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Serge A. Martinez
University of New Mexico - School of Law

Robert Statchen
Western New England College School of Law

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SCHOOL OF LAW
SMALL SCHOOL. BIG VALUE.

TEACHING TRANSACTIONAL SKILLS IN A CLINIC

SERGE MARTINEZ*

INTRODUCTION

I am Serge Martinez. I run a clinic at Hofstra University called the Community and Economic Development Law School. We work with nonprofits, micro entrepreneurs, and very low income communities in and around the law school area. I try not to limit what we do. I hate litigation and won't ever do it unless I have really screwed up, but anything else is basically fair game as long as I feel confident that we can pull it off or find someone else who can.

I. CASE SELECTION

As a result, case selection was very much on my mind as we were proposing ideas for this conference. Professor Carmen Huertas and I were talking about case selection and selecting hard cases, big cases, complex cases, simple cases, or small cases. Sometimes they are morphed into each other, but it's been on my mind ever since I started my clinic and recently even more so after actually thinking about it in a more systematic way. Just by chance over the last couple of weeks I have had people calling me about big projects, and I am trying to decide whether we are going to take them on or not. I had a group call asking me to help them do some development of affordable housing in a low income neighborhood around our place which will require lots and lots of expertise and work on our part, but it will be very exciting.

I also got a call from someone trying to startup a pretty big revolving loan fund for ex-offenders trying to start small businesses in the area. That is great, but again who knows how much work that's going to be and how well my students will be able to handle it. In talking about this throughout the clinical world, no one really defines "complex," but I will endeavor to do so. I will tell you the Serge Martinez definition, but surely there are others. By complex, I don't mean big. Sometimes small cases can be complex. Sometimes big cases aren't complex depending on context.

I previously worked in a firm, and we did billion dollar deals, but they were so cookie-cutter that anybody could have done them, even a first-year associate like me. So I like to think of it as something that will cover multiple semesters, require

* Serge Martinez is an Associate Clinical Professor of Law at Hofstra University School of Law.

multiple teams of student-lawyers, involves an unusual lack of clarity, and large amounts of time to learn the law and the facts to do negotiations. Basically something that is complex.

This is something that has been a discussion that's been taking place a lot through the years in respect to litigation clinics, but transaction clinics have sort of been by the wayside. However, there are things about transactional clinics that make them different. First, just by their nature, I think transactional matters tend to come to us more complicated as is. There is really not a transactional equivalent of the SSI hearing or a drop-in transactional clinic at a soup kitchen. Although I would like to figure out how to do that, I don't know a way. So the people tend to come to us with grander schemes.

II. CONFLICTING GOALS

A. Pedagogy

To contextualize this discussion of case selection, I want to talk about some of the goals of clinicians and clinics and the sources of all the tension that come up in case selection. Number one is pedagogy or teaching students problem solving skills. Whenever people ask me about what the goals of my clinic are, I tell them that I don't care if my students are experts in area "A" or "X" of law. It's that when they are faced with some new problem they can figure out what's going on and how to handle it. Not freak out too badly, at least in front of the client, and then create a plan of action and actually execute it. I am concerned with preparing them for practice in the real world. I am trying to make some connection between what they learn in the clinic and what they are actually going to be doing once they are real lawyers.

B. Public Service

The methodology is usually, as much as possible, non-directive and reflective. I want them to reflect on what they are doing. Another goal, and this is controversial in certain circles, is of course public service. If you want to meet the needs of the community, you have to actually be responsive to what those needs are and understand them and be willing to try to help them in whatever way that comes. Again, transactional work is different from litigation. In Long Island, where we are, there are no legal services organizations for transactional work of any kind. I am really the only game in town. We cover who knows how many square miles. There is a lot of need, but it's just me.

Other clinical situations may have the luxury of saying, "Well, someone else can take care of that." In a transactional setting it's a little bit different. Also, I think it's the best. A colleague recently told me she loved what she did because people come to her on the worst day of their life, and she can help them out. Well, I have the exact opposite approach. I love going out to people and saying, "Hey, this is the best day of your life because we are here to help you. What is it that we can do to help you out?" That's the Serge Martinez approach to community service.

