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CREATING A CLASSROOM COMPONENT FOR FIELD PLACEMENT PROGRAMS: ENHANCING CLINICAL GOALS WITH FEMINIST PEDAGOGY

Linda Morton*

We would start by learning where the students are, and that meant teaching as listening rather than teaching as telling. We had to help ourselves and each other overcome our own assumptions about the role of teacher. We had to let go of expecting teachers to lecture and students to give back to teachers what they want to hear. It was to be a pedagogy for liberation.¹

I. INTRODUCTION

There exists a historic conflict between the more traditional Langdellian philosophy of legal education,² and the experiential philosophy of apprenticeship programs, now known as field placement programs.³ The conflict is most recently apparent in the American Bar Association's (ABA) attempts to impose a more traditional classroom format on field placement programs through its regulations, guidelines, and instructions pertaining to law school accreditation.⁴ The ABA argues that law schools need to allocate greater in-

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Associate Professor, California Western School of Law, B.A., Princeton University, 1977; J.D. Northeastern University, 1981. I am grateful to Professors Anthony Alfieri, Marie Ashe, Michal Belknap, Barbara Cox, Marilyn Ireland, and Janet Weinstein for their thoughtful comments on earlier drafts of this Article. I also wish to thank my research assistant, Linda Littlefield, for her diligent efforts and assistance.

1. Liz Aaronsohn, *Learning to Teach for Empowerment* 40 RADICAL TEACHER 44 (1991) (discussing the author's experiences teaching in Mississippi Freedom Schools in 1964).

2. The term "Langdellian philosophy" refers to the theory of learning developed by Dean Langdell of Harvard Law School in the late nineteenth century by which students learn to be lawyers by studying legal principles extracted from appellate decisions. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 52-56 (1983). For a more detailed discussion of Langdell's philosophy, see *infra* text accompanying notes 28-32.

3. In a memorandum, the American Bar Association (ABA) defines field placement programs as "internships, externships, judicial clerkships, placement clinics, and any other program in which actual rendition of legal services or other actual legal activity are used and in which full-time members of the faculty are not ultimately responsible for the quality of the service or other activity." Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of Site Evaluation Team 15 (Sept. 1988) (on file with author). California Western School of Law refers to its field placement program as the "Internship Program."

4. See discussion of ABA Standard 306, Interpretation 2 and accompanying instructions, *infra* notes 60-80 and accompanying text.

structional resources toward their field placement programs, particularly programs that provide more than one-half a semester's credit.⁵ Such programs should include a classroom component that meets ABA guidelines.⁶ Clinical faculty who administer field placement programs argue that such regulations place unnecessary restrictions on their programs,⁷ show insensitivity toward program goals of self-learning,⁸ and are an ill-disguised attempt to fit field placement programs into the more traditional models of in-house and simulation clinics.⁹

Unfortunately, a traditional Langdellian classroom component is philosophically inconsistent with self-learning and pragmatic program goals. This article proposes a feminist model for field placement classes that helps resolve the conflict between clinic faculty and the ABA and, more important, enhances the objective of students' self-learning.

The model works because of the complementary relationship between the field placement goal of self-learning and certain principles of feminist pedagogy. Self-learning means learning how to learn from experience, or taking responsibility for one's own learning.¹⁰ Through self-learning, students develop moral awareness of role

5. See *infra* note 80 and accompanying text.

6. See *infra* notes 65-81 and accompanying text.

7. Leah Wortham, American Bar Association Externship Standards: Regulation in Search of a Theory 8-22 (unpublished, on file with author 1990).

8. Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 623-24 (1990).

9. *Id.* at 623-25. See also Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 N.M. L. REV. 287, 319 (1989). In addition to Maher and Stickgold's extensive critiques of ABA regulations, see Wortham, *supra* note 7, at 5-22, 34-40.

10. The process of self-learning is aptly described by Professor Kenneth R. Kreiling in his article, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981). The concept of experiential learning promoted by field placement programs involves a repeated process of students testing their theories of lawyering against their actions and feedback from others. Theories are revised once students observe and reflect upon discrepancies among their own theories, realities they observe, and feedback from others. In this way, students participate in a continuing process of testing and revising their understanding of the practice of law according to their learning experiences. *Id.* For additional discussions of self-learning, see generally, JOHN DEWEY, *HOW WE THINK: A RESTATEMENT OF THE RELATION OF REFLECTIVE THINKING TO THE EDUCATIVE PROCESS* (1933); MALCOLM KNOWLES, *SELF-DIRECTED LEARNING: A GUIDE FOR LEARNERS AND TEACHERS* (1975); DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987).

For further descriptions of self-learning as a goal for field placement programs, see Maher, *supra* note 8, at 563-66; Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV., 211, 219-22 (1989); Stickgold, *supra* note 9, at 317-18; Wortham, *supra* note 7, at 24-29.

identity¹¹ as well as proficiency in the context of law practice.¹² To reinforce self-learning during a field placement, students need a forum in which they can continually examine and critique their goals, methods, and lawyer identities.¹³ Feminist pedagogy emphasizes contextual reasoning, collaboration, and perpetual questioning; it provides an ideal environment for student interns to engage in the self-learning process.¹⁴ Feminist teaching methodology creates a student-facilitated, non-hierarchical atmosphere in which students learn about the practice of law by sharing their own experiences in the field and listening to those of others.

Most of the feminist literature pertaining to law school pedagogy discusses its theoretical basis, or its specific use in Women and the Law or other non-clinical classes.¹⁵ A recent article by Professor

11. Professor Lawrence Kohlberg describes the enhancement of moral development through self-learning and self-reflection. When confronted with an ethical dilemma that challenges their personal moral codes, students must reexamine and sometimes restructure their moral codes in light of each new experience. Through persistent reexamination, higher development of moral understanding is achieved. See L. KOHLBERG & E. TURIEL, *MORAL DEVELOPMENT AND MORAL EDUCATION IN PSYCHOLOGY AND EDUCATIONAL PRACTICE* 456 (B. Lesser ed. 1971); see also *RESEARCH IN MORAL DEVELOPMENT: THE COGNITIVE DEVELOPMENTAL APPROACH* (L. Kohlberg & E. Turiel eds. 1973). For a discussion of Kohlberg's theories of developmental psychology compared with those of other developmental psychologists, see Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1281-1301 (1988).

12. Obviously, self-learning is not the only goal of field placement programs. Corollary goals are those of increasing students' confidence and ability in the workplace (Stickgold, *supra* note 9, at 316), allowing students to gain insight into the workings of the legal system (Motley, *supra* note 10, at 217-18; Stickgold, *supra* note 9, at 327; Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95, 98 (1987); Wortham, *supra* note 7, at 27-28), teaching students professional responsibility (Motley, *supra* note 10, at 218-19, Stickgold, *supra* note 9, at 315; Maher, *supra* note 8, at 567), and teaching students skills (Motley, *supra* note 10, at 214-15; Maher, *supra* note 8, at 567; Rose, *supra* at 96-98).

13. "Moral understanding is arrived at by critical reflection on activities that have been experienced pre-reflectively and begun to be internalized as dispositions. Until disposition is present, at least in some minimal or beginning form, the moral character of action cannot be fully understood. Without the experience of acting in a lawyer role moral, philosophizing will be just so many words." Robert Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 66-67 (1986).

14. For further description of feminist methodology, see *infra* Part IV.

15. For general descriptions of feminist philosophy and teaching, see, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1990); Ellen C. DuBois et al., *Feminist Discourse, Moral Values and the Law—A Conversation*, 34 BUFF. L. REV. 11 (1985); Catharine W. Hantzi, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988); Christine A. Littleton, *In Search of a Feminist Jurisprudence*, 10 HARV. WOMEN'S L.J. 1 (1987); Joyce E. McConnell, *A Feminist's Perspective on Liberal Reform of Legal Education*, 14 HARV. WOMEN'S L.J. 77 (1991); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61 (1988); Martha Minow,

Phyllis Goldfarb begins a valuable application of the feminist model to law school clinics by describing the similarities of clinical education and feminist jurisprudence on a theoretical level.¹⁶ Goldfarb rejects the artificiality of the theory/practice dichotomy, proposing instead that theory and practice interact as a spiral.¹⁷ On a less abstract level,¹⁸ this article will demonstrate the complementary relationship between field placement goals and feminist pedagogy through a personal account of my use of a feminist teaching approach in my field placement class.¹⁹

To enhance understanding of the apprenticeship/Langdellian conflict in law school pedagogy, Part I of this Article discusses the evolution of the apprenticeship program toward the current field placement program, illustrating its antithetical stance toward the more traditional Langdellian form of pedagogy. Part II demon-

Feminist Reason: Getting It and Losing It, 38 J. LEGAL EDUC. 47 (1988); Deborah L. Rhode, *The "Woman's Point of View,"* 38 J. LEGAL EDUC. 39 (1988); Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373 (1986); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

For descriptions pertaining to specific courses see, e.g., Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988) (discussing application of feminist theory to tort law); Patricia A. Cain, *Teaching Feminist Legal Theory at Texas: Listening to Differences and Exploring Connections*, 38 J. LEGAL EDUC. 165 (1988) (connecting feminist theory and teaching method in a feminist legal theory class); Mary Irene Coombs, *Non-Sexist Teaching Techniques In Substantive Law Courses*, 14 S. ILL. U. L.J. 507 (1990); Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997 (1985); Ann E. Freedman, *Feminist Legal Method in Action: Challenging Racism, Sexism and Homophobia in Law School*, 24 GA. L. REV. 849 (1990) (feminist teaching in a sex discrimination class); Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U.L. REV. 1065 (1985); Morrison Torrey et al., *Teaching Law in a Feminist Manner: A Commentary From Experience*, 13 HARV. WOMEN'S L.J. 87 (1990) (using feminist teaching methodology in a feminist jurisprudence class).

16. Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991).

17. Goldfarb, *supra* note 16. To illuminate her spiral theory, Professor Goldfarb analyzes the reciprocally reinforcing methodologies of clinical education and feminist jurisprudence.

Professor Goldfarb notes that two other authors, Professor Mark Tushnet and Professor Carrie Menkel-Meadow, have commented upon the similarities between clinical education and feminism, but neither focused specifically on the relationship of feminist theory to clinical legal education. *Id.* at 1618, n.75.

18. In line with the feminist theory that the personal is political, I will use the first person when describing my experiences using feminist pedagogy in the latter half of this article. See Menkel-Meadow, *supra* note 15, at 63, 83; McConnell, *supra* note 15, at 119-20.

