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## LEARNING FROM DRAMATIZED OUTCOMES

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### I. INTRODUCTION

Professional training should involve practice. We don't mean to say simply that lawyers in training should have the chance to "practice" law in clinical settings (although they certainly should have that chance). We mean to say that the full variety of lawyering skills should be examined and tested in safe settings before those skills are put to service on behalf of clients. Budding professionals need batting practice before they enter the starting lineup. What's more, they need reflective, conscientious practice rather than absent-minded drill.

The value of training exercises to law students has long been accepted. The iconic Socratic law school classroom has always been a place for practicing legal reasoning and argumentation rather than for simply absorbing legal knowledge. Indeed, Socratic teaching in law schools began under the flag of progressive education's four principles of learning by doing: it follows the work of Friedrich Froebel, Edward Seguin, and Maria Montessori in that it is *student-centered* rather than podium-centered, and it is *discursive and experiential* rather than didactic.<sup>1</sup> As Lev Vygotsky would have

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1. See, e.g., FRIEDRICH FROEBEL, FROEBEL'S CHIEF WRITINGS ON EDUCATION (J.

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counseled, learning in law school classes is *dialogic and social* rather than an isolated endeavor,<sup>2</sup> and, as John Dewey would have insisted, it is *geared to the development of mastery and judgment* rather than to the accumulation of knowledge.<sup>3</sup>

Our work builds on this progressive tradition of experiential learning. Just as Christopher Columbus Langdell used Socratic questioning to turn the law school classroom from a lecture hall to a hotbed of discussion and debate,<sup>4</sup> we use a technique known as process drama to place law students' discussion and debate in a practice context and to make their practice—their process—the principal subject of their study. Process drama, like much experiential pedagogy, involves cycles in which students try something (act), think about what they did (reflect), and draw lessons from their reflection (conceptualize). The cycle then begins again as students apply their conceptualizations while trying something new.<sup>5</sup> The beauty of these experiential methods is that *the outcomes of student effort are not just indicators of learning progress, but also—and more importantly—subjects of perpetual study.*

In what follows, we will first explain the origins and substance of process drama as a teaching tool. We will then offer a template for creating process drama exercises in the law school setting, defining the ingredients and stages of a productive interactive scenario. Next, we will explain how the ingredients and stages of a process drama are used as students perform and critique their roles. Finally, we will assess the value added when students thoughtfully enact legal practice and carefully critique the

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W. Adamson ed., S. S. F. Fletcher & J. Welton trans., Longmas, Green & Co. 1912), available at <http://core.roehampton.ac.uk/digital/froarc/frochi>; MARIA MONTESSORI, *THE MONTESSORI METHOD* (Anne E. George trans., Frederick A. Stokes Co. 1912), available at <http://digital.library.upenn.edu/women/montessori/method/method.html> (explaining the need for a reconstruction of education methods into a more student-centered approach); EDWARD SEGUIN, *REPORT ON EDUCATION* (2d ed. 1880) (reporting on Seguin's work as U.S. Commissioner on Education at the Vienna Universal Exhibition, and advocating for kindergarten programs and other progressive "garden school" reforms).

2. See L. S. VYGOTSKY, *EDUCATIONAL PSYCHOLOGY* (Robert Silverman trans., St. Lucie Press 1997); L. S. VYGOTSKY, *MIND IN SOCIETY: THE DEVELOPMENT OF HIGHER PSYCHOLOGICAL PROCESSES* (Michael Cole trans., Harvard Univ. Press 1978).

3. See JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* (Free Press 1966).

4. For discussion of the historic controversy surrounding Langdell's method, see Book Note, *Langdell's "Selected Cases on Contracts,"* 6 S. L. REV. 448 (1881).

5. ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT 198–99* (2001).

outcomes of their actions.