C. The Professor and the Law School

I should say that there are other competing goals. Let's discuss that. The good of the professor. I don't want to be bored as a teacher. I don't want to be selecting cases that are not going to be providing interesting experiences or maybe good teaching opportunities for me. Also the law school might care a little bit. I know my colleagues pay attention more when my name is in the paper than they would if I am not. For a clinic professor who is on soft money or who is not on the same long-term contract that may be an issue. Maybe the school just likes the PR. I rarely hear schools touting their torts class, but you often hear them talking about how they have clinical programs and what they do. We do have a tort class at Hofstra though.

III. CASE MODELS

A. The Ideal Case

So in this sort of clinical world there is this notional ideal case that encompasses all of these goals. The student gets to be the lawyer. They start a case. They finish it. They get to make lots and lots of decisions. They get to interact with the client regularly. They don't commit malpractice. And there is a real benefit to the community that comes from all of this. If we are lucky, there is some glory to the professor, to the clinic, and the law school. Obviously, the real world is nothing like this ideal. The timing is often terrible. It's a case that is controversial, no one's going to like it, and it brings lots of these pressure points.

B. A Real World Example

Let me give you a model case that has been complex that my students and I have dealt with. We had a group of immigrant women come to us and say, "We want to start up a business doing house cleaning." I thought that was so interesting. Then, one of my colleagues said, "That will be a great opportunity for your students to provide counseling and whatnot." So I was reminded that it should be about the students rather than how cool I think it is, but this has been a complicated matter.

In the course of it, my students have had to master L.L.C. law, partnership tax law, immigration law, and how these all interact. They have to deal with counseling a group of dozens of women. Not all of them speak English, and not all of them agree. So the students have had to learn how to resolve disputes within this large context.

Anyway, it's been really fascinating, but also very difficult. So it's brought to light some of these big problems such as competency of the students. Can they master the law in a quick time? Can they master the facts? Can they master the file? I have a file this thick that I know by heart, but the student who shows up in the fall is going to take weeks to figure it out. That has proven to be somewhat problematic. If you don't know what you are doing, if you have to spend all this time treading water then you lack, I think, some opportunity to be creative and to come up with novel solutions. It's reactive. It's being stuck with whatever they did before you kind of thing. This brings me to ownership of a case.

IV. OWNERSHIP OF THE CASE

When a case has been passed down from generation to generation, whose is it? Does it belong to the student and does that make a difference? I think students want to own their cases. They want to be masters of it from start to finish, and in a perfect world, that would be the case. I was disturbed this semester when one of my students described a client as "Serge's client." I had to stop them and say, "No, no, no, that's *your* client." Well, sort of. They know the professor. They ask about the professor. The professor is the one who met with them. And starting and finishing a case, the professor gets to see all aspects of it. My students have been growing wary of me telling them the journey is the destination, but I still say it to them, and the pressures of the academic calendar are also relevant here. You can't always have your case to show up in January and be done by May. Actually, that has never happened.

Also there is a question of resources: student time, professor time, and supervisory time. The students, I assume, have an unlimited amount of time to spend on this work, but there is only one of me to go around. So they always have to come to me, and the more of that that happens, the less I can focus on other issues, other students, my wife and kid, and my goal of reflection. It is difficult to reflect when you are treading water. It's difficult for a professor to be non-directive when the student has no idea what they are doing, doesn't even know what I am talking about. So, I think, some of those goals are a compromise. I have just told you all the reasons not to take on a big case as a clinic professor. Now, I tell you that's all wrong, but that's not entirely true.