19. In fact, Professor Goldfarb admits that her sweeping synthesis of the theory/practice spiral within the clinical and feminist movements is too grand in scope to allow for experiential discussion. Goldfarb, *supra* note 16, at 1690 n.382. Inspired by her wishes that her article be the groundwork for further experiential discussion, I have written of my own experiences within. In recognizing and speaking from my experiences, my writing is an attempt to remain true to a feminist methodology.

strates how the ABA has recently exacerbated the conflict in its attempts to monitor field placement programs through more traditional guidelines for law school accreditation. Part III summarizes efforts by law schools, including California Western, to create a successful classroom component that comports with ABA guidelines and pedagogical goals of field placement programs.²⁰ Part IV outlines the major principles of feminist pedagogy and explains in more detail its commonalities with clinical idealogy. Finally, Part V describes my own experiences using a feminist format for the internship seminar class at California Western and analyzes the educational value of a classroom format based on feminist methodology. I believe that my experience supports my thesis that the fusion of feminist pedagogy with field placement experience creates a unique and valuable educational environment for the training of prospective professionals.

II. THE EVOLUTION OF FIELD PLACEMENT PROGRAMS AND THEIR CONFLICT WITH TRADITIONAL LAW SCHOOL PEDAGOGY

Field placement programs have played a significant role in legal education for the past two centuries. With their emphasis on contextual learning rather than doctrinal theory, they have been both an inspiration and a reaction to the more traditional educational pedagogy instituted by Dean Langdell at Harvard Law School. Yet, despite their apparent methodological war with Langdellian pedagogy, field placement programs as we know them today also reflect aspects of Langdell's emphasis on institutional training.

Langdell's influence is apparent in such programs' increasing emphasis on learning theory and academic rigor. No longer is the objective of such programs merely to train students in the skills and practice of law, but more important, to educate students to be "reflective practitioners" in their cycle of continual self-learning.²¹ With the help of federal funds, there has been increasing involvement by law school faculty in field placement learning—involvement which includes more rigorous supervision and more extensive dialogue with the students.²²

20. Regarding California Western's field placement program, this Article confines itself to the school's development of a classroom component. For a full description and analysis of the school's program, see Motley, *supra* note 10.

21. As described by Professors Ian Johnstone and Mary Patricia Treuthart in their article, *Doing the Right Thing: An Overview of Teaching Professional Responsibility*, 41 J. LEGAL EDUC. 75, 79 (1991), "[r]eflective judgment' should be conceived as a character trait and not merely a skill [I]t engages emotional as well as intellectual faculties [I]t develops over time and through experience, unlike character traits such as honesty and courage, which tend to form early in life."

22. I do not mean to assert that Langdell is the sole source of programs' increased academic rigor. Certainly the concerns for upholding lawyers' professionalism and morality, fears of malpractice, and an emphasis on the more humanistic aspects of

A. *The Demise of Apprenticeships: Langdell Institutionalizes Legal Education*

The study of law through training in the field under the tutelage of practicing lawyers has its roots in the English apprenticeship system of legal study. In the first half of the nineteenth century, there were minimal requirements for the study of law in the United States. Until the twentieth century, the vast majority of lawyers were trained in legal principles on the job.²³ The few fledgling law schools in existence based their pedagogy in part upon the apprenticeship theory, whereby students spent part of each day in law offices under the tutelage of practicing lawyers.²⁴

Apprenticeship training rested on the simple theory that placing students in a law office environment would teach them the necessary lawyering skills.²⁵ Unfortunately, theory and reality diverged. The law office training was minimal, with little or no supervision, and had no academic component to reinforce and complement the legal training.²⁶ In an 1881 ABA report, the dismal apprenticeship experience is described as follows:

The applicant for admission spends a year or two thumbing Blackstone or Kent, or both, with now and then a dip into Chitty or Starkie, in the lonesome, dusty, dreary round of a country attorney's office, where he was left to work his way as best he could with little to guide him except his common sense (which often was no guidance at all). He may have asked a few vague questions and received a few vague answers.²⁷

As a result of the disillusionment with apprenticeship training, there was a movement to institutionalize the training of lawyers within an academic setting to raise professional standards and thus make the bar more competent as well as more exclusive.²⁸ At the forefront of this movement was Dean Christopher Columbus Langdell, who revolutionized legal study at Harvard Law School by eliminating apprenticeships and creating a two-year program of formal requirements—a trend soon to be adopted by less prestigious

legal education in the past decade have sparked concern that students' training in the field involve greater self-reflection and supervision.

23. STEVENS, *supra* note 2, at 24.

24. *Id.* at 7-8, 22, 24.

25. *See id.* at 3, 10 n.5.

26. *Id.* at 24 ("At its best, apprenticeship at that time was all that clinical legal education is claimed to be today: close supervision of a student by his principal in real-life encounters. Yet few apprenticeships worked out that way. Indeed, even when principals were diligent, the chances of any one office offering a good all-around training were small.").

27. STEVENS, *supra* note 2, at 30 n.28 (quoting J.A. Hutchinson, *Appendix to the Report of the Committee on Legal Education*, 4 ABA Reports 278 (1881)).

28. STEVENS, *supra* note 2, at 24-25.

schools.²⁹ Rather than emphasizing the realistic elements of law practice, Langdell emphasized the scientific, doctrinal aspects of law.³⁰ He believed legal principles could be extracted through the study of appellate decisions and then taught to students through questions and answers, popularized as the Socratic method.³¹ Under Langdell, law faculty no longer consisted of practitioners, but of individuals who left the practice of law in order to teach legal doctrine.³²

Concerned that the legal profession had reacted too strongly in eliminating the practical training of lawyers, the ABA passed a resolution in 1921 urging closer contact between law students and practicing lawyers.³³ It was not until the early 1930s, however, that legal educators vociferously objected to Langdell's changes and made efforts to reestablish apprenticeship programs, as well as other forms of clinical training, in law schools.³⁴ These members of the legal community who opposed the Langdellian method as too scientific and devoid of values founded the Legal Realist movement.³⁵ The Legal Realists complained that the study of American law failed to incorporate the role of the social sciences in making legal decisions. "[L]aw school is needlessly abstract, and needlessly removed from life."³⁶

B. Disillusionment with Langdell: The Transition from Apprenticeships to Field Placement Programs

Concern for immersing students in the more value-laden aspects of law practice sparked a return to apprenticeship programs. But law schools, influenced by Langdell's system and no doubt recognizing the programmatic problems of the past, saw the need for closer ties between apprenticeships and students' academic training. The

29. *Id.* at 39, 52.

30. *Id.* at 52-53.

31. *Id.* at 55.

32. *Id.* at 38-39.

33. *Id.* at 172.

34. Johnstone & Treuthart, *supra* note 21, at 92 ("Clinical teaching or 'learning by doing' was acknowledged as an appropriate mechanism for conveying information about legal ethics as early as the 1930s." (footnote omitted)).

35. Legal realism was a theory of law, popular at the beginning of this century, which defined law not as an abstract problem of logic, but as a practical question of social management. Its most famous proponent was Justice Oliver Wendell Holmes, Jr., who believed that lawyers should study the way the legal process functioned in practice. Legal realists believed that "only by studying the social impact of legal principles and rules could men [sic] know whether the law in fact brought about the administration of real justice." EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY* 74-77 (1973).

36. Jerome Frank, *A Plea for Lawyer-Schools*, 56 *YALE L.J.* 1303, 1328 (1947) (quoting Karl N. Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 *COLUM. L. REV.* 651, 675 (1935)).

goals of those who endorsed this training were to educate students as to the more practical aspects of law and to aid the community, including the impoverished, in the administration of justice.³⁷

As early as 1928, Professor John Bradway of the University of Southern California was running a legal clinic very similar to the current field placement programs.³⁸ Interested students were placed in the offices of private attorneys, who had accepted cases from the Los Angeles Public Defender's office.³⁹ The students worked on the referred cases under the supervision of their assigned private attorney. Unlike the earlier apprenticeship programs, Bradway's had a classroom component. One morning a week, the fifteen students enrolled in the clinic reported to one another on the progress of their cases.⁴⁰

As Bradway was institutionalizing clinical work at the University of Southern California, other Legal Realists voiced their support for students' practical experience outside of the law school. Jerome Frank emphasized the need for students to "observe carefully what actually goes on in court-rooms and law-offices."⁴¹ Frank suggested that selected practicing lawyers and faculty work together on instructing students in the law.⁴² In 1935 Karl Llewellyn published a similar view, suggesting that law schools "deliberately set to work to plan an interstitial apprenticeship."⁴³ Llewellyn later chaired an Association of American Law Schools (AALS) Committee on Curriculum, which concluded that students must be trained in the practice of law as well as in the knowledge of the law.⁴⁴

During this time a program developed by Professor Walton Hamilton of Yale Law School followed Bradway's earlier lead away from unsupervised apprenticeships and toward the more carefully designed and monitored field placement programs as we know them today. Professor Hamilton supervised seven students placed in government agencies in Washington, D.C., and met with them regularly for group conferences. He commented that "[t]he program has pro-

37. See John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252, 252-53 (1929).

38. At this time, the law schools of Harvard, Yale, Northwestern, Minnesota, and Cincinnati also had legal clinics. *Id.* In fact, Northwestern and the University of Minnesota required all third year students to participate in the clinic. *Id.* at 273.

39. *Id.* at 253-54. The Los Angeles County Public Defender's office referred civil cases concerning matters over \$100 to a panel of about fifty attorneys who agreed to charge clients based on their ability to pay. *Id.*

40. *Id.* at 255-56.

41. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 911 (1933).

42. *Id.* at 920.

43. Llewellyn, *supra* note 36 at 675-76. "I believe with all my soul in the livening up, the making real, of theoretical work by practical complement." *Id.* at 675.

