinical teachers not only expect their students to make self-disclosure as part of their pedagogy, teachers make it as well.[19] Mutuality contributes to a reduction in hierarchy between teacher and student. Since relationships between subordinate and superior are characterized by asymmetry, to the degree a relationship is mutual it is a more equal relationship.

A clinical relationship that is less hierarchical can act as a motivator for some law students.[20] I am convinced that this is related to the fact that much of law school is so hierarchical, with students so frequently close to the bottom of the hierarchy, that a more egalitarian clinical relationship generally feels empowering in contrast.[21]

There is a good deal about the clinical relationship that is not mutual, however. Students do not have the power to grade teachers, for example, no matter how egalitarian their relationship otherwise may seem. Furthermore, although clinical methodology may encourage students to critique their supervisor's ideas and lawyering, this critique does not have the same harmful potential that grading holds for students. Finally, even to the extent the relationship is a mutual one, often the

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19. Jean Koh Peters has suggested two other forms of mutuality that characterize the clinical relationship: mutuality of fulfillment and mutuality of learning. By mutuality of fulfillment she means that students and teachers are mutually invested in the success of the experience; students look forward to learning and recognize that the teacher's observation of their learning is an important part of her satisfaction. By mutuality of learning she suggests that students and teachers learn from each other; teachers teach students about lawyering and students teach their teachers about lawyering and teaching. Letter from Jean Koh Peters, on file with the author.

20. *See, e.g.*, 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, 1049, 1056 (1985) [hereinafter *The Learning Contract*].

21. Michael E. Carney, Ph.D., *Narcissistic Concerns in the Educational Experience of Law Students*, J. PSYCH. & L. 9, 27 (Spr.-Sum. 1990).

supervisor sets the tone. I usually give students permission, for example, to call me by my first name.[22]

3. Trust.—Trust is dependence on the good will of another.[23] To some extent, clinicians can fairly be said to be engaged in vicarious lawyering, that is, that clinicians lawyer through their students. If for no other reason, trust is an important feature of the clinical relationship.[24] The process of clinical teaching requires that the clinician trust the student sufficiently to lawyer in her name and yet respect the student's autonomy and his relationship with his client to the greatest degree possible.

Similarly, the process of clinical teaching to some degree assumes, perhaps naively, that the student trusts the teacher.[25] If a clinical teacher models a lawyering activity and asks for the student's feedback, she tries to develop in the student sufficient trust that the student can honestly disclose his feelings without fear of reprisal or ridicule.[26] To the extent the pedagogical goals of certain clinical programs include attention to the interpersonal aspects of lawyering, the importance of trust is heightened.[27]

Although trust helps create intimacy, it does not necessarily reduce hierarchy. In fact, trust exists in profoundly unequal relationships such as master and servant.[28] Trust can also be involuntary. Mothers, for instance, trust in the goodwill of child care providers because they have

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22. Actually, I have adopted a number of different postures toward the issue of what my students call me. I find I am most comfortable saying nothing about it, and letting the student decide what to call me as our relationship evolves. [It often takes students a while to get around to calling me by my first name.] This is probably the least comfortable choice for students. In the years where I have made a choice not to say anything about the issue of names, I frequently find that a student (generally a white male student) will ask, "What should we call you?" Although it is framed as a question, I always feel called on my attempt at a power play.

23. Annette Baier, *Trust and Antitrust*, 96 ETHICS 231, 235 (1986).

24. *See* note 94 and accompanying text for examples illustrating the importance of trust in the relationship between clinical students and teachers.

25. Michael Meltsner & Philip G. Shrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1, 10 (1978) (describing an exercise clinical teachers attempted to use with limited success because of student reticence to disclose personal information about themselves).

26. Trust is reciprocal; psychological studies show that "the more trusting we are, the more likely we are to be trusted by others." Cary S. Avery, *How Do You Build Intimacy in a Age of Divorce?* PSYCHOL. TODAY, May 1989, at 29.

27. The Center for Applied Legal Studies at Georgetown University, for example, makes attention to the interpersonal aspects of lawyering an explicit goal of the program. *See infra* notes 55-62 and accompanying text.

28. Baier, *supra* note 23, at 247 (Baier argues that traditional descriptions of trust placed too heavy emphasis on analogies to contract. Contract notions may adequately explain trust that exists between actors of equal power, but does not adequately explain the trust between actors of superior and inferior power.).

no alternative, because "no one is able by herself to look after everything she wants to have looked after."[29]

Because self-disclosure, proximity and mutuality in the clinical relationship make students and teachers more vulnerable to harm by one another than is the case in the non-clinical classroom, the need for trust is heightened. As the teacher and student must trust each other, however, they must not trust so much that they fail to be critical of each other.[30]

Psychological studies of couples involved in intimate relationships suggest that trust can be so complete as to fail to see areas for improvement.[31] Even when one perceives an area for improvement, trust may act as a barrier to communicating that perception.[32] A clinical teacher's need to give and receive feedback thus requires that there be some limits on the trust her students place in her and that she places in them.

For instance, I would think there was something amiss if my students trusted my judgment unquestioningly. Indeed, I consider the student's ability to engage in a meaningful dialogue with his supervisor over strategic or professional responsibility issues in a case to be a sign of the student's growth. This kind of discussion seems helpful to the extent student and supervisor trust each other, and threatening to the extent they do not.

4. Self-Disclosure.—Disclosure is key to the development of intimacy.[33] Self-disclosure involves revealing personal and other information about oneself to another.[34] For a teacher, self-disclosure is often conscious, as when I answer students' questions about my background, or share my own uncertainty about how to proceed in a particular situation. Much of my self-disclosure, however, is unconscious, even inadvertent, as when I talk to my husband, my mother or my caregiver over the

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29. *Id.* at 236.

30. This is one example of the dialectical relationship between connection and separation. *See* discussion note 57.

31. John K. Rempel & John Holmes, *How Do I Trust Thee*, PSYCHOL. TODAY, Feb. 1986, at 28.

32. *Id.*

33. Fried, *supra* note 9.

34. *See* Bernadette Mathews Ph.D., *The Role of Therapist Self-Disclosure in Psychotherapy: A Survey of Therapists*, 32 AM. J. PSYCHOTHERAPY 521, 523 (1988) (self disclosure is "the process of making "the self known to other persons"); Miller, *supra* note 1, at 91-92; (surveying various definitions of disclosure); John M. Curtis, *Indications and Contraindications in the Use of Therapist's Self-Disclosure*, 49 PSYCHOL. REP. 499 (1981) (Self-disclosure represents the "act of imparting personal or private information. . ."); Paul C. Cozby, *Self-Disclosure: A Literature Review*, 79 PSYCHOL. BULL. 73 (1973) (self-disclosure is "any information about himself which Person A communicates verbally to Person B").

telephone within earshot of my students, or when my students sense my uncertainty about how to proceed in a case despite my best efforts to conceal it.[35]

Students also disclose personal information about themselves to me, both consciously and inadvertently: I often know, for instance, about my students' family backgrounds and career plans, whether they are married, their sexual preferences, and whether they are applying for and their success at obtaining jobs. I also know (or will eventually learn) whether they are passive rather than disinterested, or unaware rather than arrogant or insecure rather than overly self-confident. I know when they are angry with me or each other. I have enough contact with my students so that sometimes I can see patterns in their behavior, as they sometimes see patterns in mine.[36]

As my experience with my students at the coffee hour reminds me, however, one-sided disclosure does not always yield intimacy. In fact, without intimacy, disclosure often seems inappropriate. By sharing pictures of my daughter with my students I did not forge an intimate relationship with them. Indeed, had I passed around the pictures in a class of 150, I would have achieved even less intimacy, although I probably would have felt more exposed.[37] On the other hand, disclosure often encourages disclosure in others.[38]

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35. In the context of therapy, one therapist has noted that "we are, in fact, revealing ourselves all the time, whether we do so deliberately or not. Even the most distant therapist is, despite his judgment and training, leaking his personality into the therapeutic process." Miriam Greenspan, *Should Therapists Be Personal? Self-Disclosure and Therapeutic Distance in Feminist Therapy*, THE DYNAMICS OF FEMINIST THERAPY 5, 9 (1986). This observation seems applicable to the relationship between the clinical supervisor and student.

36. At the end of one term, for example, my students told me that my favorite expressions were, "How are you feeling about ____?" and "Am I making any sense?"

37. Again, I think this depends, to some extent, on the speaker's purpose in making the disclosure and the relationship between the purpose and the disclosure.

I have been on the receiving end of a speaker's self-disclosure to a large audience. At the plenary session of the 1990 Annual meeting of the Association of American Law Schools, a panel of speakers shared personal experiences of being different from others in their legal institutions. Although each of the speakers incorporated personal narrative compellingly into their presentations, I felt that one speaker made the most intimate self-disclosures. He spoke of his sexual identity, and how it felt to be a gay man in an academic institution and in the legal profession.

Although I was powerfully moved by this speaker's self-disclosure, I certainly did not and do not feel particularly intimate with him. And yet in the question and answer session following the presentation, many of those who spoke shared their personal experiences, and it was clear that the generally impersonal, harried, chaotic AALS convention, had at least temporarily, been transformed into something more intimate.