## II. DEFINING PROCESS DRAMA

Process drama uses theatre in nontraditional, experiential ways to encourage active learning.<sup>6</sup> Its name reflects the fact that it emphasizes process over final product.<sup>7</sup> This means that students engage in and reflect on the process of acting in the world, and they learn from—and are judged by—their reflective engagement in that process. A process drama involving a client interview, for example, is a study in task analysis, task planning, and contingency-management in task execution, rather than an effort to perform a scripted or “model” interview. Process drama differs from traditional theatre practices in that it “proceeds without a script, its outcome is unpredictable, it lacks a separate audience, and the experience is impossible to replicate exactly.”<sup>8</sup> It emphasizes *what is happening now, rather than what is happening next.*<sup>9</sup> Like ritualized martial arts training, it focuses less on final product outcomes than on the moment-to-moment elements of developing the art of practice.

Students in a process drama are not told what to do in hypothetical or future situations; they are told to do things and then to reflect on the positive and negative consequences of their actions. A student who learns sums; multiplication tables; and the formulae of algebra, geometry, calculus, and trigonometry is able to apply that learning in order to add, multiply, divide, and calculate the results that mathematical formulae yield. S/he can report memorized associations and perform prescribed operations.

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6. See DOROTHY HEATHCOTE & GAVIN BOLTON, *DRAMA FOR LEARNING: DOROTHY HEATHCOTE'S MANTLE OF THE EXPERT APPROACH TO EDUCATION* 15–18 (1995).

7. See CECILY O'NEILL, *DRAMA WORLDS: A FRAMEWORK FOR PROCESS DRAMA* 4–5 (1995) (“[I]f the process is allowed to grow in harmony with the rules of the dramatic medium, it will provide an authentic dramatic experience for the participants. . . . When drama techniques are valued only for their capacity to promote specific competencies and achieve precise ends, and remain brief, fragmented, and tightly controlled by the teacher or director, the work is likely to fall far short of the kind of generative dramatic encounter available in process drama.”).

8. *Id.* at xiii.

9. See *id.* at xvi (“[I]mprovised encounters will remain at the heart of the event as the source of much of its dramatic power.”). Attention to the event, or focus on the now, is a significant commonality between process drama and Langdell's Socratic method.

But s/he doesn't necessarily understand what s/he is doing. Like a child playing with mathematical concepts, an aspiring professional needs to do more than learn and apply rules and formulae. S/he needs to understand what s/he is about and to think critically about alternative courses of thought and action. This kind of understanding and critical thought enables creativity and innovation. It also enables career-long professional growth and the advancement of the practitioner's discipline and art.

Dorothy Heathcote, who taught children and teachers for more than sixty years, championed the use of drama in education because it contextualizes learning so that students "think from within a dilemma instead of talking about the dilemma."<sup>10</sup> Heathcote believed a decline in apprenticeship-type training—in teaching students to do things rather than just remember things—had impoverished education.<sup>11</sup> She argued that schools were isolating students from the real world, asking them to drop their lives at the schoolhouse door.<sup>12</sup> Students in schools were learning things in fragments rather than marshalling knowledge in order to do things, and this kind of learning left them ill-equipped to function in the real world.<sup>13</sup> To counter this tendency, Heathcote designed what has come to be known as the Mantle of the Expert technique.<sup>14</sup>

The primary function of the Mantle of the Expert technique is to provide a context in which students can call upon—and work to extend—all of their knowledge and skill to solve a specific problem or question.<sup>15</sup> To this end, students are asked to take on the roles of experts in a particular field. For example, students could be asked to grapple with the question, *How does gentrification affect a community?* They may take on the role of architects charged with designing a new shopping mall next to the Schomburg Museum in Harlem, New York. Stepping into the expert roles, students shoulder a heightened level of responsibility. They discover that

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10. DOROTHY HEATHCOTE, *Drama as a Process for Change*, in COLLECTED WRITINGS ON EDUCATION AND DRAMA 114, 119 (Liz Johnson & Cecily O'Neill eds., 1984).

11. HEATHCOTE & BOLTON, *supra* note 6, at 31–32.

12. *Id.*

13. *Id.*

14. For Bolton's compelling analysis of the Mantle of the Expert approach, and of how he came to understand it through observing Heathcote's teaching, see *id.*, at 187–91.