V. TAKING THE BIG CASES

It's totally correct, but there are some other competing concerns. The community needs, I don't think you could reasonably argue that the community needs are never going to involve taking on a large case. In fact, I've found quite the opposite. Most things that people say we really need or that are going to make a big difference are larger or more complicated cases. Be open to taking on these kinds of cases. Sometimes they just need something big to be done and they need to find someone to help. If a transactional clinic or something similar is not doing it, then it's not going to get done, and, as a professor, I think there's also some conflict. You know, obviously bigger and more complicated cases may lead you out of your safety zone and into malpractice.

I am experienced, but I haven't done everything, and the need to stay on top of it and actually learn also cuts into my time and my ability to focus on some of the other needs of my students. At the same time, they may be more interesting for me. I am the one, not the students, who is going to be working in this community for years to come. I find that by working with group "A", group "B" will come to us, and I need to keep finding clients for my students. The more attention, the more interesting stuff we do. Of course, we also make a lot of enemies, depending on what we do. So maybe I'll reduce my potential clients before too long anyway, but I think at the end of the day this is one of the best ways to accomplish all of these goals notwithstanding all the concerns I have just told you.

My students who have had these large cases and the ones who are going to have these larger cases have, first of all, been able to sort of see what it's like as a practicing lawyer. In my experience, you come in, someone tells you what to do, and you don't really understand at the beginning, but in the end you figure it out. Ideally, that's not what's going to happen, but that's a real world thing. Also, they are learning how to work in teams, how to build coalitions, and collaborative effort. That's what we are looking for. I know my students are really proud of the knowledge that they get in the clinic. It may not be useful to tell everybody they know about the ways the immigration law impacts people who are independent contractors or partners in a partnership, but that's hard-won information. They are justifiably proud of their mastery of a complex area of law. I have also seen the community benefit, and I think that's a huge factor in the cases we take.

VI. DEALING WITH COMPETING GOALS

So the question becomes how to deal with all of these issues? I think transactional clinics have not really answered that question. I put it to all the transactional law clinic professors out there to come up with better solutions to this.

In my clinic, I have tried a couple of different things. I have tried having students for more than one semester, and that seemed to work well. By the middle of the second semester they were cruising. It took a long time for them to get up to speed on some of these things, but man they were great. I could just point them in any direction, and they were wonderful. We have also tried staggering students. The students are not themselves staggered, but staggered in their terms in the clinic. I have had students starting their second semester work with those starting their first semester. The results were somewhat disastrous, but I think it could be done better. I found it hard because they did not want to take instruction from their peers or feel like their peers were better, but certainly there was someone on the case who knew what was going on and was able to take the reins while the other person sort of mastered other issues going on. One other thing we have is a practicum where students will, for a couple of credits, spend an extra semester working on one case. This has proven to be pretty valuable as well.

So you can do intensive semesters so the students have lots and lots of time. Some prep work is involved. We have talked throughout this conference about having students be prepared for certain courses with prerequisites or a pre-clinic class like they do at some schools. Simulation courses are great to prepare you to actually go practice with clients. From the teacher's perspective, I think it's also a requirement to really, really hit the substance intensively before you do what clinic professors really love to do, which is talk about the ethics, how you feel about it, and what do you think should do. I think the contextualizing is probably the most important part for me at the clinic.

There are lots of different ways to handle these issues and probably lots of ideas that I have not come up with. Clinics certainly can and, I think, should be handling complex matters, but what it requires is forethought, clinic design, and a clear ordering of the clinic's goals. Some clinics focus on social justice. Some focus on pedagogy. Some think that if you focus on anything other than pedagogy, you're doing your students a disservice. Like it or not, the question of what makes the professor happy or what makes the law school happy has to be factored into this even though in a perfect world that would not be a factor. But once you have ordered all of that, it's not impossible to come up with a design that will allow the clinic to meet those goals and to actually do really exciting, fascinating, and sophisticated work that exposes students to types of things they might not get in a simpler situation.

Another thing we do is give students a mix of large and small cases. Large and small cases are not mutually exclusive, but sometimes clinical professors treat them as they are. My students have really super small things, medium small things, and then really complicated things. They have learned different things from all of

them. It's harder for me, but it's something that I am willing to do to allow my students to have that kind of experience while still meeting the goals that we have.