38. Connie DeForest & Gerald L. Stone, *Effects of Sex and Intimacy Level on Self-disclosure*, 27 J. COUNS. PSYCH. 93 (1980); Paul C. Cozby, *Self-Disclosure, Reciprocity, and Liking*, 35 SOCIOMETRY 151 (1972).

Perhaps it is because of the simultaneous need for distance in student-teacher interaction, that defining the parameters of the intimacy clinical teacher and students may share is such a complicated task. For example, self-disclosure can be an important pedagogical tool for the clinical teacher, but so is withholding disclosure. There are times when the teacher should not share her experience, but listen for that of the student.[39]

Furthermore, assuming the value of self-disclosure as a pedagogical tool, there are limits on the kind of information one shares with one's students. One does not, for example, tell one's students about one's miscarriages or extra-marital affairs.[40]

In some sense, in any relationship, we are revealing ourselves all the time, regardless of what we choose to "disclose." Clinical teachers and students, for example, reveal themselves to each other unconsciously and nonverbally through their patterns of interaction. These interactions can contribute to a sense of intimacy. Depending on what each holds back, and the perceptions of the receiver, the image one projects to the other can be incomplete and even distorted.

At least theoretically, however, it is the sorts of voluntary, conscious, verbal disclosures[41], which we have the most control over, and which have the potential to deepen the intimacy of our relationships. Because of this, much of the discussion which follows focuses on this type of disclosure.

Disclosure as it relates to the relationship between clinical teachers and students can be categorized as follows: personal (sharing information about oneself); professional (sharing information related to one's role as a lawyer); and pedagogical (generally, revealing the reasons behind teaching or supervisory choices).

To some extent, clinicians consciously employ disclosure (sometimes making it, but more often asking students for it) as a pedagogical tool.

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39. Ann Shalleck, in an article on clinical supervision, calls this respecting the integrity of the student's process by letting it be sometimes. *See generally* Ann Shalleck, *Clinical Supervision in Context: From a Case to a Vision* 120 (1990) (unpublished manuscript). *See also infra* notes 67-70 and accompanying text.

40. One legitimately might make such a disclosure. *See, e.g.,* Robin West's disclosure of her sexual promiscuity in *The Difference in Women's Hedonic Lives.* Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory,* 3 WIS. WOMEN'S L.J. 81, 101 (1987). West's self disclosure was connected to her thesis; it made a point, as it were, and I suppose that makes it legitimate to me.

41. What I mean by verbal disclosure is disclosure involving language; I include therefore the kind of written disclosure reflected in this article, as well as the disclosure students often reveal in journals they keep as part of their clinical experiences. *See, e.g.,* Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender,* 28 HARV. C.R.-C.L. L. REV. 1 (1993) (examples of the remarkably personal disclosure students make in journals).

There are many, varied goals for clinical legal education articulated by clinical teachers: to teach students lawyering skills,[42] to teach something broader about the legal system and the role of lawyers in the system,[43] to teach students about the role of interpersonal dynamics in lawyering,[44] or to teach the importance of serving clients.[45] Regardless of the individual clinical teacher's goal, the primary focus of clinical legal education, and in a larger sense every clinical teacher's goal, is to teach students how to learn from experience.[46]

Most of what "teaching students how to learn from experience" means is teaching students to be reflective. Much of the way clinicians teach students to be reflective involves disclosure. Clinical teachers frequently ask students to reflect on an experience, and disclose that reflection; often clinical teachers model that reflection.

Modeling self-reflection is risky, and has the potential to undermine the teacher's authority.[47] To model self-reflection, therefore, requires not only self-disclosure, but trust (i.e. the teacher has to trust her students to some extent). Similarly, a student's ability to engage in self-reflection is enhanced to the extent she can trust and reveal herself to the teacher and others.[48]

Often clinical teachers employ the evaluation process to teach self-reflection to their students.[49] Like the clinical relationship itself, evaluation

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42. *See generally* Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, ARIZ. ST. L.J. 277-85 (1982) [hereinafter *Course Design*]; Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301, 312 (1986) [hereinafter *Stages*].

43. *See generally* Shalleck, *supra* note 39; *Panel Discussion: Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future,* 36 CATH. UNIV. L. REV. 337, 349-51 (1986) (comments of Elliot Millstein).

44. *See, e.g., The Learning Contract, supra* note 20; CALS MANUAL, supra note 15, at ch. 6.

45. *See, e.g.,* Gary Palm, *Message from the Chair*, NEWSLETTER OF THE SECTION ON CLINICAL LEGAL EDUCATION (American Association of Law Schools (AALS), Washington, D.C., 1986).

46. Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 616 (1984).

47. Jennifer Nedelsky, *Law, Boundaries, and the Bounded Self*, 30 REPRESENTATIONS 162, 168 (Spr. 1990). "We indicate respect for a person by acknowledging his territory; conversely, we invite intimacy by waiving our claims to a territory and allowing others to draw close." (quoting Robert Post, *The Social Foundations of Privacy: Community and Self in the Common Law Tort,* 77 CAL. L. REV. 957, 973 (1989)).

48. It has been suggested that self-disclosure encourages the development of trust. Mathews, *supra* note 34, at 523; *But see*, Fred W. Vonderacek & Marilyn J. Marshall, *Self-Disclosure and Interpersonal Trust: An Exploratory Study*, 28 PSYCHOLOGICAL REPORTS 235, 238 (1971) (testing failed to demonstrate any relationship between interpersonal trust and self-disclosure).

49. Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 972 (1990).

has components both of intimacy and distance. Most clinicians conduct face-to-face evaluations with their students, not unlike the mid-semester evaluation described above. These face-to-face meetings feature, at least aspirationally, openness and frank reflection by the student on her strengths and weaknesses, and supportive and frank response by the supervisor. To the extent the aspiration is achieved, the evaluation process is characterized by some degree of intimacy.

However, I have sometimes found myself trying to impose distance between myself and a student in these meetings, particularly when I found a student unwilling to be self- reflective. Instead of connecting with or supporting the student, sometimes I need to be more austere to motivate the student to think more critically about his actions.

Many clinicians ask students to keep journals during their clinical experience, and most clinicians read and comment on student journals. Students are encouraged not only to report on their experiences in the clinic, but also to share their reactions and feelings about those experiences.

Although I haven't surveyed clinicians on this, I suspect that most clinicians find pedagogical disclosure most often legitimate and purely personal disclosure most often illegitimate. Furthermore, even as I present this taxonomy I question its utility. I can conceive of many examples that do not fall neatly into these categories. [The lines blur for me, for example, in the story that starts the "dilemmas" section.][50]

Choices clinicians and students make to disclose or withhold disclosure are central to the development of intimacy between them.[51] Of all of the various aspects of intimacy, disclosure is, at least potentially, the one over which I have most control. It is perhaps because of this that my most troublesome supervisory dilemmas seem to revolve around power and control issues, and often involve questions concerning disclosure.

B. The Dilemmas Disclosure Poses for Clinical Teachers and Students

One of the students in my clinic was the father of two young children. During the early part of the semester, although he and his partner were working hard and capably, I felt this student was devaluing certain aspects of the work I deemed important. He was not keeping file memos, for example; in part as a result, I felt that I was out of

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50. *See infra* note 113 and accompanying text for an example of disclosure that I felt was simultaneously personal, professional and pedagogical.

51. *But see supra* note 48.

control of the team's work and that the student and his partner were too independent.

The student always justified not having file memos completed because he was too busy working on tasks he felt were more important. The student and his partner were preparing for a deposition and drafting a memorandum of law in an action in the United States District Court. They were indeed working hard on these tasks, and the quality of their work was quite high, although I kept feeling that the tasks could be completed in less time than the students were taking.

Soon, the student began to be late for supervision meetings and once or twice attempted to reschedule a supervision session to accommodate some case-related work that "really needed" to be done. Having attempted unsuccessfully to deal with these issues with the student over the course of the semester, I raised them with him again during our mid-semester evaluation meeting.

The student admitted that he was having difficulty, not only completing file memos on time, and fitting in supervision meetings, but balancing his competing roles and getting his clinic work done efficiently so that he could manage his family commitments. His wife had recently resumed a career in journalism, having left her position as a newspaper reporter to have children. She had contracted to write several articles for major magazines, and my student had agreed to share child care responsibilities so that she could meet her publication deadlines. Recently, he had failed on several occasions to make it home from the clinic at the agreed upon time to take over child care from his wife.

The student and I discussed whether the "important tasks" which took up so much of his time were either so important or so time consuming as to justify his delay in writing file memos or rushing through or missing supervision meetings or indeed not getting home to take over child care from his wife as he had promised. I believed that it would enhance the student's ability to draft a memorandum of law once he learned to spend less time on it. The close, painstaking detail he brought to deposition preparation and briefwriting, while an important perspective on lawyering—was only one perspective, and he needed to be able to operate in more than one mode. I shared these beliefs with the student.

I also believed that the student needed to balance his clinic obligations better and that finding more time to care for his children would actually enhance the student's lawyering skills.[52] I realized, however, that I had

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52. Ursula LeGuin offers that there ought to be something valuable we as primary caretakers can bring to our writing because we are primary caretakers, and that the caretaking work that we do becomes then not merely a distraction or an inhibition to

strong motivation to believe this was true whether or not it was, since becoming a mother had left me with fewer hours to devote to my own teaching and lawyering work each day than had previously been the case. I did not disclose my investment to the student, though he may have sensed it anyway.