15. See *id.* at 32 ("The teacher must plan for a continuing investigative relationship between the student and the information to be researched.").

their decision making carries power, weight, and consequences, and thus, they become personally accountable for acquiring the skills needed to achieve their prescribed tasks. Reading and comprehending curriculum material becomes essential for students to perform their jobs. The learning goes far beyond simply ingesting material, for students are forced to critically grapple with how they will use that material to make decisions. As leading drama practitioner Gavin Bolton states, students engaged in process drama are forced to take “an active, urgent, purposeful view of learning, in which knowledge is to be operated on, not merely to be taken in.”<sup>16</sup> Students are ushered into an imaginative space where they can venture beyond comprehension to application. In addition, as we shall show, students are forced to analyze their thoughts and actions in a critical process that takes them beyond application to higher order thinking.

Although many educators acknowledge the effectiveness and value of using drama in the classroom, they often are resistant to actually doing it.<sup>17</sup> Some teachers think drama is useful only for those students who are artistically talented, and other teachers believe that they, too, must possess a certain level of creative charisma in order to facilitate a drama exercise within the classroom.<sup>18</sup> Yet, as experts in educational theater agree, using process drama to facilitate and elevate classroom learning has more to do with proper lesson planning than with students’ or teachers’ artistry.<sup>19</sup> When properly designed, process drama is as suitable for students in less obviously performative professions like law, business, or medicine as it is for students in the performing arts. With this in mind, we offer a template for the effective design and

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16. *Id.*; see also HEATHCOTE, *supra* note 10, at 119 (“[Y]ou bring [students] to a point where they think from within the framework of choices instead of talking coolly about the framework of choices.”).

17. Barry Oreck, *The Artistic and Professional Development of Teachers: A Study of Teachers’ Attitudes Toward and Use of the Arts in Teaching*, 55 J. TCHR. EDUC. 55, 55 (2004).

18. LESLEY HENDY & LUCY TOON, SUPPORTING DRAMA AND IMAGINATIVE PLAY IN THE EARLY YEARS 2 (2001) (“Drama, possibly, causes more fear among adult workers and teachers than any other of the creative subjects. . . . There is a perception that to use drama the early years practitioner will have to have strong personal acting skills.”).

19. Brian Edmiston, “What Have You Travelled?”: A Teacher-Researcher Study of Structuring Drama for Reflection and Learning (1991) (unpublished Ph.D. dissertation, Ohio State University) (on file with Thompson Library, Ohio State University); see also O’NEILL, *supra* note 7, at xiii.

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use of process drama scenarios in legal education.

### III. CREATING PROCESS DRAMA FOR THE LAW SCHOOL CLASSROOM

A process drama for legal training should serve two distinct but related functions: it should not only address the need, common to all professional training, to enhance students' interpersonal communication skills, but it should also usher students to a deeper analysis of law. The template set out below is designed to assure that students are able to seize both the opportunity to grow as listeners and strategic communicators, and the opportunity to grow as legal thinkers and strategic interpreters. It is also designed to illuminate the intricate connections between human communication and legal interpretation—between how human and social problems are expressed and understood, and how legal rules take on meaning.

We begin with a list of recommended ingredients for a process drama in law. Briefly, they are:

*Two or More Protagonists.* A process drama scenario should involve protagonists with competing interests. An attractive nuisance scenario, for example, might involve a property owner who has installed a rifle range and a neighbor who has small children. A kidnapping case might involve an adult who has taken a child away from home against the parents' wishes, the child's parents, and/or a prosecutor as representative of the state. In a counseling scenario, students may all represent the same protagonist. In an adversarial or deal-making scenario, each side will be represented by different teams of students.

Persons playing the protagonist role should be trained and skilled both at managing interactions with their student lawyers and at dramatizing the conflict at the heart of their legal troubles. Protagonists should be full-blown characters rather than stick figures representing abstract social interests. Their characters should be carefully developed so that the protagonists' interactions with student lawyers and with other players are informed and motivated by a clearly drawn personality and personal history. But character development alone is not sufficient. People working in role as protagonists must be alert to the relational and social issues that drive the central legal conflict and must be prepared to highlight those issues as the conflict plays out.