44. Karl N. Llewellyn, *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345, 388 (1945).

vided an exposure somewhat different from that which the classroom gives. It develops an awareness and brings out skills which complement and underwrite those developed in New Haven."⁴⁵

But for the next three decades, the role of apprenticeship programs in legal education was minimal. As law schools developed, they continued to pattern their teaching on that of the successful Harvard program.⁴⁶

C. *The Establishment of Field Placement Programs in Legal Education*

Field placement programs received a tremendous boost in 1968 when the Ford Foundation funded the Council on Legal Education for Professional Responsibility (CLEPR) with a six million dollar, five-year grant to support clinical work in law schools.⁴⁷ The goals of CLEPR in the promotion of clinical programs were to train students in basic skills, to expose them to lawyers' "emotional commitments" to their clients' causes, and to develop students' awareness of societal injustices.⁴⁸

As a result of the grant, nearly half of the law schools in the country created clinical studies programs, which provided credit for the study of practical areas of the law and were taught by clinical professors.⁴⁹ By 1979, 90 percent of law schools offered clinical training⁵⁰ in at least one of three forms: in-house programs; simulation classes; or field placement programs.⁵¹

45. STEVENS, *supra* note 2, at 230-31 n.98 (quoting "Experiment in Training Students by Assignment to Government Agencies, Part II: Report of Walton Hamilton to the Dean of the Yale Law School," *AALS Handbook*, 1943, 124).

46. STEVENS, *supra* note 2, at 191-92.

47. Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 190-91 n.28 (1989); STEVENS, *supra* note 2, at 230 n.95 (citing Eugene L. Smith, *Is Education for Professional Responsibility Possible?*, 40 U. COLO. L. REV. 509, 510 n.8 (1968)). A second source of popularity for clinical education was students' demands that legal education be more relevant. George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 178-80 (1974). An additional source was the expressed concern for lawyer competency and the promotion of skills and professional responsibility in law schools. Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 590-92 (1987).

48. William Pincus, *Educational Values in Clinical Experience for Law Students*, Newsl. (Council on Legal Educ. for Professional Responsibility, New York, N.Y.), Sept. 1969, reprinted in WILLIAM PINCUS, *CLINICAL EDUCATION FOR LAW STUDENTS*, 77 (1980).

49. STEVENS, *supra* note 2, at 216. From 1970 to 1976, the number of clinical programs in law schools expanded from 169 to 494. *Id.* at 241.

50. Stickgold, *supra* note 9, at 289 (citing COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, *SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION*, 1978-1979, at vi (1979)).

51. Stickgold, *supra* note 9, at 298. Commentary on the virtues and drawbacks of each model has been ongoing. See, e.g., Motley, *supra* note 10, at 222-29; Maher,

In the past decade, with the dwindling of grant money,⁵³ clinical legal education has shifted its focus toward student education over service to the community as a primary goal.⁵³ As more of students' tuition is applied toward the support of law schools' clinical programs, schools have taken a closer look at the pedagogical goals and benefits of clinical training.⁵⁴ As a result, by the mid-1980s field placement programs, which generally cost less than in-house clinics,⁵⁵ yet allow students to experience the practicalities of the legal profession,⁵⁶ had become more popular.⁵⁷

The increasing number of field placement programs in law school curricula has renewed the conflict between the philosophies of the Legal Realists and Langdell. Surprisingly, the ABA, once an advocate of the practical training of lawyers, has more recently attempted through its regulations to conform the structure of field placement programs to that of more traditional legal education.

III. DEVELOPMENT OF ABA REGULATIONS ON FIELD PLACEMENT PROGRAMS

Concomitant with field placement programs' rise in popularity during the past two decades, the ABA has articulated more detailed regulations concerning their requirements. Although the ABA claimed to be concerned with law schools' neglect of their field

supra note 8, at 548-98; Stickgold, *supra* note 9, at 298-313; Linda F. Smith, *The Judicial Clinic: A Live Laboratory for Law Students*, 1 n.4 (October 1990) (unpublished, on file with author).

52. The initial CLEPR grant has been replaced by additional funding sources of the Department of Health and Human Service's Clinical Education Project (DHHS-CLEP), the Legal Services Corporation, as well as I.O.L.T.A. and state-funded sources. Nonetheless, such sources provide funding somewhat erratically and only on a short-term basis, thus causing criticism by those who wish to see clinical education more deeply imbedded in legal education. See Jeff Hartje, *Report from the Chair*, CLINICAL LEGAL EDUC. NEWSL. (Ass'n of Am. Law Sch., Washington, D.C.), (91-2).

53. Kotkin, *supra* note 47, at 191-93; Maher, *supra* note 8, at 546-47.

54. Kotkin, *supra* note 47, at 191-93.

55. Stickgold, *supra* note 9, at 301, 317. Maher, *supra* note 8, at 539. Arthur B. LaFrance, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352, 355 (1987). For an interesting discussion of the role of cost-benefit analysis in curricular reform, see John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317, 334-36.

56. For additional discussion on the benefits of field placement programs, see, e.g., Arthur B. LaFrance, *Clinical Education: "To Turn Ideals Into Effective Vision,"* 44 S. CAL. L. REV. 624, 640-43 (1971); Stickgold, *supra* note 9, at 316-17; Motley, *supra* note 10, at 222-24; Conclin, *supra* note 13, at 63-73.

57. Stickgold, *supra* note 9, at 294-95. But see Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619, 623 (1991). "In spite of many obstacles, live-client clinical education is not only alive, but growing." *Id.* (citing AALS SECTION ON CLINICAL LEGAL EDUC., FINAL REP. OF THE COMMITTEE ON THE FUTURE OF THE IN-HOUSE CLINIC (1990).

placement programs,⁵⁸ its solution to alleviate the perceived neglect was to regulate field placements by imposing upon them more traditional frameworks of law school teaching.⁵⁹ The regulations revealed the ABA's concerns regarding an encroaching law school pedagogy that was antithetical to Langdell's.⁶⁰

A. *The ABA Encourages Stricter Classroom Standards*

In 1973 the ABA adopted Standard 306 regarding field placement programs.⁶¹ Essentially, the regulation requires that credit hours allocated toward field placement programs be commensurate with the amount of work performed by the student, that placements be approved in advance, that students' work be periodically reviewed by faculty, and that a minimum of 900 hours of credit toward the law degree comprise regularly scheduled class sessions.⁶²

No mention was made, however, of a classroom component until

58. See *infra* text accompanying note 80.

59. Stickgold, *supra* note 9, at 319. Stickgold argues that the ABA and the AALS are trying either to abolish field placement programs or to convert them to an in-house model. *Id.* at 319. Maher, *supra* note 8, at 543, makes a similar argument that the ABA's intervention threatens more harm than good. Both authors contend that it was law schools' neglect in terms of design and administration of field placement programs that prompted the ABA's intervention. *Id.*; Stickgold, *supra* note 9, at 294.

60. See Maher, *supra* note 8, at 625 (suggesting that regulators have an unconscious bias favoring the passive learning of the traditional classroom and the teacher-directed learning of the simulation and in-house clinic).

61. For a detailed historical account of ABA accreditation standards, including Standard 306, see Maher, *supra* note 8, at 606-11.

62. ABA Standard 306 states:

If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions, the time spent in such studies or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.

(a) The residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student.

(b) The studies or activities must be approved in advance, in accordance with the school's established procedures for curriculum approval and determination.

(c) Each such study or activity, and the participation of each student therein, must be conducted or periodically reviewed by a member of the faculty to insure that in its actual operation it is achieving its educational objectives and that the credit allowed therefore is, in fact, commensurate with the time and effort expended by, and the educational benefits to, the participating student.

(d) At least 900 hours of total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sections in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.

1980, when the AALS and the ABA published guidelines for Clinical Legal Education.⁶³ The Guidelines encourage, but do not mandate "a structure that requires identifying substantive educational objectives; conducting a classroom component; relating fieldwork to substantive legal issues; faculty responsibility for determining and overseeing the accomplishment of the course's substantive objectives; and faculty responsibility for supervising cooperating attorneys in fulfilling their teaching responsibilities."⁶⁴

The Guidelines were never meant to be standards for accreditation.⁶⁵ Nonetheless, they established a precedent for the formulation of specific standards governing field placement programs.⁶⁶ Moreover, the ABA's concerns that programs incorporate a classroom component, that they address the learning of substantive legal issues, and that they fulfill substantive objectives, are an early indication of the ABA's desire that such programs conform more with traditional legal education.⁶⁷

B. The ABA Applies the Standards to Law School Accreditation

The first mention of a classroom component pertaining to accreditation standards for field placement programs occurred in 1986, when the ABA promulgated Interpretation 2 of Standard 306.⁶⁸ Section (e) of Interpretation 2 includes "classroom component" among ten factors the Accreditation Committee is to consider in evaluating

63. AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE 9-10 (1973). ASSOCIATION OF AMERICAN LAW SCHOOLS—AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION (1980) [hereinafter GUIDELINES].

64. GUIDELINES, *supra* note 63, at 77.

65. "[The Guidelines] are emphatically not intended as standards for purposes of accreditation or in any other way to force clinical legal education into a particular mold." *Id.* at 6.

66. Maher, *supra* note 8, at 613-15.

67. See *supra* note 9. This is not to say that the ABA's sole purpose in regulating field placement programs is to conform them to traditional law school pedagogy. The ABA's concern is that schools are not devoting appropriate instructional resources and time to their field placement programs. Even Prof. Gordon Gee, author of several CLEPR reports, disparaged field placement programs as "education on the cheap." Council on Legal Educ. for Professional Responsibility, 1979 Report, at xxii, cited in Stickgold, *supra* note 9, at 297. The problem rests in the ABA's anachronistic notions of what constitutes a proper academic component to field placement programs.

68. In 1980, the ABA also published Interpretation 1 of Standard 306(a), which simply provides that "student participants in a law school externship program may not receive compensation for a program for which they receive academic credit." Roy D. Simon, Jr. & Tom Leahy, *Clinical Programs That Allow Both Compensation and Credit: A Model Program for Law Schools*, 61 WASH. U.L.Q. 1015, 1016 (1984).

This article analyzes the ABA's attempts to regulate the field placement classroom. For an excellent general critique of Interpretation 2, see Maher, *supra* note 8, at 622-39; see also Wortham, *supra* note 7.

placement programs' compliance with Standard 306.⁶⁹

Initially, the ABA offered no specifics on the composition of the classroom component, the weight given to its existence or absence, or whether such a component was actually required. Although the vagueness of section (e) allows the ABA more discretion in refusing to accredit field placement programs,⁷⁰ such vagueness can also be viewed as allowing faculty greater academic freedom in program design.