ROBERT STATCHEN*

INTRODUCTION

What I want to talk about is drafting within the transactional-clinical context. While traditional drafting courses have the luxury of going over a few sentences a day, in the clinical environment we have to draft complete client-ready documents usually within a relatively short time-frame. So in my presentation I would like to begin to establish the goals and requirements for drafting effective documents in that transactional-clinical context and different methods of attaining those goals. As I have only been doing this for two years at my clinic, any ideas, thoughts, or concepts that you have are welcome.

I teach a small business clinic, which has eight students. We have a one semester program for four credits. The students are divided into two-person firms, and they usually serve two to three microenterprises in the Springfield, Massachusetts area. When I say microenterprise, I use the classic definition of an entity requiring $35,000 or less in startup costs, but often our clients require significantly less. We do have a range of clients, and for the purpose of giving students a well rounded experience, I try to categorize them based primarily on level of operations. Each law firm is usually assigned one "A" client who is really are up and running with significant activities; one "B" client who is starting off and may have a few customers, but nothing expansive; and one "C" client who is at the purely planning stage. That's how our clinic is set up and where the drafting requirements come from.

I. CLINIC GOALS

The goals for my clinic include producing professional client work product, creating a real-world transactional experience for students, providing an appropriate education experience for students, and contributing to the regional economic development of the region.

These goals are not prioritized at this point, but I think that's something that's subject to discussion as well. The first goal is producing professional client

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* Robert Statchen is an Assistant Clinical Professor of Law at Western New England College School of Law.

work. The work that gets produced out of the clinic has to be competent legal work primarily because it's my state bar license. In my opinion, you don't prioritize producing legally competent work. That's just what it has to be.

Then you move into the more nebulous goal, which is creating that real world transactional experience. We are not just looking to have the students be three months ahead of their contemporaries when they go to their first job. I want people to know when they get a student who has been through my clinic. I have gotten positive feedback from firms that have hired students from my clinic, but there is more than that.

What then are those intangibles? What are the other aspects that we are trying to create for them other than just getting them up to speed a little quicker ? In articulating these issues you also have to think about giving students the "real world" transactional experience, and this goes into the factors of the clinic itself. Are we talking about the real world at a "mega firm," a small-sized firm, a medium-sized firm, or a government office? I went from government practice to a small firm of ten to twenty attorneys. Do I want to create an environment similar to that small firm? Is it possible to create the "mega firm" experience with my client base? In addition, how do you address the negative aspects of the "real world" such as billable hours requirements and numerous redrafts. I think it's important to ask these questions as any clinic is developed.

Additionally, drafting is important, but it's not a drafting course. Interviewing, counseling, time management, teambuilding, and drafting all must be addressed during the semester. Therefore, there is not as much time to spend on teaching drafting for the purpose of producing client work-product. However, this analysis has to reflect the structure of the individual clinic relative to how demanding you can be on the students. If you are getting twelve credits a semester, maybe they can start the drafting process with a blank sheet and see what the students can produce. My students are getting four credits a semester, and there is a concurrent seminar included with those four credits which has separate reading assignments of probably one or two hours of reading per week. So I have deduced that students are required to produce ten hours of client-work a week.

II. TIME MANAGEMENT CONCERNS FOR DRAFTING DOCUMENTS IN A TRANSACTIONAL CLINIC

Five primary concerns which I have identified include: (1) Is time being spent appropriately by students; (2) Are the students being "spoon-fed" through the use of forms; (3) Has the clinic transformed into a drafting class; (4) Are the client's needs being met; and (5) How do you prioritize student v. client needs.