*A Background Quest for Each Protagonist.* Each protagonist should have one or more projects or goals that could be inhibited.

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*Complicating Circumstances.* The scenario should involve circumstances that put the protagonists at odds (or potentially at odds) as they pursue their projects and goals. Each protagonist should have at least one “Ace in the Hole”—a trait or circumstance that strengthens the case that s/he should prevail—and at least one “Achilles Heel”—a trait or circumstance that weakens the case that s/he should prevail.

*A Central Legal Issue.* Any realistic law school simulation will contain multiple legal questions that are governed by multiple legal doctrines. Nonetheless, there should be a single legal issue (or set of issues) that serves as a pivot in the scenario students will be called upon to enact.

*Related Relational & Social Issues.* Law is fundamentally about how people relate to one another in personal, commercial, and social spheres. It is a means of regulating personal, economic, and social behavior. The relational and social interests addressed by the central legal issue should be clearly drawn in a process drama scenario so that students can see those interests embodied in the scenario’s characters and participate in articulating the competing interests that lie at the heart of any legal matter.

*A (Transcribed) Moment Exemplifying the Protagonists’ Conflicts of Interest.* We have found it highly useful to build into each scenario a scripted encounter during which the protagonists’ clash of interests becomes manifest and explicit. This is not to say that one should or could script an interaction that will actually occur during the exercise. It is to say that background materials for persons working in role as protagonists should contain a scripted account of a past encounter between (or among) the protagonists during which their personal and circumstantial differences are brought to life.

*Lawyering Collaborations.* A process drama for legal training will usually include a role for students acting collaboratively as lawyers. Students collaborate to conduct relevant research and develop a plan for providing a specified kind and limited amount of legal advice and/or advocacy for one of the protagonists.

*Lawyering Encounters to Achieve Interim or Final Resolution.* In a counseling scenario, students interact with the client to facilitate decision making. In an adversarial or deal-making scenario, students representing the competing protagonists have at least one encounter or written exchange in which they strategize, negotiate, or advocate on behalf of their clients.

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*Structured and Guided Reflection on Lawyering Collaborations and Encounters.* Important lawyering collaborations and encounters are reviewed by both participants and observers in a process that subjects student lawyers' choices and performances to systematic, critical analysis. It is here that students progress to higher order thinking. Reflection sessions are supervised by faculty and organized to assure that attention is given to targeted task dimensions and skill sets;<sup>20</sup> that peer, self, and supervisory critiques are thought out in advance of the reflection session;<sup>21</sup> and that attention is given to both successful and regrettable in-role choices.<sup>22</sup>

We can flesh out these ingredients by describing a process drama simulation involving antidiscrimination law. In this fictitious case, we have two *protagonists*—an apartment building owner named Clemons and a tenant named Young. Each has a simple *quest*. Clemons wants to operate a successful business. To do so, s/he needs to keep the apartment building free of problem tenants. Young wants to continue living in the apartment because it is affordable, comfortable, and convenient. To do so, s/he needs a lease renewal. Young acquires a dog and a roommate. Clemons subsequently learns from the building superintendent that Young is troublesome. In response to the superintendent's reports, Clemons refuses to renew Young's lease. The protagonists' quests

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20. See Peggy Cooper Davis & Aderson Belgarde Francois, *Thinking Like a Lawyer*, 81 N.D. L. REV. 795, 798 (2005), for in-depth discussion of lawyering dimensions and skills. See also *The Lawyering Method*, N.Y.U. L., <http://www.law.nyu.edu/experientiallearninglab/methods/lawyeringmethod/index.htm> (last visited Nov. 17, 2011).