I identified strongly with the student's wife, and although the student may also have sensed this, we did not discuss it explicitly. I worried that revealing my own struggles with the equitable division of caregiving would have undermined my credibility in urging the student that the ability to "let go" of certain tasks, and not to focus on some tasks to the exclusion of others, was an important lawyering skill. I clearly saw a connection between the student's behavior in the clinic and his description of his behavior at home. In focusing on his brief and deposition to the exclusion of file memos and supervision meetings, I saw the student defining his priorities by attending to the "power-enhancing" work first. Similarly, by allowing the lawyering work in the clinic to prevent him from getting home to do child care, he was according priority to a more powerful role (lawyer) over a less powerful one (caregiver). I worried, however, that revealing the connections I saw would not only undermine my credibility and perhaps my authority with the student but might interfere impermissibly in his personal relationships.[53]

Although intimacy in all its various aspects creates dilemmas for clinical teachers, the aspect I find consistently most troubling, or at least most highly charged, involve issues of disclosure. This experience, for example, illustrates at least four potential dilemmas that intimacy, primarily the disclosure component of intimacy, poses for clinical teachers and students. First, although the reduction of hierarchy is often an

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our writing but something that enriches it. *See* Ursula LeGuin, *The Fisherman's Daughter*, DANCING AT THE EDGE OF THE WORLD 213, 228, 231, 236 (1989). Her words have encouraged me to share my narrative about my first meeting with my students this semester. Similarly, I felt that this student needed to see that being a good father did not require that he sacrifice being a good lawyer, rather, that being a good father enhanced his ability to be a good lawyer.

53. The issue of whether to reveal personal connections to a student is a familiar dilemma in the therapist/patient relationship. For example, one therapist found that revealing he was divorced hindered his ability to assist married couples. Mathews, *supra* note 34, at 527. On the other hand, Miriam Greenspan discovered that sharing her pain over her child's death helped clients explore numerous issues upon learning of her vulnerability. Greenspan, *supra* note 35, at 15. Greenspan cautions, however, that therapists "must guard against talking about ourselves as a way of emotionally unloading in a relationship that is safe for us precisely because we have considerable power in it." *Id.* at 7. This warning could also apply to the relationship between the clinician and the student.

explicit goal of a clinician's more intimate relationship with her students, there may be times when she wants and needs to call on her authority, particularly where the student's standards of practice seem to be lacking. In my example with my student, if I couldn't convince him that file memos were as important as briefs and depositions, then I wanted him to pay more attention to file memos, because I said so. Does intimacy make it harder for a clinician to call on her authority? If so, should clinicians avoid intimacy unless the student has assimilated the models of competent lawyering the teacher is trying to impart? Is a more intimate approach only pedagogically justified when the student proceeds to critique those models, or to learn self-reflection?

These questions imply that intimacy can be controlled, and a corollary to my assertion that clinical teaching is fraught with potential for intimacy is that frequently it cannot be. When I initiated my discussion with my student, I did not expect to learn anything about his home life. I have limited ability to control the patterns of interaction that led this student to reveal a personal problem to me.

Third, intimacy can be intrusive, both for the teacher and for the student.[54] There are times when a student's learning may be enhanced by a clinician's disclosure that a particular issue may be difficult for her as well, but the clinician may not feel like sharing that issue with that particular student at that particular time. In the example above, even if it would have enhanced the student's learning to disclose my own struggles balancing child care with my lawyering and teaching responsibilities, I didn't want to reveal those things to that student at that time. Similarly, even if it enhanced the student's learning to make connections between the issues in his lawyering and the issues in his personal life, does the clinician have any right to comment on the latter?

Finally, even though intimacy has the effect of reducing hierarchy, the clinician inevitably retains more power in the relationship than the student. What do we do with students who don't want to be intimate? In the example above, in some sense, the student "voluntarily" disclosed information about his relationship with his spouse. Had I wanted to engage the student more on his role as a father and spouse and the connections to his lawyering, how could I have been assured that the student didn't feel coerced into discussing his personal life with me? Clinicians expect their students to be self-reflective. The extent to which a student can reflect critically is often the basis for evaluation in clinical programs. How do clinicians guard against coercing trust and self-disclosure from their students?[55]

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54. *See The Learning Contract*, *supra* note 20, at 1063, 1078.

55. One of the risks of disclosure (and maybe the other aspects of intimacy) is

II. The Role of Disclosure in the Literature on Clinical Supervision

Nearly all clinicians employ some disclosure in clinical teaching, even if it is only the sort of pedagogical disclosure described above.[56] The written literature on clinical supervision reflects some of clinician's choices concerning disclosure and the range of differences among clinicians concerning these choices. The literature on clinical supervision also reveals some of the dilemmas clinicians may experience around issues of disclosure.

At the Center for Applied Legal Studies (CALS), a clinical program of Georgetown University Law Center, clinicians employ a learning contract as part of their clinical supervision.[57] The adherents of the contract approach describe educational goals emphasizing the interpersonal aspects of lawyering: helping law students learn to accept responsibility, teaching problem-solving through reflection on the process of decision making, teaching collaboration, and exploring students' value choices.[58]

The learning contract is individually negotiated between a supervisory team and each pair of student interns. The contracting process consumes the first two to three weeks of each semester, thus shaping the supervisor and student's interactions with each other from the beginning of their relationship. At the beginning of the semester, the students receive a draft contract, prepared by the clinic faculty, which contains some standard provisions; the students meet their supervisors at the first contract negotiating session having considered the draft contract, ready to propose additions, modifications, or deletions.

One of the explicit goals of the contracting process is to reduce, though not eliminate, the hierarchy inherent in the student-teacher relationship. The contract defines, for example, the roles the supervisor is willing to play with the student, by encouraging certain descriptive names for supervisors (advisors, resources, catalysts and process consultants) and discouraging certain others (bosses, partners, and leaders). Only rarely and with reluctance have supervisors been willing to contract for higher status roles.[59]

The contract also sets certain ground rules for interaction between student and supervisor. For example, because CALS is designed to teach

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that it can become indulgent of the supervisor's needs for approval or closeness and harmful to the student or at least not in her best interest. *See, e.g.*, Mathews, *supra* note 34, at 530.

56. *See* note 37 and accompanying text.
57. *See generally The Learning Contract*, *supra* note 20.
58. *Id.* at 1048-50.
59. *Id.* at 1059-61.

students about the interpersonal aspects of lawyering, the learning contract generally contains a provision permitting the supervisors to comment on group process or interpersonal dynamics.[60] As is the case with the contract terms defining the relationship, to the extent a particular team of students wants to remove this standard term from its individual contract, the faculty "bargain hard" to keep it in. Another standard contract term prohibits any case-related discussions between students and teachers unless all members of the case team are present.[61]

The gendered dimensions of disclosure are revealed in the clinic's experience with the proscription on substantive discussions without the entire case team being present. The faculty identified this as the only contract term faculty breach with any regularity.[62] Women supervisors particularly had trouble refusing students' requests that they speak with them. Perhaps not coincidentally, the women supervisors had less status than the male supervisors. (The women supervisors were LLM candidates who were themselves interning in the clinic, whereas most of the male supervisors were members of the tenured faculty.)[63]

It is not only the substantive contract terms, but the contract negotiating process itself that shape the interactions, and patterns of disclosure, between students and teacher. For example, the standard contract form requires students to disclose their learning goals. Faculty do not disclose similar learning goals, and have resisted students' efforts to require them to do so. The CALS faculty recognize that the lack of parallel disclosure reinforces the hierarchy between student and teacher, but are content to allow this much hierarchy to exist. It is important, they argue, to recognize the real power disparities between student and teacher that the contracting process cannot eliminate.[64]

I am again struck by the acknowledged relationship between disclosure and power, and the supervisor's unwillingness to relinquish that power, even in a clinic which aspires to reduce hierarchy. It reminds me of my discomfort after revealing my baby pictures to my students at my first meeting with them, and how vulnerable I felt having thereby undermined my "professorial authority" on the first day. I wonder

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60. *Id.* at 1060.

61. *Id.* at 1071.

62. *Id.* at 1073.

63. *Id.* at 1073, n.86.

64. *See generally The Learning Contract*, *supra* note 20, at 1053-61. Some students, acknowledging the relationship between self disclosure and power, have pointed out that this asymmetry gives the instructors more power in the process. The faculty, insisting that the instructor's power is real, resisted the students' effort to force the instructors to articulate learning goals for themselves in the contract, lest this very real power disparity be obscured.

whether CALS' explicit focus on the interpersonal dimension of lawyering and reducing hierarchy heightens the sense of vulnerability for their clinicians, and makes them more likely to draw lines that may seem less risky to other supervisors. For example, other clinicians explicitly share learning goals with their students early in the semester, and do not feel their authority unacceptably undermined thereby.[65]

In another approach to clinical supervision, Peter Hoffman has advocated a three-staged model of clinical supervision: in the first stage, the supervisor is more didactic and directive, since the student needs substantial guidance; in the second stage the supervisor works to nurture the student's confidence in his own decision-making ability, by treating the student less directively and more as an equal; in the final stage, since the supervisor and student are more like peers, the supervisor defers to the student's judgment and intervenes only to prevent serious error.[66]

In describing the stages of clinical supervision, Hoffman addresses two types of disclosure which play a role in his model of supervision: pedagogical and professional. Hoffman advocates disclosing the supervisory model to the students, arguing that such disclosure "motivates" students to proceed through the various stages.[67] This disclosure of one's teaching goals is what I previously referred to as pedagogical disclosure.