Yet such freedom has been eroded by more detailed guidelines to site evaluators. In the three years following the promulgation of Interpretation 2, the Consultant on Legal Education for the ABA provided more specific instructions regarding the classroom component for use by law school accreditation teams. A September 1988 memorandum to members of site evaluation teams from the ABA's Consultant on Legal Education, regarding teams' review of professional skills programs, indicates areas for review of classroom components as follows:

Does each placement clinic have regular classroom meetings? Is there a syllabus for the course? Is it followed? Are there course materials? Do they relate to the educational goals of the course? Are they discussed in class? Are they referred to by the students and field instructors in one-to-one meetings about casework? Do field instructors participate in classroom instruction? Do they attend? Has the school established written instructions about how the one-to-one supervision on cases should relate to the rest of the course?⁷¹

The instructions further reveal the ABA's desire to have field placement programs conform to its notion of appropriate legal education—either that of substantive law classes, or, at a minimum,

69. The full text of Standard 306, Interpretation 2 (e) states as follows:

(e) In evaluating whether such a program, in light of the educational objectives of the program, complies with the requirements of Standard 306, the Accreditation Committee shall consider the following factors:

- Prerequisite for student participation
- Extent of student participation
- Method of evaluation of student performance
- Qualification and training of field instructors
- Method of evaluation of field instructors
- Classroom component
- Student writings
- Adequacy of instructional resources
- Involvement of full-time faculty
- Amount of academic credit awarded

70. For a critique of section (e)'s vagueness, see Wortham, *supra* note 7, at 13-14.

71. Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of Site Evaluation Team 13 (Sept. 1988) (on file with author).

that of in-house and simulation clinics.⁷² Terms such as "regular classroom meetings," "a syllabus," and "course materials discussed in class" all reflect a pedagogical model based upon more traditional concepts of learning. Concerns that field instructors (meaning supervising attorneys, rather than field placement faculty) refer to course materials in case discussions with students, that they participate in class discussions, and that the supervision of cases by field instructors relates to the rest of the course are modeled on in-house and simulation clinic formats in which the faculty exert greater control over the students' cases.⁷³

In September 1990, the ABA promulgated another set of instructions for accreditation teams,⁷⁴ with content and concerns reinforcing those propounded in 1988. The language is substantially similar to that of the earlier instructions. The new language reads:

Describe any classroom component of each program. Are there regular classroom meetings? Is there a syllabus for the course? Are there course materials? Has the school established written instructions about how the one-to-one instruction by the field supervisors relates to the classroom component of the course?⁷⁵

The ABA issued new guidelines for site evaluation teams again in September 1992. Interestingly, the instructions pertaining to the classroom component revert to the exact language of the September 1988 guidelines, with its more detailed concerns regarding the field placement class.⁷⁶

In May, 1991, the Accreditation Committee of the Section of Legal Education and Admissions to the Bar announced the creation of a subcommittee to study issues of interpretation and application of Interpretation 2 of Standard 306(c) concerning full-time field placements.⁷⁷ The committee focused its concern upon the language ex-

72. See Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981) (suggesting that the teaching of in-house clinical teacher and traditional law teacher is very similar).

73. Professor Condlin has critiqued the control exercised by clinical teachers. *Id.* at 248-74. Condlin compares the professorial control of the "conventional clinic" with the more collaborative supervision by field placement faculty and supervising attorneys in his article, "*Tastes Great, Less Filling*": *The Law School Clinic and Political Critique*, *supra* note 13.

74. Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of Site Evaluation Team (Sept. 1990) (on file with author).

75. *Id.* at 6. For an interesting critique of the series of ABA instructions, see Maher, *supra* note 8, at 632-34.

76. Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of Site Evaluation Team 11 (Sept. 1992) (on file with author).

77. Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools (May 23, 1991) (on file with author).

pressed by section (e) of Interpretation 2. It seemed most concerned with the lack of instructional resources, including classroom components, applied to full-time field placement programs.

The Committee has reviewed a number of programs in recent years that involve students' spending all or most of their time during a semester or quarter with a judge or other agency. The general position of the Committee from the above language is that the greater the number of credits awarded, the greater the level of instructional resources that the school must devote to the program. The Committee has expressed its disapproval, in resolutions addressed to individual schools, of several programs that involved high levels of credit without classroom components or other intensive involvement of faculty in the placement. The only judicial placements that the Committee has approved in recent years have involved either a classroom component or no more than one-half of a full semester's credit.⁷⁸

Failure to devote instructional resources to field placement programs is certainly a legitimate concern. But regulating the format for application of such resources counters pedagogical goals of such programs and is of great concern to faculty administering field placements.⁷⁹ The committee's redraft of Interpretation 2 was released in February, 1993 and is scheduled to go into effect in July, 1993.⁸⁰

IV. FIELD PLACEMENT PROGRAMS' RESPONSES TO THE ABA

As evidenced by Bradway's and Hamilton's field placement programs described above, several law schools had a classroom compo-

78. *Id.* at 1-2.

79. In fact, the ABA's redraft of Interpretation 2 was a topic for discussion at the AALS Clinical Conference in Albuquerque in May of 1992, and at the January 1993 AALS Conference in San Francisco. Two versions of redrafted regulations were mailed to law school deans for comments in October, 1992. Several deans criticized the ABA for their "unwise" trend toward more specific, detailed regulations. See Letter of October 16, 1992 to James P. White, Consultant on Legal Education to the American Bar Association, from sixteen law school deans.

80. Unfortunately, the new interpretation regulates field placement programs even more stringently than its predecessor. Some of the new requirements are that programs will be evaluated in light of their classroom component, which is required for any program awarding more than six credits (a contemporaneous class being preferred); that field placement visitation by faculty is a factor in program evaluation, and is required for programs awarding more than six credits; that field placements initiated by students will be "closely scrutinized" by the Accreditation Committee; and that, every three years, law schools must write an appraisal of programs awarding more than six units of credit. See Proposed Amendment of Interpretation 2 of Standard 306 of November 16, 1992, from James P. White, Consultant on Legal Education to the American Bar Association, to Members of the Council of the Section of Legal Education and Admissions to the Bar. Moreover, there is no mention of changes in the existing guidelines for site evaluation teams. If anything, changes in the guidelines would have to accommodate the more detailed and stringent regulations.

nent to their programs before the ABA's promulgation of Interpretation 2. Others did not.⁸¹ One reason for this disparity may be, as the ABA contends, that law schools are simply neglecting their field placement programs. But another reason may be that some field placement faculty believe that a classroom component viewed in the traditional sense contradicts the educational purposes of field placements.⁸²

One of the difficulties for field placement faculty in designing a classroom component is structuring the class so that it complements program goals of self-learning.⁸³ There is little consensus as to the structure or content of such classes, as field placement programs are so varied among schools.⁸⁴ Reading materials used are generally materials compiled by field placement faculty, rather than textbooks.⁸⁵ In addition, students have traditionally resisted classroom environments pertaining to their field work, preferring to learn in the law office, rather than the law school.⁸⁶

As a result, schools that have adopted a classroom component are extremely varied in their approaches, as demonstrated by the survey results outlined in section A below. The brief chronology of California Western's varying approaches, described in section B, exemplifies the struggle to create a format satisfactory to student and faculty and conducive to self-learning. The description of programs in both sections will illustrate the perhaps misdirected tendencies of

81. Professor Marc Stickgold conducted a survey in 1982 on externship programs that revealed that fifty-four out of seventy-nine schools responding to the survey offered a classroom component "directly related" to the students' fieldwork." See Stickgold, *supra* note 9, at 309-10.

82. See *supra* notes 7-9. Obviously, not all field placement faculty hold this view. In fact, a majority of programs use a more traditional format of lecture/discussion in their field placement classrooms. It is questionable, however, whether this format is widely used because faculty believe it is most appropriate, or because the ABA guidelines encourage a more traditional format.

83. Professor Maher argues that the goals of field placement programs may differ from in-house clinics, justifying a more student-centered approach to the classroom:

The in-house program may have as its principal objective the instruction of litigation skills with teaching students to accept responsibility being only a secondary goal. However, the principal objective of the practice supervised program may be teaching students to accept responsibility with learning litigation skills being the secondary objective. This shift in emphasis is important because, while instruction by full-time faculty may be a good way to teach litigation skills, a student-centered approach may be superior for learning to accept responsibility.

Maher, *supra* note 8, at 565.

84. *Id.* at 600-602. Cf. Motley, *supra* note 10, at 227 (stating that many schools have tried classroom components, with varying success). In an attempt to centralize and share information on various externship programs, Professor Robert Seibel of Cornell Law School has surveyed law schools about their programs. For preliminary results of his survey see *infra* Part III A.

85. Maher, *supra* note 8, at 601.

86. Motley, *supra* note 10, at 227.

field placement programs to comply with ABA regulations by modeling their classroom components on more traditional formats.

A. Survey Results Regarding Classroom Components

A recent survey by Professor Robert Seibel of Cornell Law School reflects the variety of form and content in classroom components.⁸⁷ In the survey, questionnaires were mailed to all United States member and fee-paid law schools listed in the AALS directory of law schools. Of those questionnaires mailed, sixty-eight schools responded. Preliminary statistics indicate that fifty-eight schools have field placement programs. Of those fifty-eight, thirty-five⁸⁸ schools have a classroom component to their program that meets consistently—at least fourteen hours over the course of a semester or at least one hour per week. The great majority, thirty-two schools, use compiled materials for their classroom component, rather than a printed text, which only three schools use.

The statistics indicate that skills, professional responsibility, student reflection, and substantive law are the subjects most often discussed in field placement classes.⁸⁹ The formats most prevalent are lecture and student presentation. Statistics as to content and format of the classes for forty-four programs are as follows:

Of 44 Programs*

Program Content Used	# of programs	% of programs
Substantive Law	16	36.4
Skill	25	56.8
Legal Process	6	13.6
Legal Institution	11	25.0
Professional Resp.	22	50.0
Career Choices	5	11.4
Student Reflection	17	38.6
Other	2	4.5

*Note that most programs only devoted a percentage of the classroom time to a given area.

87. Professor Seibel has not yet published the results of his survey. Because I assisted him in developing the survey, he was kind enough to send me copies of all the responses. We are in the process of developing an extensive national database on the information we have. The results described in the text following this footnote are from preliminary drafts by my research assistant, Linda Littlefield (Spring 1992) (on file with the author).

88. A few schools had more than one program. The total number of programs with a classroom component is forty-four.

89. Statistics recorded above reflect schools that had a minimum of 20 percent of the content or format named. In other words, sixteen programs had a minimum of 20 percent substantive law taught in their field placement class. Programs with less than 20 percent substantive law were not included in the statistics for that category. The survey results as to content of the programs may be a bit skewed, as "student reflection" is more a method of discussing such topics as professional responsibility and skills, than an actual topic.