21. See Joshua Aronson, Ebony Coletu, Peggy Cooper Davis & Bonita London, *Research on the Development of Professionalism*, N.Y.U. L., <http://www.law.nyu.edu/experientiallearninglab/researchdevelopmentprofessionalism/index.htm> (last visited Nov. 17, 2011); *The Origins of American Legal Education*, N.Y.U. L., <http://www.law.nyu.edu/experientiallearninglab/methods/origins/index.htm> (last visited Nov. 17, 2011) (“The Lawyering Method, refined over more than thirty years, identifies the component parts of each lawyering task, engages students in the collaborative performance of that task, then takes student performances as texts for structured, collaborative reflection and critique.”).

22. See *The Lawyering Method*, *supra* note 20, for discussion of Role Analysis and its interplay with other forms of critical self-analysis, including Institutional and Socio-Cultural Analysis, Psychological Analysis, Rhetorical Analysis, and Rule-Based Analysis. See also James Webb, Richard Schechner & Peggy Cooper Davis, *Actor/Teacher Training*, N.Y.U. L., <http://www.law.nyu.edu/experientiallearninglab/actorteachertraining/index.htm> (last visited Nov. 17, 2011) (discussing the need “to demystify and systematize the ‘acting’ and critique functions that characterize simulated problem-solving”).



are thereby *complicated and set at odds*.

Young believes that the refusal to renew is a result of racial discrimination; s/he is a person of color. Clemons believes that the refusal to renew was an appropriate response to other tenants' complaints about noise and about Young's poorly trained dog. Clemons's ace in the hole is a record of accommodating diverse tenant groups fairly, in a conscious effort to gentrify his buildings without sacrificing cultural heterogeneity. Clemons's Achilles heel is that his business is informal, loosely managed, and dependent on personal loyalties that sometimes cloud supervisory judgment. Young's ace in the hole is status as a long-term tenant with impeccable credentials and no prior record of late rent payments or neighbor complaints. Young's Achilles heel is that s/he is blind to difficulties presented by an adored pet and quick to attribute criticism to bias and intolerance. What neither the tenant nor the owner understands is that complaints about the tenant were exaggerated to an unknown extent and that they were motivated in part by other residents'—and the building superintendent's—disapproval of the tenant's romantic relationship with the new roommate. The tenant's claim embodies our *central legal question*: "What constitutes unlawful housing discrimination?"

The competing interests in this case raise a number of *relational and social issues*: Should residential owners have autonomy to manage their properties as they see fit? To what extent should a landlord accommodate a diverse tenant population? Are procedural measures (like notice requirements or keeping records of tenant complaints or objectionable practices) necessary to prevent unlawful discrimination? At what point do a tenant's lifestyle choices infringe upon the rights of other tenants and property owners?

Two *transcribed incidents* embody the protagonists' legal and personal difficulty. They are set out in confidential memoranda for actor-teachers who work in role as the protagonists, and they are described (but never repeated verbatim) by each protagonist in the course of a first meeting with his or her lawyer. They are reproduced below in full:

*Time: 1:30 pm, October 4, 20XX*

*Place: Lobby (near mailbox area) of 837 Cloremont Ave*

*CLEMONS: Hi, Mr./Ms. Young, I'm Lee Clemons, President of Clemons Properties. We met back in February at the reception.*

YOUNG: *Hello, how are you?*

CLEMONS: *Good. Great. Look, Mr./Ms. Young, it seems that there have been some complaints made by other tenants in the building about noise coming from your apartment.*

YOUNG: *Noise?*

CLEMONS: *Yes, from your dog. Is it your dog, or your roommate's dog?*

YOUNG: *[bristling] It's my dog. What has this got to do with my roommate?*

CLEMONS: *Well, nothing, I guess. I thought that maybe the dog came with the roommate, who I understand also moved in recently.*

YOUNG: *Well, there's nothing in my lease that says I can't have a roommate. Or a dog.*

CLEMONS: *I'm not talking about your roommate. People have been complaining to Jesse Jones about the dog. . . .*

YOUNG: *The dog is very well-behaved. Who would have complained?*

CLEMONS: *Look, we've had a few complaints, and I don't want to argue about the dog. I just want a building full of happy tenants. And that's not what I've got right now, you understand? So can you please see what you can do to fix the problem?*