It is interesting, and true, in my experience, that many students are motivated to perform well by the prospect of becoming the teacher's peer. I also think that for many students becoming the teacher's peer means more than simply becoming more proficient at a set of technical skills. Becoming the teacher's peer implies a qualitative change in the student's relationship with the teacher (and a corresponding increase in the student's power) that many students may find attractive and motivating. I find that it is easier for me to be "friendly" and less guarded with the students whom I judge to be performing well. I assume this message is not lost on students for whom my approval or friendship is a motivator. Perhaps the generally less personal and frequently alienating environment of law school makes the prospect of a closer relationship with a teacher seem like a particularly valuable commodity.

In his only concrete example of supervisory dialogue, Hoffman provides an example of what I have termed "professional" disclosure. In a discussion with a student during the second stage, Hoffman helps a student explore options in response to a complaint in a personal injury action. Hoffman tells the student, "I know the attorney for the other

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65. *See supra* note 34 and accompanying text.
66. *Stages*, *supra* note 42, at 309.
67. *Id.* at 311.

side and I am pretty sure she will give us an extension of time to answer."[68] Like much professional disclosure, this seems relatively non-controversial most clinicians would have no objection to doing it and it reveals very little personal information.

Hoffman doesn't address disclosure directly, and talks more in terms of authority and control versus openness and friendliness. However, this model seems to recognize some need to balance the sorts of disclosures that are implied in the supervisor's move from authority figure to peer, with the need to remain in control, even at the final stage. I suspect he would advocate caution in making personal disclosure, particularly in the early stages of the supervisory relationship.[69]

I also find it somewhat telling that Hoffman's article is written in a more abstract style than others who have written about clinical supervision and, in some sense, discloses the least personal contextual information. Just as my own more concrete and personal writing reveals a somewhat greater willingness to disclose, the absence of examples that reveal more about the author and his personal supervisory style reinforces my feeling that Hoffman would be suspicious of a supervisor's disclosure of personal information unrelated to her role as a lawyer.[70]

In another of the leading articles describing the process of clinical supervision, Ann Shalleck describes a form of supervision that endeavors to explore the connections between lawyering and the socio-political context in which it operates.[71] She believes that any lawyering activity can serve as a metaphor for the lawyering process generally, and argues that subjecting any lawyering activity to intense scrutiny can illuminate the lawyering process. Shalleck's description of her supervisory process models her supervisory methodology: she constructs a theory of supervision by examining three supervisory interactions in a single clinic case, and subjecting those interactions to intense scrutiny.[72]

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68. *Id.* at 308.

69. I subsequently did send Hoffman a draft of this article and he generously shared his reactions with me. While he acknowledged that for him "intimacy has not been a particularly important part of the supervisory exchange," he regularly employs connected, pedagogical disclosure. "'[T]hinking aloud' including relating my emotional reactions is valuable teaching by demonstrating or modeling what a good lawyer should do in a particular situation." Letter from Peter Hoffman, on file with the author.

70. This may be another indicia of the significance of gender in clinical supervision. *See* Henley, *supra* note 2, at 8. Hoffman thinks the style of writing reflects little about his supervisory style and attributes the lack of personal examples to traditional law review writing style and the pressures of supervision which at the time he wrote the article precluded more expansive illustrations.

71. Shalleck, *supra* note 39.

72. The case of Jessica Green provides the setting for this analysis of supervision. Ms. Green is a victim of domestic violence who seeks an order excluding her husband

Like Hoffman, Shalleck advocates a form of pedagogical disclosure where the supervisor makes the reasons for her choice of subjects to discuss in a supervision session clear to the student. Shalleck's reason, which is to motivate the student to be patient with the teacher's agenda, is similar to Hoffman's. Shalleck acknowledges, however, that disclosing the teacher's agenda has the potential to derail it by giving the student the opportunity to challenge the project of the teacher, an opportunity the student may not have had in the absence of the teacher's disclosure.[73]

Implicitly, Shalleck acknowledges the relationship between hierarchy and disclosure, and that the supervisor may, in the disclosure of her teaching goals, relinquish some of her authority to her students. Hoffman does not allow for this possibility as a consequence of the supervisor's disclosure. But "allowing the student to transform the teacher's agenda" is a much less risky proposition for Shalleck in the context of a single supervisory encounter, than it is for Hoffman who, in disclosing to students the stages of clinical supervision, is setting the ground rules for the entire relationship. Presumably, if Shalleck, as a consequence of her disclosure to her students, feels uncomfortable with the amount of supervisory authority she has relinquished, she can try to make an adjustment in the next encounter. Hoffman, in contrast, is talking about a fairly critical moment early in the semester. Since his preferred method of supervising his students is in some sense non-negotiable, his disclosure of his methodology is not designed to provoke discussion, or permit alteration of his agenda. The relationship between authority and disclosure is not only that we disclose, but when and how.

On the other hand, Shalleck says that supervisor-student interaction is not itself a focus for inquiry in her model of supervision.[74] In this way, Shalleck distinguishes her view of supervision from the CALS model, where supervisor-student interaction is a focus for inquiry. Presumably then, Shalleck does not comment on supervisor-student interaction, and either explicitly or implicitly discourages students from doing so.

This is another interesting choice, and while Shalleck doesn't provide her reasons for it, one wonders about them. There are parallels, for instance, in supervisor-student interaction and lawyer-client interaction.[75]

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from the marital residence and an order of support for herself and her children. Shalleck describes three supervisory encounters (1) a meeting between the supervisor and Ms. Green's student lawyers which precedes Ms. Green's hearing on her application for orders of eviction and support, (2) the hearing itself, and (3) the supervision session which followed the hearing. Shalleck, *supra* note 39, at 19-65.

73. *Id.* at 183.

74. *Id.* at 185.

75. *See* Peter Margulies, *"The Mother with Poor Judgment and Other Tales of*

It is not necessarily inconsistent with Shalleck's methodology to examine an interaction between supervisor and student. It could be a choice made simply in the interest of efficient casehandling. Certain discussions have greater potential to advance the casework than discussions of student-supervisor interaction. Making certain subjects off-limits, and being the one to say they are off-limits, reinforces the teacher's authority in a way that willingness to talk about these issues would not.

Shalleck cautions supervisors to be vigilant constantly for ways in which they "may be overpowering or subverting the student's experience." Although this comment is directed more at intervention generally than at disclosure in particular, it provides another reason for a supervisor to withhold disclosure.

Maybe there is less risk that the supervisor's disclosure will overpower or subvert the student's experience where the supervisor has endeavored to achieve a more egalitarian relationship with the supervisor. My students urge me to share my feelings and reactions with them, to not hold back. They insist that they can react critically to my ideas and they seem to do so. Maybe this is all just my attempt to justify my own more disclosing style, because the truth is it is often difficult for me to withhold my own reactions. I often have very intense reactions to experiences like the hearing described in Shalleck's article.[76] Sometimes my own insights seem so fresh and so urgent that it is difficult for me to wait for a student to come to his own conclusions about it.

III. Themes of Connection and Separation in Feminist Scholarship and the Insights They Offer Clinicians

Much of lawyering is a process of separation and connection; it is the lawyer who can do both effectively who is the most successful advocate. A lawyer is required in her relationship with her client, to empathize, or connect in a fundamental way.[77] A lawyer must, in order

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the Unexpected": A Civic Republican View of Clinical Legal Education 8 (1993) (unpublished manuscript); Smith, *supra* note 41, at 56.

76. Shalleck's article describes a hearing in which her students represent a battered woman in a proceeding seeking a protective order, an order excluding the abusive husband from the home, and temporary support payments. The students succeed in getting the order of protection excluding the husband from the home, and an order requiring the husband to continue mortgage payments for ninety days. The judge refuses to order support however, although the woman has two small children and does not work outside her home. Shalleck, *supra* note 39, at 32-57.

77. Peter Margulies, *"Who Are You to Tell Me That?": Attorney-Client Deliberation Regarding Non-Legal Issues and the Interests of Nonclients,* 68 N.C. L. Rev. 213, 229 (1990); David A. Binder, Paul Bergman and Susan C. Price, Lawyers as Counselors: A Client Centered Approach at 32-45 (1991) [hereinafter Lawyers as Counselors]; *see also* Stephen Ellmann, *Empathy and Approval,* 43 Hastings L.J. 991, 1003 (1992).

to be effective, be able to see a problem from her client's perspective, even if that perspective is very different from her own.[78]

In the clinic I teach, we represent clients seeking social security disability benefits. I often observe students evaluating a client's disability claim with reference to the way in which they or their parents, since most of our disability clients are significantly older than most of our students, would react if faced with similar physical challenges. The problem with this perspective is that it fails to account for the subjective nature of pain[79] indeed its severity, since students have not, in general, experienced the pain their clients face.[80] Often, though not always, the student's perspective also discounts the demands of physical labor, and the effects of racism, classism and sexism. To be truly empathetic, a lawyer must be able to evaluate a case from her client's perspective.[81]

Simultaneously, however, a lawyer or advocate must also be able to separate herself sufficiently from her client's perspective to be able to subject the client's story to scrutiny, to gather facts in discovery, to think about the most effective way to present the client's claim to third parties such as judges and opposing parties. In the disability case, it is important not to be so wedded to your client's perspective that you fail to appreciate the initial hostility you may encounter from a judge or agency representative.