Of 44 Programs*

Format Used	# of programs	% of programs
Lecture/Discussion	31	70.5
Guest Speaker	13	29.5
Student Presentation	20	45.5
Student Facilitated	6	13.6
Simulation	4	9.1
Other	1	2.3

*Note that most programs use at least 2 of these formats.

Most important, the statistics show that the majority of field placement programs are modeling their classes on a more traditional form of pedagogy. The topics of skills and substantive law, although certainly pertinent to field placement experiences,⁹⁰ pertain more to in-house clinics, simulation clinics, and substantive law courses.⁹¹ In addition, the format for the classes also imitates that of more traditional methods, with more formal lectures and student presentations as the norm, rather than student facilitation.

B. California Western's Earlier Approaches to the Field Placement Class

To reinforce the goal of self-learning during field placement, students must have the opportunity to examine and critique continually their goals, methods, and lawyer identities.⁹² At California Western, an emphasis on self-learning begins before students start their internships. Students meet with clinical faculty to discuss their learning goals and select their field placements. Throughout the semester, students maintain journals in which they record not only what they are doing, but what they are learning in terms of skills, the legal system, and their place within it. They meet individually with clinical faculty on a regular basis to review and revise their learning goals in the context of their lawyering experiences. Students also meet regularly with their supervising attorneys to discuss their progress in honing specific skills, as well as their professional development. Faculty grade them on their ability to analyze, understand, and accept their professional and personal responsibilities. Students are not graded on their technical proficiency with a certain task or knowledge of the substantive law.⁹³

90. Students in a field placement at the Public Defender's office could most likely benefit from a class on oral advocacy, or a review of the Fourth Amendment. The problem is that students' placements are often varied and students come to class with differing levels of skill. See Motley, *supra* note 10, at 227.

91. See Maher, *supra* note 8, at 624.

92. See Kreiling, *supra* note 10, at 289.

93. For a more in-depth discussion of various programs' goals and methods, see, e.g., Liz R. Cole, *Training the Mentor: Improving the Ability of Legal Experts to*

In hope of further enhancing the concept of self-learning, the internship faculty at California Western has tried to use the classroom component to complement other aspects of the course. Since I joined the faculty in 1989, we⁹⁴ have tried a variety of formats for our internship class, all of which met with only marginal success. Students came reluctantly to class, rarely having read the prepared materials and, as a consequence, could participate in only lackluster discussions.

Class formats varied each trimester. They ranged from lecture/discussions, to student presentations, to skills training, but none seemed to spark the students' interests. To emphasize the importance of the class, we added an additional unit of credit in the spring of 1990, and we increased the number of class meetings from four to fourteen. Thinking we were doing students a favor, we instead caused a backlash, which discouraged us further. Students viewed the revamped class as exacerbating existing problems. They complained that their time would be better spent in the field, and that the readings were too long, too theoretical and, for the most part, too depressing.⁹⁵

At that point we realized that, in attempting rigid control of the classroom through lecture, discussion, or presentation on materials we had selected, we had lost sight of our goal. In order to reinforce self-learning, we needed to focus more on students' learning through their field placements. In the fall of 1990, we changed our readings to emphasize the experiences of lawyers and eliminated many of the more negative law review articles. We decreased the size of the class from more than twenty to fewer than fifteen students. Students

Teach Students and New Lawyers, 19 N.M. L. Rev. 163 (1989); Maher, *supra* note 8; Motley, *supra* note 10; Rose, *supra* note 12; Smith *supra* note 51; Stickgold, *supra* note 9; Wortham, *supra* note 7.

94. By "we," I am referring to the clinic faculty at California Western, which consists of Professors Janet Weinstein (formerly Janet Motley), Irwin Miller, Mark Weinstein, and the Author.

Although I regret having to use the unfeminist we/they dichotomy in my reference to faculty and students at California Western, our efforts to structure the classroom component were perhaps less collaborative than they should have been. Although the faculty consistently asked for feedback from students, it was the faculty who ultimately declared what the class format and content was to be. Hence, based on what I now consider to be the self-conscious traditionalism of our methodology, it seems more honest to discuss our role in terms of "we" and "they."

95. The great majority of our readings were rather lengthy law review articles written by those disillusioned with the legal profession. Because a lot of the articles were theoretical, rather than anecdotal, students complained that they were not practical enough for their purposes. Students also objected that the majority of the articles covered the emotional hazards of the legal profession, rather than the benefits. We attempted to explain to them that their job as students was to critique the opinions expressed, not to necessarily incorporate them. Nonetheless, the students were correct on this point. It is a painful task to read consistently about the negative side of a profession that one has devoted a great deal of time and money to enter.

presented topics relating to their field experiences or the class readings. Faculty helped to facilitate the discussions and graded students on the quality and thoughtfulness of their presentations.

As a result of these changes, students' attitudes toward the field placement class improved. Their interest increased with their participation and sense of empowerment. But the class still seemed to have a formality, even rigidity, which appeared to impede, rather than to enhance, self-learning. After reading in the *Harvard Women's Law Journal* a description of a feminist teaching methodology by Professor Morrison Torrey and students Jackie Casey and Karin Olson,⁹⁶ I realized our shortcoming had been in not fusing our content with the process of the class.

The format for our class was still based upon the artificial dichotomies between professor and student. The unwarranted control and power emanating merely from my presence as classroom professor hindered students' learning from each others' experiences.⁹⁷ Students gave their presentations to me, instead of to their peers. They looked at me as they made their comments, hoping that what they were saying was in line with my thinking. By their third year, students were accustomed to focusing on the words of their professors. Emphasis in more traditional classes had been on legal principles, rather than on personal experiences and values. Thus, students had difficulty with the concepts of self-learning and self-reflection. It became clear that we had to create a completely different power structure in the classroom, a structure that valued the mutual and cooperative exchange of experiences, that promoted the honest expression of values, and that avoided the pressures of professorial evaluation.

Inspired by Professor Torrey's account of her success in teaching a seminar based on feminist methodology, in the spring of 1991 we began using a feminist format in our internship classes. Despite initial skepticism, students' evaluations of this format have been overwhelmingly positive. But to understand how we adopted feminist methodology, and why it works so well, requires an explanation of feminist teaching principles.

V. FEMINIST TEACHING METHODOLOGY

Although the feminist movement has historical roots, it gathered

96. Torrey et al., *supra* note 15 (discusses the experiences of the authors as professor and students in a seminar on feminist jurisprudence offered at DePaul University College of Law in the spring of 1989).

97. For a critique of the hierarchical professor/student relationship causing students to ultimately internalize such abuse of power as an appropriate model for professional conduct, see Toni Pickard, *Experience as Teacher: Discovering the Politics of Law Teaching*, 33 U. TORONTO L.J. 279, 283-90 (1983).

momentum in law schools in the 1960s,⁹⁸ at the same time the clinical movement was gaining momentum, and again in the 1980s.⁹⁹ Nevertheless, it was in the latter decade that feminist jurisprudence, as well as teaching methodology, gained a strong foothold in legal education.¹⁰⁰

Similar to the clinical movement, the feminist jurisprudence of the 1980s borrowed principles from the Legal Realists¹⁰¹ and Critical Legal Studies (CLS) proponents, known informally as "crits," who opposed the abstraction and hierarchy of the Harvard method.¹⁰² Feminist jurisprudence gathered additional support in 1985 when theorists sponsored a feminist CLS conference. Participants in the conference differentiated themselves from CLS theorists by specifying feminist theories and methods of confronting law and legal institutions. "Fem-crits" saw their methods as more "inclusive, participatory, nurturing, [and] experience-based" than those fostered by the CLS movement.¹⁰³

Feminist teaching goals are to encourage trust and collaboration among students through conversation and shared experiences, rather than to emphasize competition and individual achievement, aspects

98. For a brief history of the feminist movement, see Bender, *supra* note 15, at 12-15. For a more in-depth analysis of the feminist movements, see JEAN E. FRIEDMAN & WILLIAM G. SHADE, *OUR AMERICAN SISTERS: WOMEN IN AMERICAN LIFE AND THOUGHT* (2d ed. 1982); NANCY WOLOCH, *WOMEN AND THE AMERICAN EXPERIENCE* (1984).

Of course, it should be noted that, as Professor Bender argues, feminism's beginnings are undocumented because men, not women, recorded human struggles. "Feminism has been in the hearts and minds of at least some women in all time of patriarchy." Bender, *supra* note 15, at 12.

99. Menkel-Meadow, *supra* note 15, at 63 & n.10.

100. Although feminist pedagogy in law schools no doubt existed prior to this decade, it was during the 1980s that writings on feminist jurisprudence, many of which discuss feminist teaching methodology, began to flourish. See *supra* note 15. But *c.f.*, West, *supra* note 15, at 4 (arguing that feminist jurisprudence cannot exist until the patriarchy is abolished).

Also during this time, others wrote of feminist teaching outside the law school. See, e.g., *GENDERED SUBJECTS: THE DYNAMICS OF FEMINIST TEACHING* (Margo Culley & Catherine Portuges eds. 1985); *LEARNING OUR WAY: ESSAYS IN FEMINIST EDUCATION* (Charlotte Bunch & Sandra Pollack eds. 1983); MARY FIELD BELENKY ET AL., *WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND* (1986); HESTER EISENSTEIN, *CONTEMPORARY FEMINIST THOUGHT* (1983).

101. See Scales, *supra* note 15, at 1400-1403 (differentiating Feminists from Realists).

102. CLS is recognized as a school of thought similar to feminist theory in that it focuses on "the hierarchy, passivity, depersonalization, and decontextualization of present-day legal education." Menkel-Meadow, *supra* note 15, at 61. Examples of critical legal theorists' support for clinical education can be found in Mark G. Kelman, *Trashing*, 36 STAN. L. REV. 293, 299-300 (1984); Karl E. Klare, *The Law-School Curriculum in the 1980s: What's Left?*, 32 J. LEGAL EDUC. 336, 343 (1982).

