REFLECTIVE PRACTICE IN LEGAL EDUCATION: THE STAGES OF REFLECTION

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Reflection is a part of legal education. ABA accreditation standards require that externship programs must provide "opportunities for student reflection,"[1] and most clinical programs include reflection as an explicit learning outcome.[2] Although many teachers and students have seen the value of reflection, few have studied the process of reflection.[3] Fewer still have developed a model for developing reflective capacity. There is virtually no literature describing the way to teach reflection. This article defines "reflective practice" and presents an organizational model for teaching reflective practice in six stages. Research from psychology, in the fields of cognitive development, moral reasoning, and reflective judgment, supports the Stages of Reflection model described in this article. The model provides teachers and students with a deeper understanding of the process of reflection, and creates a pathway for the development of the professional value of reflective practice.

[1] A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 305(e)(7) (2013-14); Anahid Gharakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14 CLIN. L. REV. 61 (2007).

[2] *See e.g.*, Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems, and Possibilities,* 2 CLIN. L. REV. 413, 435 (1996); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996); Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 CLIN. L. REV. 623 (2003).

[3] Several scholars have described the use of journals in their clinical courses. *See, e.g.*, Ogilvy, *supra* note 2; Seibel & Morton, *supra* note 2; Morin & Howells, *supra*, note 2.   **R** Thus, reflection appears as a core value to the clinical teaching method.

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INTRODUCTION

"Good Judgment comes from experience. Experience comes from bad judgment."[4]

Experts in a professional field must have the capacity to exercise judgment – they do so quickly, seamlessly, and repeatedly.[5] Experts draw upon experience to distinguish relevant information from irrelevant, and to assess the risks of different courses of action. In most professional contexts, more than one course of action will successfully resolve the problem, and the expert will choose a particular course of action by using professional judgment.[6]

Professional experience informs the expert's intuition, and shapes the exercise of judgment. If asked to state the reasons for a decision or an action, the expert would likely describe a series of factors that led

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[4] IRVING T. MARSH & EDWARD EHRE, BEST SPORTS STORIES 1958, 120 (1958).

[5] DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER 49-69 (1984).

[6] Professor Donald Schön noted a critical distinction between the process where an expert—a professional—calls upon an intuitive, thoughtful action, and the process of thinking about the "thinking-in-action." Donald Schön, *Educating the Reflective Legal Practitioner*, 2 CLIN. L. REV. 231, 247 (1995). "[R]eflection-in-action is the process by which a new response is generated in the situation, in response to surprise and under conditions of uncertainty, in a way that involves on-the-spot experimentation and that does not necessarily take place in words . . . . [R]eflection on reflection-in-action is an attempt to describe the knowledge that was generated and the conditions under which it was generated and the on-the-spot experimentation was carried out." *Id*.

to the ultimate decision.[7] But the expert might also rely on "gut," or intuition, in the exercise of professional judgment.[8] Professional experience allows the expert to analyze instantaneously the factors that could affect the professional performance or the outcome.[9]

Deliberate reflection provides the new professional with a process to develop professional judgment. New professionals lack experience – the very thing that allows a professional to exercise professional judgment. This deliberate process of reflection is necessary because new professionals cannot rely on intuition or "gut" in the same manner as an expert. While the seasoned professional integrates seamlessly thought and action, the new professional must de-couple the action from the thinking about the action; the new professional must consciously activate a process to guide the rendering of professional judgment.[10] This is not meant to imply that experienced professionals have no need for reflective practice. Rather, they are more likely to integrate reflection in their practice. Professionals in other disciplines have described this process of thinking about action as reflective practice.[11]

The concept of reflective practice applies to the legal profession. A conscious and deliberate analysis of a lawyering performance can provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation. Skilled professors and mentors can guide this conscious and

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[7] As Schön noted, "Doing something and answering a question about what you are doing are completely separate activities." Schön, *supra* note 6, at 243.   **R**

[8] In *Thinking Fast and Slow*, Daniel Kahneman describes two parallel thinking processes—the intuitive and the rational. The intuitive process corresponds to the "gut feeling," while the rational process relies on logical reasoning. DANIEL KAHNEMAN, THINKING FAST AND SLOW 13, 20-24 (2012).

[9] In *Blink*, Malcolm Gladwell described the process of "thin slicing"—where professionals in divergent fields use small pieces of available data, together with experience and intuition, to make judgments in a professional context. MALCOLM GLADWELL, BLINK 14-16, 23 (2005).