I often find students who can either separate or connect very well, but have trouble doing both well. Often issues of connection and separation seem related to gender.[82] For instance, I often find students,

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78. Clinical scholarship (particularly the Theoretics of Practice Movement), feminist legal scholarship and critical race scholarship all emphasize the importance of considering multiple perspectives; *see* Anthony V. Alfieri, *Essay: The Politics of Clinical Knowledge*, 35 N.Y.L. Sch. L. Rev. 7, 15 (1990); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 Buff. L. Rev. 1, 31, 39-40, 44, 45, 47, 50, 55-56 (1990); Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. Civ. Rts. Civ. Lib. 323, 325, 331, 359, 391 (1987); Kimberle Williams Crenshaw, *Forward: Toward a Race - Conscious Pedagogy in Legal Education*, 11 Nat'l Black L.J. 1, 3 (1989); Ellman, *supra* note 77, at 1003.

79. Aubeuf v. Schweiker, 649 F.2d 107, 111-112 (2d Cir. 1981) (citing Marcus v. Califano, 615 F.2d 23, 27 (2d Cir. 1979)); Ber v. Celebreeze, 332 F. 2d 293, 299 (2d Cir. 1964).

80. *See* Jack B. Weinstein, *Equality in the Law: Social Security Disability Cases in the Federal Courts*, 35 Syracuse L. Rev. 897, 899 (1984) (eloquent discussion of how disability cases pose similar dilemmas for judges).

81. *See* Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 Minn. L. Rev. 1599, 1618, 1622, 1625, 1649 (1991); Ellman, *supra* note 77, at 992; Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 Vt. L. Rev. 459, 475 (1992); Patricia J. Williams, The Alchemy of Race and Rights 212-13 (1991).

82. *See generally* Carol Gilligan, In a Different Voice: Psychological De-

frequently, though not exclusively, white, middle-class male students, who have trouble empathizing with their clients often poor, female, or people of color. Occasionally, the same student is quite effective in courtroom settings. I have had students who could, for example, stand up to harsh and public criticism by a judge, and be totally unfazed, yet have difficulty understanding a client's concerns.[83] Similarly, I have had students who were quite empathetic and effective with clients, but who were so conscious of the opinions of others that they were flustered in the courtroom or even unable to speak in class for fear of their classmates' reaction. Often, these are female students. I would be very concerned how such a student would react in the face of a judge's rebuke.

In the first case, the student's ability to separate himself from the judge's perspective may be crucial to his ability to maintain his poise in the courtroom and his ability to evaluate the judge's behavior critically later. On the other hand, he was unable to connect with his client's perspective sufficiently to understand him. In the second case, the student was so connected to what her classmates thought that she was quite literally unable to find her voice in the clinic seminar.

Some of the dilemmas surrounding intimacy for me involve questions concerning when to attempt to connect with and when to separate from my student's perspective. I am convinced, for example, that the students I criticize as insufficiently empathetic are the same students I have trouble empathizing with. And similarly, I wonder whether I need to "separate" better from female students who have trouble doing so? In each case, the ability to model connection and separation effectively imparts important lawyering messages for students.

I have found the metaphors of separation and connection helpful in thinking about my relationships with my students, and in reflecting on my choices concerning self-disclosure. Because feminists pose resolutions of the tension between separation and connection, I have found that feminism has been useful in resolving the tension I feel around issues of intimacy and distance with my students.

That feminism offers clinicians assistance in analyzing the way in which distance and intimacy operate in a clinician's relationship with

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VELOPMENT AND MORAL THEORY (1982); Bryant, *supra* note 81, at 479. *But see* Angela Y. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588, 591 (1980); CATHERINE A. MACKINNON, FEMINISM UNMODIFIED 8 (1987).

83. The judges in the United States District Courts where my students practice are overwhelmingly white and male. Conceivably, the social class and power disparity between the student and the client may be greater than that between the student and the judge, making the judge seem not nearly as forbidding as he might to a student whose experiences were closer to those of the client.

her students should not come as a surprise. The epistemological and methodological similarities between feminism and clinical teaching have already been well documented.[84]

What follows are three examples of models posed by feminists of the resolution of separation and connection, and some thoughts from my supervisory experiences concerning how these models might translate for a clinician's relationship with her students.

A. Separation and Connection in Mothering and the Lessons for Clinical Teaching

The feminist philosopher Sara Ruddick in her book, *Maternal Thinking*, offers an aspirational account of mothering and the distinctive thinking that arises from the work mothers do.[85] Ruddick identifies the three essential tasks of mothering as: 1) preserving the child, 2) fostering his growth and 3) socializing, or making the child acceptable to society.[86] In each of these tasks mothers are required to connect with and separate from their children. It is in socializing, however, that the tension between connection and separation is greatest.

Ruddick recognizes that mothers occupy positions which are simultaneously powerful, vis-a-vis their children, and powerless, vis-a-vis other persons and institutions in society.[87] Socializing therefore poses "painful contradictions for mothers."[88] Mothers want their children to be able to negotiate in the world without continually getting into trouble with people who have the power to hurt them. At the same time, these mothers may not want their children to accept society's dominant values unquestioningly.

Mothers could, and often do, respond by viewing their children as having essentially hostile natures that require domination and control. They could, and often do, exert their maternal power and authority to demand unquestioning obedience of the child. Children can also yield,

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84. Goldfarb, *supra* note 81, at 1637-42.

85. Sara Ruddick, Maternal Thinking: Toward a Politics of Peace (1989) [hereinafter Ruddick]. The following discussion is drawn largely from Ruddick's work.

86. Throughout my discussion of Ruddick's work, I use the male pronoun to refer to the child, and the female pronoun to refer to the mother. Ruddick consciously chose to focus on "mothering" rather than "parenting" or "caregiving." Ruddick recognizes that mothering is "potentially work for men and women," and that some men in fact perform some mothering work. Ruddick, *supra* note 85, at xi; 40.

87. *Id.* at 35. *See also* Martha Fineman, *The Neutered Mother,* 46 U. Miami L. Rev. 653, 654 (1992) ("[T]he symbol of Mother is negatively implicated by the specter of her dependence on husband and child. She is married by burdens of obligation and intimacy in an era where personal liberation and individual autonomy are viewed as both mature and essential.").

88. *Id.* at 104, 109, 114, 115.

just as unquestioningly, to the authority of fathers, school officials and powerful others. Mothers can also completely accept their children's behavior, without recognizing any need to control it, or fail to do so despite recognizing the need.

Ruddick proposes an alternative form of socializing she calls "training as a work of conscience," as a way of reconciling these contradictions. The goal of this training is the growth of children as "conscientious" persons, capable of judging against as well as with dominant values.

Ruddick's method requires "conversational reflection" in which the mother, rather than dominating her child or accepting every behavior without criticism, nurtures a responsiveness in him. This method requires ongoing mutual trust; that is, the mother must trust her child to instill the child's trust in her. This trust helps keep the dialogue from becoming coercive, or at worst, minimizes the damaging effects of coercion. Trust must not be so complete that a mother fails to recognize a child's occasionally manipulative and meanspirited behavior, yet a mother must not be forever suspicious of her child. Similarly, the child must be able to recognize and protest his mother's betrayal in order to affirm that she was once and will again be trustworthy. In order for this to happen, a mother must acknowledge her failings and work against them. The appropriate degree of trust then, is an ongoing struggle.

Training as a work of conscience forges a unity of goal and method. A mother models the conscientiousness she tries to develop in her child. When she seeks and trusts the authority of others, for example, she takes responsibility for judgments of trust while keeping respectful distance from the authority judged trustworthy. This form of training requires both intense connection as mother and child develop the bond on which trust is based, and temporary, necessary separation as that bond is tested when parent or child stand back to examine the other critically.

Clinical legal education is often looked upon as the same sort of "training" that mothers are called upon to do.[89] For example, the legal profession asks law schools to train students to be "acceptable" members of the profession. Legal educators rail at this task, viewing their goal not "training" as narrowly defined by the profession, but rather a broader view of the educational mission.[90] To the extent, however, that

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89. These parallels between mothering and clinical supervision have also been described in the therapist-client relationship. "The nature of the intimacy established between a primary caretaker and an infant, as well as between a therapist and a client, can be seen to involve the handling, within the relationship, of complex interrelated issues around nurturing and individuation." Sandra Beth Levy, *Toward a Consideration of Intimacy In the Female/Female Therapy Relationship*, 1 WOMEN & THERAPY 35, 37 (1982).

90. *See generally* Jack Himmelstein, *Reassessing Law Schooling: An Inquiry Into*

law schools attempt to satisfy the profession's expectations that law students be trained, that task falls to clinical law teachers and teachers of lawyering skills, who are often one and the same.