103. Menkel-Meadow, *supra* note 15, at 65. For an additional feminist critique of the CLS movement, see Hantzis, *supra* note 15.

of the case method and Socratic form of teaching.¹⁰⁴ Feminists have described this teaching methodology in varying terms.¹⁰⁵ Precisely what it is remains an open question;¹⁰⁶ feminist teaching "avoids the confines of a single disciplinary approach."¹⁰⁷ Even the principles themselves are not distinct concepts, but coalesce.¹⁰⁸

For organizational purposes, I have synthesized feminist pedagogy into the following two principles of content and form: (1) a content of contextual reasoning through consciousness-raising and perpetual questioning, and (2) a format of interdisciplinary learning through collaboration and rejection of artificial dichotomies. These principles are not necessarily unique to feminist philosophy, nor would all feminists endorse each of the principles I describe. Feminists differ

104. Menkel-Meadow, *supra* note 15, at 81. Obviously, trust and collaboration can be aspects of the Socratic format, just as competition and individual achievement can be a part of feminist pedagogy. My differentiation here is not to create artificial dichotomies based upon more-valued and less-valued teaching, but only to comment upon what has been viewed as the dominant characteristics of each. Combining elements of the different forms of pedagogy, such as feminist and Langdellian, could very likely enhance legal education. For various critiques of the Socratic system, see Hantzis, *supra* note 15, at 156-57; Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991); Janet Rifkin, *Teaching Mediation: A Feminist Perspective on the Study of Law* at 96, 100 in GENDERED SUBJECTS: THE DYNAMICS OF FEMINIST TEACHING, *supra* note 100; Pickard, *supra* note 95, at 289-90 (criticizing the hierarchical model as fostering the view that professors' conduct toward students can become an inappropriate model for students' conduct toward their clients); see also a series of articles by McAninch, Brest, Menkel-Meadow, Neustadter, Hegland, and Riskin narrating their personal experiences replacing the authoritarian role in the classroom with a more personalized and less polarized role in SYMPOSIUM, HUMANISTIC EDUCATION IN LAW, Columbia University School of Law (1981).

105. In fact, some use the more gender-neutral label of "humanist," rather than "feminist," perhaps because they do not identify with feminists' claim that their philosophy and teaching methodology stems from their experiences as women in a society dominated by men. Illustrating this disparity in terminology are essays in a monograph entitled HUMANISTIC EDUCATION IN LAW, *supra* note 104. All but one of the essays are by men who use the term "humanist." The sole female author, Professor Menkel-Meadow, uses the term "feminist" to describe herself. Others have written of the need to explore the values and emotions that underlie our legal system from a humanist, rather than a feminist perspective. See, e.g., Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978); Paul J. Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. OF LEGAL EDUC. 243-70 (1988); ELIZABETH DVORKIN ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981).

Because I believe that the essence of the form of teaching I describe draws primarily upon my female experiences of consciousness-raising, rejecting abstraction and hierarchy, and questioning our patriarchal ideology, I choose to use the term "feminist" rather than "humanist."

106. Menkel-Meadow, *supra* note 15, at 76.

107. Goldfarb, *supra* note 16, at 1625.

108. See Torrey et al., *supra* note 15, at 118.

among themselves as to certain tenets of feminist thought,¹⁰⁹ often resulting in their ascribing varying labels to their viewpoints, such as "cultural feminism," "radical feminism," "liberal feminism" and "postmodern feminism." Feminists who do subscribe to the principles I discuss have used different terminology or a different conceptual structure.¹¹⁰

My description of feminist methodology is an attempt to incorporate writings of women on the subject with my own teaching experiences, not an effort to define feminist pedagogy, nor confine it to specific terms. Thus, I espouse the belief held by some feminists in the value of difference, of multiple perspectives, and of collaborative thought.

A. *The Content: Contextual Reasoning Through Consciousness-Raising and Perpetual Questioning*

Contextual reasoning is the development of theory by examining

109. For example, feminist writers disagree over propounding a feminist ethic of caring and conciliation. Certain feminists support these principles as representing women's "voice," urging that this voice must be used to reconstruct our rule-based system created by men. See, e.g., Carol Gilligan's foundational work, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 29, 64 (1982); see also, Bender, *supra* note 15, at 28-32; DuBois, et al., *supra* note 15, at 54-57 (comments by Carrie J. Menkel-Meadow). Other feminists have argued that the ethic of caring and conciliation stems from women's experiences of oppression and powerlessness, and that incorporation of these principles by a patriarchal society would only continue women's suppression. See, e.g., DuBois, et al., *supra* note 15, at 21-26, 73-75 (comments by Catherine A. MacKinnon); Scales, *supra* note 15, at 1380-84. See also, Naomi R. Cahn, *Defining Feminist Litigation*, 14 HARV. WOMEN'S L.J. 1 (1991) (arguing that feminist litigation need not include an ethic of care). For more recent discussions on this topic, see Mary Joe Frug, *Progressive Feminist Legal Scholarship: Can We Claim "A Different Voice?"* 15 HARV. WOM. L.J. 37, 58-64 (critiquing the conservative view that Gilligan's work validates a static, universal definition of gender differences, and urging a more progressive view, that the definition of gender differences is context-based, and thus more inclusive of women of color, non-middle class, non-Western, or aged women).

Another disagreement is expressed by African-American women, who argue that many of the generalizations concerning "women" that feminists espouse, are not applicable to the experiences of African-American women. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 154; bell hooks, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 7 (1981). In ignoring differences of class and race among women, feminist theory has fragmented women. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585, 592 (1990). See generally, Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9, 39 (1989).

110. For example, Professor Goldfarb's descriptions of story-as-method may also be viewed as a form of consciousness-raising. See Goldfarb, *supra* note 16, at 1630-34. Her delineations of exclusion questions and epistemological questions may come under Professor Torrey's umbrella of perpetual questioning. See Goldfarb, *id.* at 1634-36, 1642-46; Torrey et al., *supra* note 15, at 118.

human experiences within the context of their surrounding circumstances. It is based upon the tenet that theory is generated from experience, not the reverse.¹¹¹ Feminists argue that the historical, political, and social struggles that form the context of a particular case, are critical to the understanding of the case. They emphasize the experiential, human, value-oriented dimension of learning the law.¹¹² Feminist writers have criticized overuse of appellate cases to teach legal doctrine.¹¹³ Instead, they attempt to contextualize legal theory by, for example, bringing to class persons involved in an ongoing lawsuit to discuss their experiences with the law,¹¹⁴ or teaching through simulation.¹¹⁵ Feminist teachers might also teach classes through cases they have worked on as practitioners.¹¹⁶ They might use varied teaching sources, including legislative histories, data, and other legal documents, in addition to the edited case text.¹¹⁷

Consciousness-raising and perpetual questioning are methods to achieve contextual reasoning. Consciousness-raising has been labeled the "preeminent method" of the feminist movement.¹¹⁸ Through the telling of life events, participants explore common experiences and emerging patterns, thus building knowledge.¹¹⁹ Consciousness-raising

111. See Bender, *supra* note 15, at 27.

112. See Menkel-Meadow, *supra* note 15, at 80-81.

113. *Id.* at 67-68, 80.

114. See Menkel-Meadow, *supra* note 15, at 80 (describing MacKinnon's teaching First Amendment restrictions on pornography by having actual victims of pornography discuss their experiences with students in the classroom).

115. See, e.g., Rifkin, *supra* note 104, at 102. Professor Rifkin compares her mediation simulation to the casebook method as follows:

In traditional law pedagogy, the case-book is the emblem of the authoritative character of the law, and the 'Socratic method' mirrors and reinforces the structures of authority. The simulation embodies a contrasting way of thinking about conflict. The demonstrated mediation illustrates that conflict-resolution can be non-hierarchical and non-authoritarian, participatory and consensual.

Id.

116. See Menkel-Meadow, *supra* note 15, at 80. Certain authors delineate "rejection of abstraction" as a separate principle. See, e.g., Torrey et al., *supra* note 15, at 117. I tend to view rejection of abstraction, however, as the negative of contextualized experience. Essentially, feminists reject the objective characterization of jurisprudence, claiming that it comprises generalized rules that are subject to context, feelings, and needs. Objectifying the law only reinforces the pretense that law is neutral, when in fact it is based upon the male norm, created by the patriarchy, and therefore reflects the male hegemony. *Id.* See also, Scales, *supra* note 15, at 1378-79.

117. See Menkel-Meadow, *supra* note 15, at 80-81.

118. See Goldfarb, *supra* note 16, at 1626. See also, Torrey et al., *supra* note 15, at 111.

119. See Bender, *supra* note 15, at 9. Professor Goldfarb describes consciousness-raising as a "collective, interpersonal, reflective method aimed at articulating and advancing authentic ways of understanding and interpreting lived experiences." Goldfarb, *supra* note 16, at 1627 (citing MacKinnon, *supra* note 15, at 101).

ing is not simply a matter of stating one's thoughts, "but of discovering one's thoughts with the support and assistance of the other participants' tentative reports and statements."¹²⁰ Consciousness-raising gives authority to individuals' experiences by testing them against the experiences of others in the group.¹²¹ Because the method places a premium on personal experience, it allows women and other silenced minorities to have a voice.¹²²

Through constant questioning of male societal norms, feminists hope to discover and undermine the underlying values and assumptions that dominate our interactions.¹²³ In examining and critiquing these underlying values, we gain further insight into the power of such norms.¹²⁴

B. The Format: Interdisciplinary Learning Through Collaboration and Rejection of Artificial Dichotomies

Certain feminists find a multiplicity of perspectives desirable.¹²⁵ Therefore their methodology encourages cross-disciplinary thinking and rejects artificial doctrinal boundaries.¹²⁶

They believe preservation of relationships based upon an ethic of care to be a critical aspect of the female voice.¹²⁷ Collaboration and destruction of artificial boundaries foster a more open discussion of the ways in which legal problems can be solved.¹²⁸ Collaborative teaching includes the notion of shared leadership and consensus decision-making in the classroom, rather than professorial domination.¹²⁹ Students and professor work together to gain knowledge, rather than students competing with each other or with the professor to gain advantage over other participants.

Student/professor is one of the artificial dichotomies disparaged. Other examples are male/female, rational/emotional, and theory/practice. From these false dualities arises the inference that the "female" aspect of each dichotomy (here, "female," "emotional," and

120. Goldfarb, *supra* note 16, at 1628.

121. See Torrey et al., *supra* note 15, at 111-13.

122. *Id.*

123. *Id.* at 118.

124. See Minow, *supra* note 15, at 59-60; Bender, *supra* note 15, at 4; Goldfarb, *supra* note 16, at 1642-46 (describing this process in terms of asking "epistemological and ethical questions").