[10] SCHÖN, *supra* note 5, at 49-69. For the reflective practitioner, the thought about the   **R** action and the action occur simultaneously, and in perfect integration, so that it is not possible to separate the action from the thought about the action. *Id.* The degree to which professionals integrate reflection into practice may vary from individual to individual. There is an important distinction between (1) learning from experience, (2) reflecting on the lessons learned from experience, and (3) engaging in reflective practice. Almost all professionals learn from experience—they avoid making the exact same mistake twice. Many professionals reflect on the lessons learned from experience—when they have time to reflect, they can apply the experience from one situation to the next situation. Professionals who engage in reflective practice make a conscious decision to integrate reflection into their practice. For them, the process of engaging in conscious and deliberate reflection becomes integrated into the practice.

[11] Schön described the workings of the architectural design studio, and the experience of jazz music. Schön, *supra* note 6, at 244.   **R**

deliberate analysis in the process of reflection.

Teaching reflective practice is neither obvious nor easy. The first issues lie in identifying the value of reflection. This is not obvious. It is easy to believe that the primary function of legal education is the transfer of substantive knowledge. But, in practice, substantive knowledge only provides a part of what is necessary to solve a client's problem. Reflection helps to build the skills, values, and modes of critical thinking required to frame and solve complex problems.

Teaching reflection is not easy. There are two problems typically associated with introducing a reflective component into a law school course. The first problem is resistance from students. They see reflection as too "touchy-feely" because it does not impart substantive knowledge; in their minds, reflection has little value or relevance to the mission of legal education.[12] The second problem derives from teachers, who have high expectations for their students, and who may feel disappointed in what they perceive to be a fairly low level of performance with respect to reflection.[13] Both of these issues can be addressed with a thoughtful approach to teaching reflective practice.[14]

The model proposed in this article begins with a concrete, descriptive level of reflection and then progresses in stages to more abstract and more contextual levels of reflection. Each stage adds complexity. The first stage – Competence – asks the student to relate her performance to the standard of a reasonably competent lawyer. At the next stage – Difference and Choice – the student considers different means to achieve the goal of the performance. Middle stages

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[12] Joshua E. Perry, *Thinking Like A Professional*, 58 J. LEGAL EDUC. 159 (2008). "For many enrolled in the required PR class, curricular expectations are focused solely on learning the black letter rules (i.e., passing the MPRE), discussing the seminal cases, and reviewing the activities that will and will not get one sideways with the Board of Professional Responsibility." *Id.* Perry used the term "mushy" to describe the reflective component of a professional responsibility course. *Id.*

[13] Ogilvy noted that while the journals in a law clinic provided a "window into the thinking and lives of . . . students," the journals did not demonstrate critical thinking. Ogilvy, *supra* note 2 at 59. Research from other disciplines suggests that reflection tends to   **R** be superficial unless it is approached in a systematic manner. Joan Rué, Antoni Font & Gisela Cebrián, *Towards High-Quality Reflective Learning Amongst Law Undergraduate Students: Analysing Students' Reflective Journals During a Problem-Based Learning Course,* 19 QUALITY IN HIGHER EDUC. 191, 195 (2013), *available at* http://dx.doi.org/10.1080/1353832 2.2013.802575. *See also* J.E. Dyment & T.S. O'Connell, *Assessing the Quality of Reflection in Student Journals: A Review of the Research*, 16 TEACHING IN HIGHER EDUC. 81 (2005). In a meta-study related to student reflection, Dyment and O'Connell found relatively low levels of reflection in student journals (only two of eleven studies reported high levels of reflection in student journals). *Id.* Rue, et al., *supra* at 195.

[14] Rué et al., *supra* note 13, at 195 "[S]ome studies suggest that reflective writing in   **R** higher education tends to be superficial unless it is approached in a consistent and systematic way." *Id.* (*citing* L. Orland-Barak, *Portfolios as Evidence of Reflective Practice: What Remains "Untold"?*, 47 EDUC. RES. 25 (2005)).

– Internal Context and External Context – ask the student to describe factors that affected her decision-making process, beginning with a consideration of personal preferences, experiences, biases and characteristics, and moving to consideration of the preferences, experiences, biases and characteristics of others. The next stage – Societal Context – asks the student to consider relationships between law and society, social, political, historical, or economic structures that affect the lawyering process. In the final stage – Metacognition[15] – the student should demonstrate an awareness of the effect of reflection on her thinking process.