YOUNG: *Sure, but I don't know how I can get the dog to be any quieter than she already is.*

\* \* \*

*Time: 4:30 pm, December 20, 20XX*

*Place: Telephone conversation, phone rings in Clemons's office . . .*

CLEMONS: *Lee Clemons speaking.*

YOUNG: *[Mr./Ms.] Clemons, this is Courtney Young. It seems that there has been some kind of misunderstanding—*

CLEMONS: *Mr./Ms. Young, if you are referring to the Notice of Non-Renewal we issued, there is no misunderstanding.*

YOUNG: *What?! I've lived here for nearly ten years, and I haven't been late on a single rent payment! And this is how you show your appreciation? By evicting me?!*

CLEMONS: *It's not an eviction, Mr./Ms. Young, it's a non-renewal. And this shouldn't come as a surprise to you.*

YOUNG: *What are you talking about?*

CLEMONS: *I asked you to take care of the dog situation, and you*

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*didn't. And it turns out that there have been other complaints as well.*

YOUNG: *I don't understand how you could do this without talking to me first.*

CLEMONS: *I did talk to you, that day in October, remember? And you gave me an attitude about it.*

YOUNG: *Attitude?! How dare you! Where do you get off talking to me like that? You don't know anything about me—*

CLEMONS: *I know everything I need to know. If you had been more cooperative, I would have been happy to renew your lease.*

YOUNG: *Can we at least sit down and talk about this rationally? Give me a chance to explain the situation to you—*

CLEMONS: *I've already made my decision, and there are people lining up to take that apartment off my hands when your lease expires, so I don't think there is an awful lot to talk about. I'm sorry.*

*[Young makes an indecipherable sound then hangs up. Clemons follows suit.]*

Law students *collaborate* in teams of two or more as junior attorneys, half representing the building owner, Lee Clemons, and half representing the tenant, Courtney Young. Each team interviews its client, conducts factual and legal research, and works with its client to prepare for an *encounter* with an opposing team: a mediation session that the Human Rights Commission has arranged in the hope of settling the tenant's pending complaint.

At crucial points, students' work in role is interrupted for collective *reflection* on what they have done, what effects their actions have had, and what tactical or strategic corrections they might make. Each reflection session is an occasion for reviewing the students' legal reasoning, fact development, goal setting, and strategic communication. All reflection sessions expose and explore the interconnectedness of legal reasoning and human understanding. A walk through one of the reflective critique sessions of the Clemons-Young antidiscrimination process case will allow us to elaborate on how each of the simulation elements contributes to student learning, and to be more explicit about how students' lawyering technique and their comprehension of law are simultaneously enhanced in the course of a process drama.

#### IV. USING PROCESS DRAMA IN THE LAW SCHOOL CLASSROOM

The first reflection session in the Clemons-Young process drama typically<sup>23</sup> occurs after the student lawyers' initial interviews with their clients. Under optimal circumstances, these sessions are videotaped, and the videotapes are reviewed by all participants as they prepare for their sessions. Each session is, of course, an occasion for focusing students on the level of thoughtfulness and the variety of interpersonal techniques required for working productively and collaboratively with a client.<sup>24</sup> Issues like time management, developing trust and rapport, choosing question forms and styles, and establishing professional roles and boundaries are inevitably on the table. It is, however, equally an occasion for interrogating the delicate and indeterminate process of translating ordinary human situations into legal questions and formulating helpful answers to those questions. It is not enough, therefore, that critique participants review students' responses to interpersonal challenges—like time pressures, reticence, defensiveness, and role uncertainty—that are generic to a professional interview. They must also critique students' efforts to identify the client's quest, to understand the factual circumstances and intersecting interests that are complicating that quest, and to figure out how legal rules and issues of legal interpretation might hinder or support the client's quest. This is the raw material with which student lawyers will work as they research relevant law and try to use the law to advance or protect the client's endeavor. When faculty and actor-teachers begin their work with clear definitions of the process drama's protagonists, quests, complications, and central legal issues, they are positioned to usher students through the complexities of issue translation, and thereby assure that students' interpersonal and legal reasoning skills are examined and developed in tandem. This means, for example, that students are more easily led to appreciate the extent to which weaknesses in developing trust and rapport can compromise lawyers' comprehension of facts and thereby mask the relevance of favorable rules. To be more specific, it is easier to demonstrate that lawyers who seem unsympathetic or excessively distrustful toward

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23. The timing of reflection sessions will vary depending on what tasks students are first asked to perform.