An example where the first concern is presented is having students help clients address choice of entity issues. Notably, the only prerequisite I have for the students in my clinic is business organizations. So they have a smattering of the issues presented, but there is a steep learning curve even when dealing with the microenterprise because the issues involve tax, liability and local procedural requirements. Generally, once you apply these principles to a microenterprise, the recommendation is generally fairly uniform. For a variety of reasons, the microenterprise client should continue operating as a sole proprietor or general partnership or, at most, should form a limited liability company. So do you spend five weeks with the students getting to that point where they fully understand the nuances of these issues, to include partnership taxation as applicable to S Corps versus L.L.C.'s, or do you just say generally this is what the client should understand and spend time working on issues more immediately relevant to the client.

My first semester, I had all students do a separate choice of entity memo. As a result, there was no client contact for almost five weeks because the students had to get to the point where they understood the issues, had gone through multiple drafts of their client memo, and then finally had gotten to a point where there was a client ready document. It was five or six weeks, and they hadn't talked to the client yet, other than the retainer letter. The class had therefore descended into a drafting class. So I think this presents the issues associated with balancing student and semester time management with the needs of the client. However, on the other side of the coin, and the second concern I highlight, is the issue of whether students are being spoon fed with a form choice of entity memorandum and not thinking for themselves. But again, as always, you must ensure that the client's needs being met? Prioritizing all of these needs is required.

III. METHODS TO ACHIEVE CONFLICTING GOALS

The remainder of my presentation focuses on what I have done to facilitate students' ability to produces client ready documents and provide some examples of these documents. Again, I would be happy to hear how other clinics are doing this as well.

A. Internal Clinic Forms

The Engagement Letter

Again, when I started off, I had each student draft a individual engagement letter from scratch. They had to go out and find three examples and draft what they thought was an appropriate engagement letter. So the client had the initial interview, and then they didn't hear from us for two or three weeks because it took time for the

students to prepare the engagement letter. Because this took so much time, one of the first things I did was create a uniform engagement letter. As you look at this letter, you will see that there is still original drafting required. For example, if you look in the scope of representations section, there is original drafting that's going to be in there as far as what type of contract the client will require.

So there is original drafting, but there are also things that are crucial that I felt that we need to get immediately to the clients such as the next sentence: "You acknowledge we are not your general counsel and that our acceptance of the engagement is not undertaking a representation to represent you in all matters." Our representation is strictly related to the tasks identified, and that allows us to provide those services in this context and not be concerned about an ongoing relationship. So I think this internal form allows for some original drafting, and it also allows for timely service to the client. The client meets with students, and within a week they can get an engagement letter saying this is what we are going to do for them.

Another benefit of using internal forms is that it provides a realistic environment for the students because when they eventually go to a law firm they are going to be working with these sorts of internal forms. I also try to show students where they can add value when using internal forms. Again, hopefully they can hit the ground running and make an impression. The senior associate or partner who is advising them is going to give them an internal form and perhaps the students can find ways to improve it, without reinventing the wheel. It's also a great opportunity for the clinic as an institution because you have new people every semester reviewing these forms to see if there is a better way to communicate with the client.

I tell students to come talk to me if they read a paragraph in our form letters and they don't understand it. I think that's a more realistic environment for them as far knowing when not to go too far in unnecessarily modifying an internal form. I have had students who get the form, for example the choice of entity memo, and then come back with something that's completely different. It provides a good teaching moment to discuss why they did that and were the changes made substantive or stylistic. They should justify whether they made the change because they felt that is what they were supposed to do or what I was looking for rather because they have a substantive basis for the change. Sometimes it's a problem of how I explained it, but I think the process and interpretation of a "partner's" direction also is a practice skill which they will benefit from.

Choice of Entity Memo

The choice of entity memo also allows for some original drafting as far as the background on the company and really laying out what the company is and what

they do. We do that because I think it's important for the student to put their recommendations in context and because, as we all know, the client's needs can change over time. We want to say, "Based on these facts, this is why we are telling you what we think, and if something is not here then come and tell us that it is different." Again, I think the choice of entity memorandum facilitates getting students to the point of client interaction and talking about the issues a lot quicker than having them take six weeks of a fourteen-week semester to draft that memo.