125. See Bender, *supra* note 15, at 11. But cf., Scales, *supra* note 15, at 1385 (arguing that the male perspective—rights-based society—and the female perspective—care-based society—are incompatible).

126. See Goldfarb, *supra* note 16, at 1625.

127. See GILLIGAN, *supra* note 108, at 171.

128. See Menkel-Meadow, *supra* note 15, at 81.

129. *Id.* at 79-80. Obviously, collaborative learning is not confined to feminist teaching or clinical legal education. See, e.g., Thomas Michael McDonnell, *Joining Hands and Smarts: Teaching Manual Legal Research Through Collaborative Learning Groups*, 40 J. LEGAL EDUC. 363 (1990).

"practice"), is inferior.¹³⁰ Feminists who laud these principles of care and collaboration believe society should be organized in terms of its relationships, rather than its differences.¹³¹ They prize openness, inclusivity, and equal respect, rather than hierarchy and exclusivity.¹³²

C. *The Common Bonds Between Clinicians and Feminists*

Both the clinical and feminist movements were reactions to the more abstract Langdellian form of teaching. Both movements were instigated by those "outside" the accepted mode of law school instruction—practitioners and women.¹³³ As a result, commonalities exist between clinical and feminist philosophies, though the movements developed parallel to, rather than in conjunction with, one another.¹³⁴

Both clinicians and feminists emphasize interdisciplinary learning in the context of experience; clinicians learning from lawyering experiences outside the law school and feminists from their experiences as women in a male-dominated society.¹³⁵ Both groups emphasize the development of a moral awareness of societal injustices being a goal of the CLEPR grant as well as an impetus for the feminist movement.¹³⁶ And both movements, in their rejection of the more competitive and authoritarian Socratic system, emphasize learning through collaboration and critical inquiry. Of the variety of clinical programs, field placement programs, with their emphasis on self-learning and reflective critique, rather than the learning of technical skills and professorial critique, most closely mirror and complement the feminist process.

VI. USING FEMINIST METHODOLOGY IN THE FIELD PLACEMENT CLASS: WHAT WE DO AND WHY IT WORKS

Unknowingly, in our effort to structure a classroom component at California Western in the fall of 1990, we had already fused our clinical goals with certain feminist principles. We had emphasized contextual reasoning through consciousness-raising by having the

130. See Menkel-Meadow, *supra* note 15, at 71-75.

131. See Torrey et al., *supra* note 15, at 115-16.

132. Bender, *supra* note 15, at 11.

133. Professor Goldfarb also emphasizes the significance of clinical educators and feminists both having the status of "outsiders," or those outside the more traditional "male" law school mainstream. Goldfarb, *supra* note 16, at 1618-25, citing Mark V. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272 (1984).

134. See Goldfarb, *supra* note 16, at 1674.

135. Professor Goldfarb argues that clinicians could focus more on the multiplicity of perspectives feminists emphasize. Goldfarb, *supra* note 16, at 1677 n.332.

136. "Feminism brings law back to its purpose—to decide the moral crux of the matter in real human situations." Scales, *supra* note 15, at 1387. "[Feminists] place caring and responsibility over rights and property." Bender, *supra* note 15, at 11-12.

class focus on students' internship experiences, so we built on theories of lawyering processes from the context of those experiences. We had also emphasized perpetual questioning by having students continue to examine their experiences and encouraging all to question one another, as well as themselves, as to what they were learning. What we were missing was the format of a more collaborative environment to enhance the honest discussion of values and experiences.

A. *What We Did*

1. *Our Goals*

In view of our prior mistakes, our goal for the spring of 1991 was to structure a classroom environment that encouraged students to share internship experiences and thoughts on practicing law. We hoped the classroom would be another forum, in addition to our requirements of journal-writings and private meetings between students and faculty, which would enhance our goal of student self-learning. We wanted to encourage cooperation and mutual learning, rather than competition among students. We wanted students to experience their innate ability to educate as well as learn from their peers. But to do so, we needed to create a more conducive atmosphere in the classroom through shared leadership, destroying artificial boundaries between professor and student, and emphasizing consensus over dictate.¹³⁷

2. *Our Methods*

To maintain our shift toward a more feminist environment, we continued to limit the class size to fewer than fifteen students and to keep the readings focused on personal experiences of individual lawyers. Borrowing from Professor Torrey, we changed three key components, which radically altered the professor/student hierarchy, and thus the classroom atmosphere.

First, to promote leadership sharing, we changed the label from student "presenter" to student "facilitator." Students are no longer required to "present" or impart knowledge to the class, to be ultimately judged in terms of professorial grade. Instead, they are asked

137. Professor Torrey describes the basic ground rules of a feminist environment as "an atmosphere that valued shared leadership, personal experience, multiple perspectives, voluntary participation, continual questioning of power relations, the destruction of artificial barriers, decision-making by consensus concerning issues of common interest, and an understanding of the relationship between self and others." Torrey et al., *supra* note 15, at 93.

Consensus decision-making is based upon the concept of "'feeling or sensing together,' implying not agreement, necessarily, but a 'crossing of the barrier between ego and ego,' bridging private and shared experience." MARY FIELD BELENKY, et al., *supra* note 100, at 223 (quoting literature teacher Norman Holland).

to "facilitate" a discussion on a topic of their choice. Students are motivated to lead an interactive and qualitative discussion by their desire to please the class, not the professor, since they are not graded on their class facilitation skills. In essence, students are inspired to do well merely by their own leadership roles. My trust in their sense of obligation and interest, and the trust of their peers provide a positive incentive to cooperate, rather than a negative incentive to compete with one another. As a result, a certain degree of stress, inherent in more traditional law school classes, is alleviated.¹³⁸ Furthermore, in order to encourage risking personal comments on difficult issues, I do not grade participants on the quality or the quantity of their comments in class.¹³⁹

The student facilitator begins the class, develops the discussion, and concludes the class.¹⁴⁰ The topic may stem from the readings, the student intern's experiences, or, ideally, an integration of the two. The topic may simply be in the form of a question, such as how to deal with a supervising attorney who is not readily available, or it may be an inquiry as to how others' internships have influenced their career intentions positively and negatively. It may be objective, such as a discussion of the advantages and disadvantages of mandatory pro bono or the self-policing nature of the profession, although discussion of students' personal views on the issue and how

138. See B.A. Glessner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991).

Sharing control with students eliminates significant stressors by reducing feelings of powerlessness and paranoia. Academics have debated the merits of a cooperative versus a control model of lawyer-client relationships; a parallel choice exists in the model of teacher-student relationships within the law school. In either context, cooperative relationships are not inconsistent with challenge or effectiveness, they only require a surrender of some control and an increase in open communication.

Id. at 657 (citations omitted).

139. See Pickard, *supra* note 97, at 303-304 (discussing the importance of the professor abstaining from evaluating class discussion to promote shared responsibility for learning and risk-taking on difficult issues).

I do grade students on their class attendance (they may miss one out of fourteen classes) and on their promptness to class. The purpose of these grades is not to wield authority, but to encourage self-respect among participants, demonstrating the value of their presence and input, and to encourage respect for others facilitating. Students also receive grades on their journals and their timely submission of paperwork required for private meetings with faculty. To encourage the integration of students' experiences in the field with those in class, we require students to write about the readings assigned for class and the class discussion in their journals. The very few students who have been reluctant to participate in class discussion have agreed to discuss the class more extensively in their journals.

140. In order to ease the students' concerns regarding facilitation, I pass out a sheet the first day explaining the tasks of a facilitator, i.e., asking for announcements, clearing up any housekeeping details, and posing issues for discussion. Students may amend the agenda in any way they choose, though initially, they seem to be comforted by an outline of a potential agenda.

their internship experience has influenced their views inevitably results.

To weaken the student/professor dichotomy, the second altered component was the change in the role of the clinical faculty member from professor to peer. On the first day of class I announce that I prefer to be called by my first name and that I will participate in, but not steer, the discussion. I tell them that my comments will concern my own experiences or views regarding an issue and that they will not be an evaluation of others' comments. I also tell them it is up to the student facilitator to begin and end the class on time. I explain that my only role is to appear in class on time and comment on an issue when motivated; should the discussion become too lively, so that the facilitator must call on participants in turn, my raised hand is not to be given priority. I warn them that if the discussion becomes unfocused or irrelevant, it is up to the students to save the hour from being wasted, according to their definition, not mine. To encourage the peer relationship, we sit in a circle.

A third change to comport with the feminist teaching methodology is that decisions are reached by consensus, rather than by autocratic or majority rule. This is not a dominant component to the class, as many of the structural components of the field placement course have already been implemented by clinic faculty.¹⁴¹ The consensus process has been used, for example, to decide the content and time of future classes.

B. Students' Responses to What We Did

Students' favorable responses to the class throughout the course of the seminar and in their final written evaluations proved we had arrived at a format which provided a sound structure for our classroom component.¹⁴²

The first time I used a feminist teaching methodology to teach the class in the spring of 1991, nineteen out of twenty students filled out class evaluation forms I had composed. In response to how they felt about student facilitation of the class, only one student responded negatively, stating that some of the leading appeared perfunctory. Examples of positive comments, as expressed in the student evaluations, were: "felt more open and free thinking, less worried about

141. As stated *supra* Part IV.B., faculty design, rather than student design, of the regulations pertaining to internship requirements is antithetical to feminist philosophy.

142. We continue to hold three private meetings with each student during the course of her internship. These meetings are for the students to bring up issues relating to their field placements which they may feel awkward raising in the large group. They also give the clinic faculty an opportunity to challenge students on an individual basis as to the quality of their learning and help guide them to be more reflective of their internship experiences.

being called upon," "everyone seems to take it seriously," "worked out wonderfully," "nice change from pre-planned law school classes where students have no control over agenda," "got a different point of view each time," "heightens the 'experience' of the internship," "became more acutely aware/more sensitive to everything around me when trying to come up with a topic," "loved leading the discussion," and "best part of group—having such individualized topics turned into group discussions."

In response to a question on the evaluation form pertaining to the professor playing the role of peer participant, only four students commented that it did not always work because the professor still evaluated and graded students on their participation. Actually, these students misunderstood our grading procedure.¹⁴³ Some comments of a positive nature were that this method: "[was a] welcome change," "worked out very well," "helped alleviate anxiety in expressing opinions," "worked in that after a couple of meetings we didn't look to professor each time we answered a question," "felt like a big group of friends most of the time," "[was] terrific," and "I liked Prof playing peer participant; not often student gets to know Prof on this level."