Furthermore, there are parallels between the simultaneously powerful and powerless positions of mothers and those of clinical law teachers. Supervision in the clinical setting, like mothering, is a conflictual status of power and powerlessness.[91] Clinicians hold power over students but often hold positions in the institution and the profession which are relatively less powerful.[92]

In the descriptions of clinical supervision in the literature on clinical legal education, the clinical teacher hopes her student will acquire skills necessary to succeed in the existing system while developing the tools to critique both the system and her role in it to preserve the possibilities for transformative change.[93] Similarly, when clinical teachers ask their students to critique the models of lawyering they teach their students, indeed when they encourage students to critique the teacher, they need to create the trust that empowers the student's voice. Because of the power disparities inherent in the student-teacher relationship, this trust, like that between mother and child, is an ongoing and difficult struggle.

My interaction with one female student illustrates this struggle. The student was drafting a complaint in a civil rights case. In reviewing the draft, I emphasized the need for "spare" pleading which leaves open as many options as possible in developing the case theory depending on the facts learned in discovery. I also questioned the student's decision to plead several harmful facts, since they were not necessary to establish the cause of action. The student had included the harmful facts because she felt that leaving them out gave the reader an incomplete and potentially misleading understanding of what had occurred. The student agreed to take out the harmful facts, although she questioned the honesty

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the Application of Humanistic Educational Psychology to the Teaching of Law, 53 N.Y.U. L. Rev. 514 (1978).

91. As Fineman has noted with respect to mothers, it may be the burdens of obligation and intimacy which effect the perceptions of clinicians in the institutions they serve. Fineman, *supra* note 87, at 654.

92. Ruddick describes mothers as profoundly ambivalent about their conflictual status. Ruddick, *supra* note 85, at 68-69. Clinicians may be equally ambivalent. *See* David Barnhizer, *A Clinical Carol or the Spirit of Clinical Future, Remarks Before the Annual Meeting of the Clinical Legal Education Section of the Association of American Law Schools (AALS)*, in AALS Clinical Legal Education Newsletter, Mar. 1987, at 9. (describing clinicians who lost touch with the reformist roots that originally brought them to clinical teaching in the interest of becoming more powerful).

93. *See generally* Carrie Menkel-Meadow, *Two Contradictory Critiques of Clinical Legal Education: Dilemmas and Directions in Lawyering Education*, 4 Antioch L.J. 287 (1986).

of doing so, saying, "I'm becoming the kind of lawyer my mother wouldn't approve of."

I was very troubled by this comment, never having perceived previously a conflict between honesty in advocacy and the rules of good pleading. I thought, however, that while the student's view of honest advocacy would disadvantage her client in the system as it currently exists, the student and her mother may have had a point. I shared my concerns with the student.

I told the student I thought it was important that she understand how the system defined competent lawyering skills, while continuing to look at the system as critically as she was. I also told her I was troubled that I could be perceived as encouraging her to become the kind of lawyer her mother would disapprove of, and that, apparently, I *was* the sort of lawyer her mother would disapprove of.

I nevertheless felt that, having considered the options, including whether we might look better to the court having pleaded the harmful information and whether this outweighed the disadvantages of disclosing the information, leaving out the harmful information was best for the client. The student apparently felt the same. At least she said she did. Thereafter, the student and I frequently engaged each other on the "honesty" of various courses in litigation, using "how would your mother react to the ethics of this?" as the standard.[94]

B. Integrating Connected and Separate Knowing and the Lessons for Clinical Teaching

Women's Ways of Knowing,[95] represents a groundbreaking attempt to identify and categorize the different ways that women acquire knowl-

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94. Robert Condlin might use this anecdote in his critique of live client clinicians' use of "persuasion." Robert J. Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 48 n.7 (1986). *But see* Eric S. Janus, *Clinics and "Contextual Integration": Helping Law Students Put the Pieces Back Together Again*, 16 WM. MITCH. L. REV. 463, 489, (1990) (criticizing Condlin as endorsing a false objectivity).

I question whether persuasion would fairly characterize my interaction with this student. For one thing, I continue to question the "conventionalness" of my choice; if the student's mother truly believed the ethical course required disclosing the information, why didn't I? The "maternal" standard here resembles that described by William Simon as a regulator, one for whom duties to the system outweigh any duty of loyalty to the client. *See* William Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083, 1086 (1988) (My own instincts often tend toward those Simon would describe as "libertarian;" a libertarian would certainly leave the harmful information out, unless doing so would harm her client.). Simon's model of Ethical Discretion might justify this decision on the relative power disparities of the parties—the client for whom we were writing the complaint was a poor woman and her adversary a powerful corporation.

95. MARY FIELD BELENKY, BLYTHE MCVICKER CLINCHY, NANCY RULE GOLDBERGER, JILL MATTUCK TARVLE, WOMEN'S WAYS OF KNOWING (1986) [hereinafter WOMEN'S WAYS].

edge. For most women, according to the authors, higher education serves a function of offering women formal structures for acquiring and analyzing information. These formal structures can be of two types. One type, "separate knowing" emphasizes critical thinking, looks for logical inconsistencies, and extols reason. "Connected knowers" in contrast gain knowledge through empathy; thus, they develop procedures for gaining access to others' knowledge.

1. Separate Knowing and Traditional Legal Education.—Traditional legal education privileges separate knowing. Most of law school, particularly in the first year, emphasizes abstract, decontextualized modes of reasoning.[96] Even the traditional teaching of professional responsibility emphasizes resolution of ethical dilemmas by reference to the Code of Professional Responsibility, an abstract rule approach to the resolution of problems often having moral dimensions.[97]

Furthermore, the setting of such courses emphasizes the notions of hierarchy, and exclusion of self that characterizes most courses in professional responsibility, indeed much of law school.[98] Classes are taught in large groups in raked lecture halls, lead by an "expert" professor whose ability to know students personally or interact with them individually, much less intimately, is limited by the number of students in the class and the barriers imposed by the classroom design.[99]

Even in the most "open" law schools, interaction between faculty and students is limited by the size and design of most law school classrooms. I have heard students, particularly in the first year, describe the ring of students that forms around the professor after such large classes. The students approach the professor with "questions" ostensibly, although it sometimes seems that certain students long more for interaction with the professor than have a pressing need to have a question answered. The "inner" ring is largely composed of students, who like the professor, are often white, heterosexual, and male. Students of color, gay and lesbian students, and women students approach the professor,

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96. Himmelstein, *supra* note 90, at 534; Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1305 (1988).

97. *Id.* at 520-21 (Jack Himmelstein notes that neither stricter ethical codes nor courses on professional ethics address "a critical consideration of the lawyer's role, and of the human and social concerns underlying that role."). *See also* Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159, 1162 (1992) ("The effect, and it is fair to say the effort, is to separate the lawyer and her own ethical sensibilities from the broader social work in which she will function.").

98. *Id.* at 533, 536-39; Weiss & Melling, *supra* note 96; Unhappily, this description has also been applied to universities and colleges. Margo Culley, Arlyn Diamond, Lee Edwards, Sara Lennox & Catherine Portugues, *The Politics of Nurturance in* GENDERED SUBJECTS 11 (Margo Culley et al. eds. 1985).

99. *See, e.g.*, Himmelstein, *supra* note 90, at 534.

if at all, on the outskirts of the ring. As the professor runs out of time to answer the questions of all the students, it is the students on the outside which are most often left unaddressed.[100]

It is not surprising then, though it is ironic, that for many students, their first individual conversation with a law faculty member who teaches such a class is when and if the student meets with the faculty member after she receives her final grade for the course.[101] I recall overhearing one student describe such a conference, "I never really spoke with [the professor] before. I was so surprised to find out he was so nice." Whether or not clinical students would describe their clinical teachers as nice, they usually have some basis for making such a judgment before they talk to her about their final grade.

2. Clinical Education and Connected Knowing.—In contrast to traditional legal education, clinical education emphasizes at least two modes of teaching, both of which bring students into closer contact with their professors.[102] Each of the modes of teaching in which clinicians are engaged emphasize relationships with,[103] and among,[104] students.

Most clinical programs include a classroom component which emphasizes more interaction among students and teachers than is the case in the traditional classroom.[105] Clinical classes are generally smaller than most non-clinical classes.[106] There is generally more interaction among students and between students and teachers than is the case in non-clinical classrooms. Student teacher interaction is achieved in part by a curriculum which encourages students to engage in simulations and role plays and to critique their own performance and that of their classmates. Students often receive individualized feedback on their performance in role from teachers and classmates. The development and maintenance of trust is an explicit goal of the clinical classroom.[107]

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100. *See* Alice Dueker, *Diversity and Learning: Imagining a Pedagogy of Difference*, XIX N.Y.U. REV. L. & SOC. CHANGE 101, 104-05 (1991-92).

101. *See* Carney, *supra* note 21, at 31 (an assessment of the effects of this form of teaching on law students' mental health).

102. *See Stages*, *supra* note 42, at 301-02. *See also The Learning Contract*, *supra* note 20, at 1051; Shalleck, *supra* note 37, at 2.

103. Shalleck, *supra* note 39, at 2.

104. *Id.* at 120.

105. Meltsner & Schrag, *supra* note 25, at 31.

106. Marjorie McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand their Beachhead*, 35 N.Y. L. REV. 239, 254, 283 (1990) (comparing the 1:8 average student teacher ratio in in-house clinics to the 1:23 ratio in all other law school courses).