Entity Operations Memo

When we do assist in forming a new entity, we also provide an entity operations memo. Again, based on my one semester, four credit course, it is unrealistic to expect students to develop the concepts in that memo in addition to the numerous other client issues of the client. Primarily, I want to get clients contracts done so the clients can start making money. I want to make sure that they are not wasting their money on the marketing because there is somebody else who has got their trademark. If they have original intellectual property, I want to make sure that it is protected with a non-disclosure agreement. Clients should be focusing on how they going to operate profitably. I do see a lot of clients where there is a type of "legal paralysis" as far as their decision making based on the belief that they cannot proceed due to legal barriers.

For example, we had a client that operated an errand service with no employees or partners. The client provide all the services. They provide all the equipment. Should they spend their $500 initial and annual fee in Massachusetts to form an entity. Or, should they spend that on a commercial insurance liability policy because the liability protection they are going to get from being a L.L.C. will be minimal and, not to mention the fact that the insurance policy is going to pay their defense costs. In this case, I think it's our role to show them their money is better spent on an insurance policy where they are going to have some defense.

B. Third party Commercial Forms

Third party commercial forms can also be a useful starting point for drafting documents. Examples of products I have used include an independent contractor agreement from Massachusetts CLE product and a preliminary trademark availability search client letter from an Aspen Publisher's treaties on trademark registration. These are both good starting points and the students learn a variety of practice skills from using these. They learn that these types of resources are available, and more importantly that some are certainly better than others. For the CLE material, they go through the process of viewing the CLE videos and learning about the documents.

The Aspen guide to registering trademarks, which I had used in practice, also exposes students to a less understood practice area. Often, students (and sometimes practitioners) link all intellectual property altogether and don't take on trademark work, even at the most basic level. This helps students get an understanding of what "gaining competence" in a practice area entails. Now, we are not going to represent Nike in their global trademark dealings, but when we have a small business come in, this practice guide is going to allow the students to do a preliminary trademarks search and give their opinion on it and gives a format for doing that. For time management purposes, it's appropriate for them to have that form to use and it's in finding that sort of resource that I see my role in assisting students. Also, I think in the transactional clinical community, we need to think about ways—and I know some others including the Kauffman Foundation are working in this sort of thing—of making people aware of certain resources that have worked well with students. And again, the goal is to provide that work in that context in a short period of time and yet still do some substantive work.

QUESTION

Some struggle with the assumption that forms detract from student learning. How do you balance a student literally just filling in the blanks versus them actually sitting down and looking through some of these forms as examples rather than templates?

ROBERT STATCHEN

There are a variety of ways. One way is that there are required readings that incorporate some of the learning to back up the use of forms. So they are going to read those, and they are going to get some degree of background. For example a sample NDA we use has two sections which for 99.9% of our clients will not be relevant. These are the sections dealing with public company Rule 100(b) under reg FD and with export regulations. They have to read and know that these are not applicable to the client at this time. I am comfortable with using these devices based on the needs of the clinic clients, the time allocated to the course, and the other skills students are required to obtain in a relatively short period of time.

Based on these factors, I think that the students are getting that benefit, and I think it is more consistent with what they will experience when they get in practice. I can clearly tell students who are using these practice devices appropriately, often through the discussions we have about necessary modifications to the documents. I had a very bright student recommend a section on other methods of liability protection in the choice of entity memorandum. In that memorandum, I had a fairly minor sentence on a certain issue, and she came in and said, "Why don't we expand

on that because I think that is important to this client and our client base in general." It was a great idea, and she came up with it and put that in and now that's incorporated into the form. That's part of the discussion that I want to get into, but I think this method takes into account the time that they have and the other skills that they need to acquire.

C. Other Drafting Methods to Achieve Clinical Goals

Prior Student Work

Another method is use of prior student work. While potentially a valuable tool, I think this method has more potential for students simply choosing to plug things into a form. It's one thing to use commercial forms that always have to be modified for specific clients,, but when students see that it's prior student work they know that it's already been approved by me. So what I usually do in that situation is have students do a first draft on their own. When I feel that they have done a sufficient amount of work, I'll say, "Well here is how we have done it in the clinic previously. Let's see how that fits into what you did."