Of the eighteen responses to the same questions by the fall of 1991 class, only one student made a negative comment that, except for the student's own facilitating experience, the students were not able to control the class. Two other students also commented that the notion of professor as peer may be illusory. Some of the more positive comments were: "an open and validating experience where I felt free to share what was going on in my internship," "I was able to relate to [the professor] on a more human level because I felt we were equals," "the small size of the class, as well as the non-hierarchical structure would reduce apprehension that even the most shy students may have," "helpful in my understanding of myself to vocalize my internship experiences with others," "Perfect! Student facilitation is an excellent way to promote discussion and interest—it produces the ideal learning environment."

Needless to say, many students are initially skeptical.¹⁴⁴ Some visibly react to the term "feminist" when I describe my teaching method the first day of class.¹⁴⁵ Others may feel discussion of their own experiences, values and thoughts irrelevant compared with the

143. See *supra* note 139.

144. Students do not come to the first class with the skills of self-directed learning. Upon realizing that they must participate in the planning and direction of the class, they can be skeptical as well as resentful. See MALCOLM S. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION* 40 (1970) (describing the reorientation to self-directed learning that adults must experience).

145. "Feminism is a dirty word." Bender, *supra* note 15, at 3.

doctrinal theory they are used to learning.¹⁴⁶ They have been trained to adhere to the words of their professors or supervising attorneys, not their peers. They are unsure of their abilities to lead class discussions, and some wonder whether the professor is simply shirking her duties.¹⁴⁷

At times I, too, have had hesitation about the format. It is difficult, if not impossible, to relinquish control completely. Although I have adjusted to simply "appearing" in the classroom, I still find it taxing to refrain from my ingrained role of directing discussions to levels I think are more intellectual or appropriate.¹⁴⁸ I must constantly remind myself that the class methodology is based upon the concept that the process of learning is just as important as the content. I also find it difficult to be self-disclosing to students whom I have not previously considered to be my peers. The class format requires me to trust the students' abilities and to learn from their experiences rather than tell them what to do—a format seemingly inapposite to my status as a professional educator.

C. *Why It Works*

I have described theories of self-learning and feminist pedagogy, as well as my own experiences combining and applying the two theories in a law school field placement class. To accord with feminist and self-learning theories, we must further build the theories described in light of the teaching experience in order to better understand why feminist pedagogy complements field placement classes. Feminists and advocates of self-learning contend that theory is generated from personal experience, and that theories conceived must be re-tested in light of new experiences.

Essentially, both the content and format of feminist methodology and self-learning are substantially similar. The content of contextual reasoning and perpetual questioning are institutional hallmarks of

146. For another discussion of this problem, see Paul Brest, *On My Teaching*, 10, 13-14 in SYMPOSIUM HUMANISTIC EDUCATION IN THE LAW, *supra* note 104.

147. Students made these comments to me privately in the first few weeks of class.

148. One way I have voiced my concern with the direction of a discussion is to raise my hand and, when called upon, simply express my discomfort with the topic and explain why I feel the way I do. An example of this is the class's discussion of certain law school regulations. I was uncomfortable because, as a law school professor, I felt the discussion was directed toward me instead of involving me, making me feel like an outsider. Second, I felt that the topic was one more appropriately discussed in other forums. When I expressed this to the class, the facilitator heard from two other students on the issue, then redirected the discussion. Although her action no doubt was based in part on my disapproval, I also sensed that, had anyone else objected, the facilitator would have been sensitive to that person's discomfort, too. I also hoped that by expressing my own dis-ease with the topic, I would encourage others to do so when they also felt uncomfortable. For a description of professorial need to "deepen down" a class discussion, see Pickard, *supra* note 97, at 294.

both feminist and field placement teaching. In both field placement programs and feminist teaching, abstract theories of law are replaced with personal and professional theories drawn from real-life experiences—by clinical students from their lawyering experience and by feminist students from their experiences as women. Both movements encourage students to question continually and test their formulated theories against their experiences and those of others. Students are inspired to question and challenge the existing norm—whether it be the legal system or the male hegemony.

But it is critical to fuse the content with the process.¹⁴⁹ In order to encourage self-learning through contextual reasoning and questioning, it is logical that the format of the field placement class incorporate certain feminist principles of collaboration, shared leadership, rejection of artificial dichotomies and consensus decision-making. A classroom atmosphere that fuses content with process permits self-learning in an environment safe from professorial judgment and peer competition. Student facilitation in field placement classes reinforces the program goal of students taking personal responsibility for their education. It also helps students who do not function well under the Socratic system by allowing them a leadership role within a supportive environment. Formats involving collaboration and consensus allow students to develop skills in appropriate role behavior for lawyers.¹⁵⁰ The feminist format of our field placement class also complements the journal and private meeting requirements of the internship. Class discussions give students more to write about in their daily journals. We encourage them not only to write about their own experiences, but also to compare their fieldwork and thoughts on lawyering to those expressed by others in the class. In return, journal writings encourage deeper levels of class discussion by further engaging students in the practice of reflecting upon their work experiences. Having already thought through an issue in their journals, students frequently raise the same issue in class for feedback from their peers. In private meetings with supervising clinic faculty, students discuss their learning in the context of what they hear others learning in the class. They are more forthright concern-

149. See Nancy Schniedewind, *Feminist Values: Guidelines for a Teaching Methodology in Women's Studies*, in *LEARNING OUR WAY*, 261-62 (Charlotte Bunch & Sandra Pollack eds., 1983). "The more classroom interaction reflects feminist principles and the greater the congruence between process and content, the more consistent and powerful students' learning can be." *Id.* at 261.

150. Disparaging the more traditional model of the student/teacher hierarchy, Professor Pickard writes:

[L]egal education fosters a view of professional behaviour towards clients which is based on the experienced and accepted view of teacher behaviour towards students [T]his model is hierarchical and inappropriate to many legal (and educational) tasks.

Supra note 97, at 290.

ing their own moral dilemmas of role identity, recognizing from class discussion that their peers are encountering similar issues and that it is safe to talk about one's values.¹⁵¹

The content and format of feminist pedagogy are particularly complementary to field placement programs, as opposed to in-house or simulation clinics. Two reasons for this are that field placement programs provide a broader context for students' experiences and do not have to focus on the learning of technical skills in the classroom. Students in most field placement programs are engaged in a wide range of lawyering experiences with their supervising attorney, rather than being involved primarily in the specifics of a particular trial or skill, as students in an in-house or simulation clinic might be. At California Western, as in many other field placement programs, students are in both public and private, as well as civil and criminal, placements. As a result, the personal experiences narrated in class provide a broader context for theorizing through consciousness-raising than those of other clinical programs. Field placement classes that emphasize self-learning also have the luxury of devoting more time to personal issues of lawyering, thus according with feminist pedagogy in providing a personal context for developing theory. Students in our internship seminar frequently raise issues, such as the quality of lawyers' lives, alleviating stress, and resolving conflicts between personal and professional codes. Although in-house and simulation classes may also discuss these topics, they usually have important agendas emphasizing the learning of technical skills in the classroom, as well.¹⁵² Also, because there is a more flexible agenda in field placement classes, questioning of institutional norms is more of a focus than it might be in other clinical programs.¹⁵³ Emphasis in field placement programs is on challenging normative values within the legal system, rather than critiquing an individual's technique in a specific lawyering skill.¹⁵⁴

151. See Brest, *supra* note 146, at 12.

A sense of trust and acceptance by others—and the concomitant sense of community—is a good in itself. It also facilitates a full and honest discussion of many of the difficult issues we encounter. It allows us to let down defenses, which is often a precondition for examining the values we hold and the choices we make.

Id. at 12.

152. Professor Goldfarb warns clinicians of becoming overly mired in technical skills or on the unique demands of particular cases. Goldfarb, *supra* note 16, at 1675.

153. Professor Goldfarb also indicates that feminists may be more critical than clinicians of institutional norms. *Id.* at 1672-73. Professor Goldfarb's comparisons between feminist and clinical theories, however, are more descriptive of in-house and simulation ideologies than they are of field placement programs.

154. For further discussion of the "pre-designed" and "teacher-directed" nature of in-house and simulation clinics, see Maher, *supra* note 8, at 564 n.86. For a discussion of the control exerted by in-house and simulation clinicians, see Condlin, *supra* note 13.

Scholars have advocated in theory the combining of self-learning with the collaborative classroom in the context of general education¹⁵⁵ or clinical legal education.¹⁵⁶ In her recommendation of an appropriate fusion of feminist and clinical thinking, Professor Goldfarb forecasts most precisely what our internship seminar does:

The feminist and clinical movements view the nature of justice and community as the stakes of education, a sensibility that the classroom can actively tap. To stimulate this sensibility, feminists and clinicians would reduce the traditional hierarchy of the classroom. A teacher wedded to this aim would not be the omniscient fount of knowledge, but would facilitate the students' active responsibility for making sense of their experience of the legal and interdisciplinary materials. Authoritarianism conflicts with the values of this project and impedes its possibilities of success. An atmosphere of open exploration, where students and teachers exchange their views and insights on matters of deep and abiding interest, encourages students to assume responsibility for developing the understanding of self and others that this classroom approach requires.¹⁵⁷

VII. CONCLUSION

Using a feminist pedagogy in our field placement class has awakened me to the benefits of a more collaborative classroom. I have learned that students are able to facilitate discussions on subjects of great educational value which may never have occurred to me. I have learned to trust students' abilities to deal with conflict on their own. The class format has further enhanced my belief in the value of learning from students' experiences, despite the risks of self-disclosure and relinquishing control to the class.

One of the most enjoyable aspects of legal education for me is that it is not static. It is hoped that the chronicles of our classroom component will continue to reflect that aspect. Using feminist pedagogy in the classroom may prove to have its shortcomings, just as Langdell's method has. But ultimately, the process of reexamining our educational goals and methodologies is as important as the content we choose to teach. That we must maintain our awareness of the need to unify our substance with our methodology is the lesson my students have taught me.

155. See, e.g., KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION*, *supra* note 144. Adult self-learning should be accomplished in an environment "which causes adults to feel accepted, respected, and supported; in which there exists a spirit of mutuality between teachers and students as joint inquirers." *Id.* at 41.

156. See, e.g., Tushnet, *supra* note 133. Clinicians "could assert the positive value of femininity over the negative masculinity of the classroom." *Id.* at 276.

157. Goldfarb, *supra* note 16, at 1695.