107. While it has failed to overcome the bias of legal education or legal institutions, clinical education has frequently challenged law schools to examine biases within law school and the legal profession. *See* Susan J. Bryant & Victor M. Goode, *Racism and*

The second mode of teaching in which clinical teachers are engaged, one on one supervision, is at least as important as the teaching which occurs in the classroom. In supervision, student teacher interaction is even more individualized than in the clinical classroom. Most clinical faculty have regularly scheduled meetings with the students they supervise, either individually, or in groups of three or fewer. In addition to these formal meetings, faculty interact with students informally on an almost daily basis in the clinic office, or elsewhere, as the teacher assists the student plan, reflect on or carry out lawyering activities. Relationships between students and teachers inevitably develop through this daily interaction.[108]

3. Constructed Knowing: Integrating the Voices.—In contrast to knowing which is exclusively separate or connected, *Women's Ways of Knowing* identifies a third form called "constructed knowing" which represents a synthesis of separate and connected knowing.[109] Constructive knowledge is characterized by an ability to relate with the information learned and test it against one's experience and to take what is learned outside oneself and compare it against an external standard.[110]

Constructed knowing is promoted through teaching which models for students a way of achieving the integration of connection and separation. "Constructive teaching"[111] acknowledges that students learn not simply through the subject matter taught, but that teachers impart important lessons through their interaction with students.[112] Constructive teaching, therefore, includes opening up your process for the student's

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Sexism and Their Effect on Supervision, PANEL DISCUSSION AT THE AALS NATIONAL CLINICAL TEACHERS' CONFERENCE (Colo., May 19, 1986); Mary Jo Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach,* 38 J. LEGAL EDUC. 183 (1988); Suellyn Scarnecchia, *Gender & Race Bias Against Lawyers: A Classroom Response,* 23 U. MICH. J. L. REFORM 319 (1990).

108. These relationships have the potential to respond to critiques of legal education as destructive to law students' self esteem. Carney, *supra* note 21, at 10.

109. Weiss & Melling, *supra* note 96, at 1307, describe constructive knowers among the women in their law school class "as [those who] know [they] can take any side of a legal argument and knowing they want to now find the argument that [they] want to believe in and then argue that."

110. It is unfortunate that WOMEN'S WAYS of KNOWING's categories take on a hierarchical quality, that seems to reflect some class bias. Most of the examples of "Silent Women," the lowest category, were lower class women. On the other hand, most of the examples of "constructed knowers" were students at or graduates of "elite women's institutions." WOMEN'S WAYS, *supra* note 95, at 93, 103, 131, 190-91.

111. Although the authors call this type of teaching "connected" I am avoiding that term to emphasize the goal of truly integrating separate and connected knowing rather than privileging connected knowing over separate. *Id.* at 223-29.

112. *See* Dueker, *supra* note 100, at 131 (arguing the value of connected teaching in the law school classroom).

scrutiny. Allowing a student to watch a teacher solve and fail to solve problems can be a powerful learning experience, and empower students to take on solving problems themselves.

I once supervised a student appellate argument in a case I had supervised for a number of years. I had tried the case with different clinic students a year earlier. We won a significant verdict at trial, only to have the trial judge grant our opponent judgment notwithstanding the verdict. As we got closer to the date of the appellate argument, I became increasingly nervous. We had had a number of practice arguments, and I was disappointed in the progress of the student's performance. The student's performance was competent, and I had little doubt he was capable of a good argument, but after each practice argument, we talked about the changes we wanted to make in the next practice argument, and few of those changes seemed to be getting made. I was also having a very hard time restraining myself. I really wanted to do the argument myself.

The day before the "real" argument, we had not scheduled a practice argument, but I asked the student to meet with me anyway. We talked about his expectations for the following day, summarized some of the practice questions that had been especially difficult, and agreed on the best way to approach those questions. During our conversation, the student asked me whether it was difficult for me to let him do the argument.

I could have deflected the question, saying, "that's what clinical teachers always do," or minimized the issue saying, "It's always hard, but's it's my job to help you do it, not to do it myself." Students have asked me this question before. I had answered it similar ways in the past and the answer usually seemed satisfactory—even true. Instead, however, I admitted that it was especially hard for me to let go of this argument, that I felt very committed to the client, and was very invested in the outcome, probably more so than he.

I was concerned that my difficulty letting go of the argument not become the student's problem, and I shared this concern with the student as well. I was also concerned that the student not use my problem as an excuse for disregarding my feedback. The student said he had sensed my inability to let go of the argument in my supervision of him. While this was undoubtedly true I told him, I was genuinely concerned that he was not incorporating the feedback he had been receiving, and I wanted him not to discount my suggestions just because I was also having a problem letting go of the case.

The student's performance at oral argument the following day was inspired, as good as any I have ever seen. There may well have been no connection between our conversation, my disclosure, and his performance. His performance may have been attributable to the "luck of

the day," as his less successful performances in the practice sessions may have been. Or it may be, as he assured me throughout the process, that he could only "pull it together" at the last minute. It may be however, that he needed to hear me acknowledge my difficulty letting go, because he could hear it whether or not I acknowledged it.[113] It may be that he was so distracted by my obvious desire to do the argument myself, it was difficult for him to focus on anything else.[114]

The constructive teacher is one who helps students articulate and expand their latent knowledge. The constructive teacher enters her student's perspective, but does not abandon herself to it.[115] Her role does not entail power over students, but does "carry authority, an authority based not on subordination but on cooperation." [116]

A dilemma faced by a male student litigating a sexual harassment case on behalf of a female client illustrates this integration of separation and connection. The student was involved in face to face negotiations to settle a pretrial order with his opponent, a male lawyer. During the course of the negotiations, the lawyer repeatedly made disparaging remarks about the client's character, remarks which undoubtedly would have offended the client had she heard them. Indeed the student admitted that he had been offended by them, yet he said nothing to the lawyer.

In a subsequent supervision meeting, the student expressed disappointment that he had not "defended" his client against his opponent's remarks. He felt that in failing to respond, he had been disloyal to his client.

I explored with the student the reasons for his reluctance to confront the lawyer's disparagement of his client. The student felt he could not respond to the lawyer's remarks without detracting from the completion of the pretrial order. He felt it may even have been helpful to establish

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113. LAWYERS AS COUNSELORS, *supra* note 77, at 39.

114. At the risk of being criticized for justifying something that has good for me as good for the student, once I acknowledged my difficulty "letting go" to the student, I felt better able to do it. I think it is very possible that he couldn't do the argument well until I moved out of his way. The student reflected some time afterward as follows: "I can only agree that the reasons you offer are possible because I still have no idea what the cause of my problem was. I would like to think that I knew I would "pull it all together" in the end, but I know better. The pressure of the task was the most intense I had ever experienced. I was frustrated that I was not performing up to your [or my] expectations, knowing the substantial effort you had made for [the client] and that this was her last chance in the courts. Your disclosure must have had some positive effect on me based on my performance, but so many thoughts were running through my head that I could not assign responsibility to a particular occurrence. Most likely, a part of each of the possible reasons discussed played a role in the process." Letter from former student on file with the author.

115. WOMEN'S WAYS, *supra* note 95, at 227.

116. *Id.*

an atmosphere where the lawyer felt free to make insensitive remarks about the client. Permitting the lawyer to speak so freely might have given the student an insight into the lawyer's theory of his case. He also admitted, however, that his joint work with opposing counsel on the pretrial order created a sort of allegiance with the lawyer that excluded the client. Concerned about this, the student spoke to his adversary, and the completion of the pretrial order was not adversely affected.

The student needed to be able to separate, or impose some distance in his relationship with his adversary so he felt less reluctant to call him on his inappropriate remarks. Or, conversely, he needed to be able to maintain his connection with his client even though he was engaged in the kind of lawyering task which normally requires one to separate oneself from the client.

Paralleling the student's relationships with his client and his adversary, the supervisor's relationship with the student needed to be sufficiently close for the student to safely expose his misgivings about his conduct with the lawyer, while distant enough to subject his actions to scrutiny, with his supervisor's support.

C. Separation, Connection and the Integration of Justice and Care

The feminist psychologist Carol Gilligan in a work now familiar to most law teachers identifies the different moral "voice," that often characterizes women's decision making.[117] Whereas the leading theorists, in particular the psychologist Lawrence Kohlberg had hypothesized that higher order moral decisionmaking required the application of a hierarchy of abstract rules, Gilligan notes that these theories were reached through studies of male subjects. In applying Kohlberg's research to women, Gilligan uncovered a different mode of reasoning which emphasized relationships over rules as a way of resolving moral dilemmas. Legal scholars, in particular feminist legal scholars, have come to recognize this "different voice" as an ethic of care.

In subsequent research, Dana and Rand Jack sought to elucidate the lawyer's notion of professional responsibility by listening for justice/rights (reasoning through resolution of competing abstract principles) and care (reasoning through attention to self and other) themes in their interviews of lawyers.[118] They concluded that the notion of ethics adopted by most of the lawyers in their study included both justice and care themes, and that these competing moral visions worked together for the lawyers in their study in resolving moral dilemmas the lawyers encountered. They noted, however, that when particular ethical dilemmas brought

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117. GILLIGAN, *supra* note 82, at 24-63, 128-74.

118. MORAL VISION, *supra* note 18, at 13.

justice and care concerns into sharp conflict the lawyers seemed to resort primarily to one mode or the other to resolve the conflict. To this extent, women were somewhat more likely to rely on the care mode to resolve the dilemma, while men were somewhat more likely to rely on the justice mode.