Forms and Memorandum Library

I also utilize, just by way of example, a briefs, forms and memos library. This tracks and organizes the documents which our clinic has produced, and I have put them in an organized fashion. At this point, I don t release them to the students, but it is something I am also considering.

IV. Conclusion

There is no textbook yet. Again, how that will be done I think is something interesting to think about. If it all comes down to the clinic specifics, how many students, who the clients are, and credit semesters then I just think it's very important for us as a transactional clinical community to share documents and to share best practices because there are a lot of very smart people doing smart things. If we can get exposure to that we can really have impacts on the local communities that we are working with as well as the students.

QUESTION

When you are using prior student work, do you avoid that because you think if they do just change names, change e-mails, it fits too easy?

ROBERT STATCHEN

Possibly. But I also see the value of using prior student work because the end client product is improved. Like the example I mentioned earlier where the student came in and said, "Why don't we change this a little bit." I want to expose students to the concept of a firm improving its processes and improving its forms.

QUESTION

I guess students who rely on the forms or prior student work will just come in and say, "Well, this really didn't fit." So you've got to let them go and try it and show them how it's efficient.

ROBERT STATCHEN

That's true, right.

QUESTION

So I guess it depends on the context, though, as to what is the most efficient way to get things done.

ROBERT STATCHEN

Right. And I am continually getting a better understanding of the legal issues related to my fairly unique client base. One time, I had an independent contractor issue with a student, and I felt that I pushed them in the wrong direction because I gave them a sample that was dealing more with a different issue. So I focused them in the wrong direction by relying on a client form but that was the one I had at the time and now we have one that's a more appropriate.

QUESTION

Do you think about what kinds of skills you want your students to walk out of the clinic experience with? Is it to be somebody who came from a nonprofit board and deal with large groups? Is it going to be something more in dealing with individual clients? The macroenterprise and communities are going to be something larger. So how do we give the students skills that will last beyond the first three months of practice, the higher level skills?

SERGE MARTINEZ

I alluded to this earlier, but for me the last thing I really care about is whether they are able to draft document "X" in a good way. It's whether they are able to solve problems. I hope that they have the tools and the confidence to say, "Okay, here is how you assess the issue. Here is where I might go to find out the information that I need to do what's next. Here is how I will counsel the client to make that decision; here is how I will execute that. I will be careful, reflective, and deliberate on and think about ethics."

My students come to me all the time and ask why my clinic is different. I say, "Well, hopefully, I think we are all teaching the same end product." The odds are low that everybody in the child advocacy clinic is going to be a child advocacy lawyer. What you are learning is more the broader thing, and I think any clinic student should be coming out with those skills. I often hear people say, "When you go to work at a firm, X is going to happen." But most of the people I went to law school with worked at a firm only briefly. So I guess maybe it is applicable, but my students don't tend be to all going to work at firms. So I am sort of intrigued by that assumption that transactional lawyers are going to go work at firms and to see whether there is any correlation, anyway.

QUESTION

Do you do something that encapsulates that message or is it just that they have the experience and you leave it to them to figure out what skills they learned that are sort of extractable?

SERGE MARTINEZ

When they come to me, I try to say, "Look, now you know how to read the statute, so what will you do differently the next time around?"

ROBERT STATCHEN

What I am trying to do is, and I tell them this, is I want many of their "deer in the headlight looks" to come in the low threat environment of the clinic. I want them to have that initial feeling of what practicing law is about. Then I expose them to the resources that are available to assist them in becoming competent under the rules of professional responsibility. How do you get that Model Rule 1.1 or 1(B) competency? It's important to show them the way to become competent and not to be intimidated by what they don't know and understanding that they are not

supposed to know everything right away and it's going to be ten to fifteen years before they start knowing things off the top of their head. Then, also the take away I like them to have is that transactional lawyers can do public service. It's one of the things that they are surprised at in some respects.