24. See ANTHONY G. AMSTERDAM, PEGGY COOPER DAVIS & ADERSON BELLEGARDE FRANCOIS, *LAWYERING* 145–65 (2010); KRIS FRANKLIN, *THE LAWYER'S PRACTICE: A CONTEXT AND PRACTICE CASE FILE* 3–10 (2011).

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their landowning client may not communicate well enough to learn of mitigating facts like the extent of the dog's disruptiveness. They therefore may not suspect the relevance of rules about the mitigating effect of a non-discriminatory motive. At the same time, it is easier to help students see that those who fail to maintain an appropriately critical distance in dealing with their landowning client may not question probingly enough to learn of the building superintendent's animosity toward the tenant and, as a result, may not be led to investigate agency principles that bind an employer to an employee's conduct.

One of a teacher's chief functions in the critique of an early client interview is to monitor student lawyers' identification and formulation of controlling legal questions. In the Clemons-Young scenario, as in any simulation, there are legal issues that any student lawyer should address. Procedural, technical, and other secondary issues<sup>25</sup> are best identified early in the representation process; they involve choices that turn on information the client may need to provide, and they might also affect the client's well-being. Choice of forum, for example, may depend both on the nature, time frame, and site of the client's goals and activities, and on the client's convenience and comfort. But the identification of central legal issues has a deeper importance that is best understood in connection with previously identified relational and social issues. Indeed, the reason it is important to identify in advance a central legal question and accompanying relational and social issues is that many of the most profound lessons of a process drama are conveyed when a central legal question and the relational and social issues that it entails are embodied in the spontaneous behavior of protagonists with competing quests. The Clemons-Young case exemplifies this.

Trained and focused simulation participants working in role as Clemons and Young embody the rich complexities that courts, litigators, and legislatures wrestle with as they attempt to protect citizens against discrimination, while at the same time protecting against litigious harassment and unduly burdensome conduct controls. What is discrimination? How can discrimination be detected and regulated? How is it experienced? What states of mind are necessary to make a selective process unlawfully

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25. It should be noted that a procedural issue can serve as a central legal question, as in a process drama about the voluntariness of a confession.

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discriminatory? How should the law deal with mixed motives? When questions of fact are perceived and reported in an emotionally charged context, which reporter should bear the benefit of the doubt?

All of this is crystallized in Clemons's and Young's reports of their transcribed but still ambiguous conversations. As they ask about these conversations, student lawyers should probe the following questions: Did Clemons discriminate? Did Clemons know or suspect that Young was African-American? That s/he was homosexual? How, if at all, did Clemons's knowledge or suspicions about Young's race or gender affect the two parties' interactions as landlord and tenant? Might Clemons have been willfully blind to discrimination or negligent in failing to prevent it? Must a businessperson formalize application or complaint or renewal procedures to protect tenants against discrimination? Was Young hypersensitive to the possibility of discrimination? Was Clemons hypersensitive to the possibility of being accused of bias?<sup>26</sup> What should a presumptively neutral factfinder make of Clemons's and Young's different interpretations of their encounters?

When teachers identify a central legal question, think through its relational and social implications, make it a point of conflict between or among realistically drawn protagonists, and assign student-lawyers to address the central legal question in order to protect the protagonists' interests and further their quests, the stage is set for a process drama. Careful selection of these elements should assure that a process drama will provide more than an opportunity to practice a set of lawyering skills. It will provide occasions to deepen students' understanding of both the lawyer's art and the law itself.