The effect of law school's emphasis on abstract analysis in producing "detached, neutral, partisan stoics who think like lawyers and share the assumptions of professional ethics" is well documented.[119] In suggestions for educating a "more morally responsive advocate," Jack and Jack suggest reform of law school teaching methods, which in modeling combative lawyering behavior, encourage the archetype of the adversarial lawyer who approaches his professional role and the ethical dilemmas he faces by resort to the rigid application of rules, without regard for the morality he brought with him when he entered law school.

Furthermore, the separation of self which characterizes much of legal education may give messages about the relationship between distance and power which are mirrored in the legal system.[120] The higher status, elite forms of practice (federal litigation, corporate deals, e.g.) are treated as discrete bounded interactions, as compared to the "messiness" individual representation in family court, housing court, or criminal court with its "recidivist" component.

The legal profession accords elite status not only to certain forms of practice but to those lawyers with the means to distance themselves from clients. Large law firms with legions of associates and staff divorced from the actual client have more status, for example, than the solo practitioner engaged in closer relationships with individual clients. The federal prosecutor who is immune from the pressures of the community is more powerful than the local district attorney. Indeed, arguably the most powerful actors in the legal profession, judges, are the most distant. Appellate judges are have more power than trial judges, and perhaps not coincidentally are more distant from the controversies and litigants they judge than are trial judges. The justices of the United States Supreme Court are the most powerful actors in our legal system but are the most distant from the litigants and controversies which come before them.[121]

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119. *Id.* at 44-45.

120. These messages are mirrored not only in legal institutions but in law itself. *See, e.g.*, Nedelsky, *supra* note 47, at 167 (a discussion of the preoccupation with separateness and the pervasiveness of boundary metaphors in American constitutionalism).

121. Of course, distance and power are not synonymous, and the powerful actors and institutions I cite are not powerful simply by virtue of their greater distance. But the relationship between distance and power is more than coincidence and the ability to distance oneself is one incident of power. The reaction of some of the Justices of the Supreme Court to the release of Justice Marshall's personal papers suggests that the

Feminist legal scholars remind us that traditional legal reasoning denies the value of connection, intimacy and care, while feminists simultaneously celebrate connection and fear connection's invasive or oppressive potential.[122] As the aspiration toward explicit recognition and integration of care based (connected) and rule based (separate) values seeks to improve our legal system, a clinical teacher can integrate distance with intimacy in her relationship with her students, as a check on intimacy's oppressive or invasive potential.

To the extent that teaching methodology influences the kind of professional who emerges, a point urged by Jack and Jack in their call for reform of the law school curriculum, clinical pedagogy promotes creative thinking which values divergent views and fosters cooperative learning to a greater extent than the traditional law school methodology. Thus, clinical teaching models for students a place for care values in the legal curriculum, and by implication in their professional lives.

Furthermore, to the extent that clinical teachers engage in relationships with students that are not only distant, but intimate, the methodology of clinical teachers has a powerful potential for offering students ways to integrate an ethic of care with an ethic of rights in their approach to moral problems. The ethic of care requires neither the exclusion of one's own needs, nor exclusion of the needs of others in resolving moral issues. Clinical teachers by integrating both distance and intimacy in their relationships with students, can offer a model for integrating "justice" concerns with care concerns—that care-based thinking, the connected self, is no less just, and justice based thinking, the separate self, is no less caring.

In urging that a course that looks and feels more intimate gives positive messages about the value of care concerns in resolving moral dilemmas it may be useful to share a conversation with a student I will call Ellen. Ellen thought everyone in the clinic seminar regarded her as "crazy" during a class discussion of whether to take a case involving the government's attempt to seize the public housing apartment of a women indicted on narcotics charges. Ellen had urged that the clinic should accept the case because otherwise a woman and her two small children would be rendered homeless; that is, that the potential harm itself justified taking the case. In the discussion of the case in the clinic seminar, most of the students who advocated taking the case did so because of the perceived important constitutional principles involved:

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members of the Court are acutely aware of the relationship between distance and power. *Chief Justice Assails Library on Release of Marshall Papers*, N.Y. Times, May 26, 1993, pg. 1, col. 1.

122. West, *supra* note 6, at 53-61.

i.e., that the government's attempt to take the women's property (in this case her public housing apartment) violated the woman's constitutional right to "due process" by not affording her a pre-seizure hearing. Some students were concerned about whether the proposed client was "really guilty" of the narcotics offense she was charged with and thus would lose her apartment even if she got a pre-seizure hearing, and that the "drug crisis" plaguing our country justified such action anyway. Ellen felt many of her classmates, particularly her male classmates, disrespected her reasoning. She questioned it herself.

Ellen's reaction to her classmates troubled me in at least two respects. First, I thought the class discussion had been valuable precisely because it raised both "rights" concerns and "care" concerns. Ellen's feeling that many members of the class ridiculed her concern that the prospective client and her children had become homeless, and that this should play a role in any decision regarding whether to take the case, was thus a matter of concern. Furthermore, I was concerned that Ellen's perspective or any student's perspective not be silenced by the reaction of certain class members.

I urged Ellen that her concerns were important, both in enriching the class discussion and in informing her work as an advocate, in the clinic and in her future career as a lawyer. We also talked about the importance of asserting such concerns even in the face of other's ridicule. I also spoke individually with the other students in the seminar, however, about taking responsibility for behavior that might inhibit the expression of opposing views.

Later that semester, an incident involving my students occurred in a joint clinic class. [Several times each semester my clinic students attend class with the students in other clinical programs in our law school.] Some of the students from other clinics made presentations to the group, after which the floor was opened for questions. After a presentation by students who were defending police officers in a civil rights action brought by a *pro se* plaintiff, several of the students in my clinic questioned the student defense lawyers as to why limited clinic resources should be used to defend police officers accused of brutality. Some of these were the same students who had earlier ridiculed Ellen. Although many of the students in the class were sympathetic with the viewpoint such questions expressed, some objected to the way the student defense lawyers had been challenged.

In response to this incident, Ellen designed and presented the following week's class for our clinic called, "The Student Lawyer as Perceived by Others." Although the class was planned by a group of students, the impetus for the class came from Ellen. In the class, the clinic students participated in a roundtable discussion in roles as clinical teachers, secretaries, clients, adversaries, co-counsel, "significant others"

and students from other clinics. One student, modeling himself after a traditional law school professor, moderated the discussion.

In collaborating with her classmates, some of whom were the very students she felt had ridiculed her earlier, Ellen was able to find a place for her care based instincts and was successful in getting members of the class who earlier had denigrated her reasoning to accept its value. The students who participated in the class were shocked to learn they had been perceived as insensitive to the students in other clinics, and concerned about the reaction, set about to repair the damage to their relationships with those students.

IV. Conclusion: A Reflection on the Effects of a Search for Balance Between Distance and Intimacy in my Own Supervision

What have the effects of my examination of intimacy been in my own supervision? Since beginning this project, I have become more self conscious of my relationships with students. I am more reflective about my choices to disclose to students, and more reflective about the circumstances under which I ask them to reveal something to me.

As a result, I have become slightly more cautious about how much and in what ways I reveal myself to students. This is particularly true in the early stages of my relationship with a student. I no longer, for example, show pictures of my child to my students when I first meet them, although I show them quite freely in personal social settings. I tend to take more cues from my students concerning when to reveal personal information. I volunteer information less often, and what I do reveal is usually revealed in response to a student question.

Having come to a greater appreciation of the relationship between gender, authority and disclosure, and having recognized that some of my dilemmas around intimacy involve questions of power and control, I think the choice to hold back slightly more is a good one for me. Even so, since I came to this project thinking intimacy is a good thing in clinical supervision, I find my reaction to hold back a little more at the beginning an odd one. I suspect that I will be making corrections continuously along a spectrum of disclosure and openness, that reflect changes in me, in my students or in my perceptions of them, and in my understanding of the dynamics affecting our relationships.

Although I am slightly more held back personally than I used to be with students, I am at least as willing as I used to be to share reasons for pedagogical choices with them. This seems especially true for me in selecting students to participate in the clinic. I am much more conscientious than I used to be about articulating for students the bases of our pedagogy, making sure students understand my expectations of them and my reasons for those expectations.

With respect to disclosure that is neither purely personal nor pedagogical, I try to impose a connection test throughout my relationship with students, in deciding whether to share information about myself or in reflecting on choices I have made concerning disclosure. This is not to suggest that I am constantly in control of my interactions or my conversations, or even that I want to be. In retrospect, however, it is the unconnected choices that I fault myself for most, like the choice to show the new students the pictures of my baby.

I think I have always been more patient and cautious about asking students to make disclosure than I have been about making it myself, and I continue to be that way. I have a somewhat greater appreciation of the hidden ways teachers can coerce disclosure from students, however, and am more conscious of my power over them than I used to be.

Mirroring many of the issues in my supervision, the process of writing this paper has been a process of separation and connection, "doubting and believing"[123], choices about when to disclose, how much my stories intrude on other's privacy, and when to hold back. Mediating my own impulses to reveal and to hold back in this article has also, no doubt, taught me about how to mediate those issues in my supervision in ways that will continue to reveal themselves to me. Having asserted this, it is time for me to let go of this paper, get back to supervision, and test out my assertion.

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123. Peter Elbow, Writing Without Teachers 148-49, 190-91 (1973).