QUESTION

I have a question for Serge regarding the timing of complex cases in the handover process because that's one of the things that I really worked on is to have a beginning and an end. This semester I did have a client that carried over, but the defined tasks that were defined for the first semester were completed and there were additional tasks and we had a new letter saying, "These are the tasks we are going to do for you now." How do you work that sort of carryover and getting the new students up to speed on that and keeping the client happy?

SERGE MARTINEZ

Well, first of all I try to prepare the clients by telling them that they are going to have lots of lawyers through the course of this representation. I make sure they are fine with that and understand that. I say it's free, but that doesn't mean there are no costs. You are going to have detailed transfer memos but really the unifying factor is me. I don't really know a way around that. During the summer it means I have a lot more work than I might have otherwise, but it means also there is some continuity on the case rather than, you know, some clinics pass it off again to another summer coverage person which we don't do. I try really hard to make sure that the files are in pristine condition and that we have got detailed transfer memos with every possible thing. But at the end of the day, the thing that really keeps it all together is me.

QUESTION

How do you involve students in case selection?

SERGE MARTINEZ

In my clinic we have two or three different ways of selecting cases. Number one is, if it is during the summer, obviously, I just won't make that decision or if it's really cool and I know that I want students to deal with. The more interesting cases come up when it is something that I don't want to take, but the students do. We have possibly foolishly incorporated a sort of constitution in the clinic where if 80% of the students want to take on the case and even if I don't they can overrule that

selection. In the larger cases they have been uniformly ecstatic because they think, oh, it's so cool. Then I am completely undaunted by the challenges that so worried law professors of learning the law. Sometimes, once they get in they start to regret what they have done, but they have no concept of the fear of big cases.

ROBERT STATCHEN

I classify clients in that group of A, B, and C and then I create four groupings of three clients. During orientation the students review those and decide which student law firm will take which group of clients. Hopefully people can pick and get with clients that are of interest to them.

QUESTION

You want to keep these kids interested, keep the students interested. As a practitioner it really offends me that they have chosen to go to law school, they want to be lawyers. They should want to have some skills. So is it really the case that there is this constant need to keep them engaged or am I just being too cynical?

ROBERT STATCHEN

What I have learned over my first two years is it is likely there is going to be one difficult student every semester who needs additional motivation. Fortunately, I get at least two people applying for each slot in the clinic. They are motivated, they are working hard, and I feel a sense of responsibility to channel that motivation properly, to foster it, and to make it grow. But other than the one difficult student that I have to watch out for, I don't see the lack of motivation or interest.

SERGE MARTINEZ

I have found that whatever I am interested in and enthusiastic about the students will pick up on that and do the same. So I have actually had the opposite problem. I don't want them to adopt the policy of Serge Martinez too much. I tell them that I don't want a bunch of mini-Serges running around. I want them to have their own ideas about this, but it doesn't work.

QUESTION

How many transactional clinics are there? I am not familiar with the concept at all, and I am fascinated.

AUDIENCE MEMBER

There are 200 accredited law schools and about 60 transactional clinics exist. The penetration rate is still relatively low.

TINA L. STARK

This is not intended to be shameless self-promotion, but in between the world of drafting classes and transactional skills classes there are simulations in the classroom in the world of transactional clinics that are community economic development and nonprofit oriented or whatever else they are. There are some schools doing something in-between, and Emory is one of them. We are trying to create cooperation among the university units to help commercialize university inventions. So we have a joint program between the law school and between Georgia Tech College of Management, which is a business school, and there are science and engineering schools where we pre-select Ph.D. students from Georgia Tech and from Emory. We put them on teams where they function to learn about the process of commercializing new technologies. Then they apply what they learn to their Ph.D. projects, so that they move the Ph.D.s invention further from the laboratory towards being commercially viable. There are a number of schools doing that kind of work in terms of giving students not just transactional, but lawyering skills experiences which are both transactional and kind of IP intensive by their nature.