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26. For a brilliant treatment of the relational barriers present in communications between people with different social identities, see Philip Abita Goff, Claude M. Steele & Paul G. Davies, *The Space Between Us: Stereotype Threat and Distance in Interracial Contexts*, 94 J. PERSONALITY & SOC. PSYCHOL. 91 (2008) (describing the findings of experimental research regarding tendencies toward social distancing) and CLAUDE M. STEELE, WHISTLING VIVALDI: AND OTHER CLUES TO HOW STEREOTYPES AFFECT US (2010) (contextualizing and explaining the social distance findings).

## V. MINING THE FULL POTENTIAL OF PROCESS DRAMA

What follows is an approximate transcript of a conversation with a newly minted lawyer; we reproduce it to describe a syndrome that process drama in legal education is especially suited to prevent:

*Young Lawyer:* I graduated from law school several months ago, and I'm still looking for a job.

*Professor Davis:* What kind of work would you like to do?

*Young Lawyer:* I don't know. When I started law school, I wanted to be a labor lawyer and protect workers' rights. But then, in the summer after my first year, I worked at an agency that heard workers' claims. I hated the work. The employers were mostly small businesspeople. Lots of them were witty. They all had stories to tell. They felt hurt about being made out to be villains. I guess I just lost my appetite for being a warrior for working people.

*Professor Davis:* How can I help?

*Young Lawyer:* I don't know. The market for lawyers is tough right now. And when I'm interviewing for jobs I think people can sense that I don't have enough confidence or enthusiasm about lawyering to be successful at it.

We think of this young lawyer as a "Disenchanted Warrior" who has failed to find a laudable or satisfying professional purpose. Disenchanted Warrior syndrome is not unusual, and it reflects more than the aftermath of a severe economic downturn. It reflects a common failing of legal education: the tendency to prioritize the mastery of rules and to slight the mastery of understanding and using rules in context.

Law school curricula focus closely—and appropriately—on governing rules, for "learning the law" is the most basic—and most easily tested—of a law student's tasks. One should not leave law school without knowing that discrimination in the sale or rental of housing can be unlawful. But many law school curricula focus too little on the relational contexts in which rules are interpreted and used. This is understandable, for the interpretation of an ambiguous set of communications in a complex human setting can be devilishly difficult. What, after all, was the meaning of the transcribed exchanges between Clemons and Young, and what legal consequences should flow from them?

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Socratic discourse, the mainstay of the law school classroom, is all about testing rules—like the rules against discrimination on grounds of race or sexual preference—against unexpected facts—like ambiguous exchanges between a striving realtor and a disliked tenant. The case method and Socratic questioning transformed the study of law from naked memorization to analytic practice.<sup>27</sup> They were the first important steps in the legal academy's move toward progressive and experiential pedagogy. Newer experiential forms like the process drama are logical and important next steps.

We encourage more ambitious forms of experiential learning both in the name of professional excellence and in the interest of fostering healthy engagement. Excellence in legal practice requires intellectual versatility. A well-trained lawyer is able not only to argue the naked implications of legal doctrine, but also to use legal doctrine as s/he works to advance particular interests in complex human situations. S/he knows what it means to interpret rules and manage relationships in the pursuit of particular goals. In other words, s/he knows how to interpret antidiscrimination law in a way that can be said to address the needs and lawful interests of potential discriminators, potential targets of discrimination, and the public at large.

Professional excellence and healthy professional engagement go hand-in-hand. A lawyer who is skilled at manipulating rules, but blind to the play of relationships is a lawyer at risk of disenchantment, for s/he is likely to feel like a hired rule-wielder, close kin to a hired gun. An intellectually versatile and more comprehensively trained lawyer is able to see rules as tools for managing relationships and to take satisfaction from the lawyer's work of adapting them to that end when the interests of a client are in tension with the legitimate interests of others.

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27. Peggy Cooper Davis, *Desegregating Legal Education*, 26 GA. ST. U. L. REV. 1271, 1281 (2010).