The goals of reflective practice are to provide the professional with a self-improvement algorithm, and to increase the capacity of the professional to exercise judgment in the professional context. In a basic sense, reflective practice forces the professional to increase awareness of the factors that affect judgment. A higher level of awareness and consciousness of the decision-making process will lead to better and more ethical practice.[16] The goal of the Stages of Reflection model is to build a professional context for the student and to integrate reflective practice as a professional value.[17]

Moreover, the Stages of Reflection model follows the path of the student's cognitive and moral development. The research from psychologists and educational theorists informs us that cognitive development, moral development, and reflective judgment move along three axes. First, as students develop, they move from dualistic and absolute notions of reality to more relativistic and contextual understandings of reality. Second, the student develops the capacity to move from concrete experiences to abstract principles. Third, the student's focus shifts from a self-centered and self-interested perspective to a view that includes the interests of others, and ultimately to one that has universal application. As one researcher noted, "[r]egardless of the number of stages, positions, or perspectives, the sequence invariably suggests movement from a dualistic, objectivist view of knowledge to a more subjective, relativistic stance and ultimately to a contextual, constructivist perspective of knowing."[18] The Stages of Reflection tracks this trajectory. The stages move the student from an objective

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[15] The term metacognition implies "thinking about thinking." *See* Flavell, *infra* note 131 and accompanying text. In this model I mean thinking about reflection.						**R**

[16] At minimum, careful consideration of the interests of self and others ought to decrease ethical lapses based on inattention or a lack of thoughtful analysis.

[17] The scope of this article does not include a specific argument for the inclusion of reflective practice as a way to raise ethical practice. Rather, I assume the audience acknowledges the value of reflection in teaching professional practice.

[18] Barbara Hofer, *Personal Epistemology Research: Implications for Learning and Teaching*, 13 J. Educ. Psychol. Rev. 353, 356 (2001).

perspective to a relativistic perspective, and ultimately, to a contextual perspective.

Part I of this article defines reflective practice. Part II examines psychological theories of cognitive development, moral reasoning, reflective judgment, and adult learning, and compares these theories to the Stages of Reflection. Part III, presents a model for teaching reflective practice in a law school course: the Stages of Reflection. Part III also demonstrates the congruence of this model with information from other disciplines about cognitive development, moral reasoning and reflective judgment. Part IV provides examples of the application of the Stages of Reflection model.

PART I: DEFINING REFLECTIVE PRACTICE

Reflective practice is the integration of intentional thought and specific action within a professional context.[19] Reflective practice includes consideration of ethical rules and norms in a given field and offers guidance for the skillful application of professional ethics.[20] Reflective practice is not the same as occasional review or reflection about a past professional experience, rather, it is the ingrained habit of constant reflection.

One scholar has described reflective practice as the process that produces *praxis* – informed, committed action.[21] Another has described reflection as "a basic mental process with a purpose, an outcome, or both, applied in situations in which material is unstructured or uncertain and where there is no obvious solution."[22]

In the mid-1980s, Professor Donald Schön described the virtues of reflective practice,[23] and the reflective practitioner emerged as a new vision of professional master. Reflective practice became a critical learning outcome in many programs of professional education.[24]

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[19] CHRIS ARGYRIS & DONALD A. SCHÖN, THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS 12 (1989); s*ee also* DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS (1987); DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER (1984) [hereinafter SCHÖN, REFLECTIVE PRACTITIONER].

[20] Schön, REFLECTIVE PRACTITIONER, *supra* note 19, at 59-69.   **R**

[21] Stephen Kemmis, *Action Research and the Politics of Reflection*, in REFLECTION: TURNING EXPERIENCE INTO LEARNING 139, 141 (David Boud, Rosemary Keough & David Walker eds., 1985) ("We are inclined to think of reflection as something quiet and personal. My argument here is that reflection is action-oriented, social and political. Its 'product' is praxis (informed, committed action), the most eloquent and socially significant form of human action.").

[22] JENNIFER A. MOON, REFLECTION IN LEARNING AND PROFESSIONAL DEVELOPMENT: THEORY AND PRACTICE 10 (1999).

[23] SCHÖN, REFLECTIVE PRACTITIONER, *supra* note 19, at 338-54.   **R**

[24] For an extensive list of the use of reflective journals in other disciplines, see Ogilvy, *supra* note 2, at 59, n.9 (including reference to sociology, geography, literature and lan-   **R**

PART II: MODELS OF LEARNING AND MORAL DEVELOPMENT

"Essentially, all models are wrong, but some are useful."[25]

Researchers in the fields of cognitive psychology and educational theory have focused on understanding the process of acquiring and processing knowledge.[26] The phrase "epistemic cognition" describes the relationship between the knowledge and the person acquiring the knowledge. Researchers have noted that the way a person perceives knowledge – or reality – affects the way the person acquires and uses knowledge.[27]

Cognitive psychologists inform us that a person's cognitive ability develops in stages.[28] Early stages are defined by a submission to an external source of authority, a perception of problems in terms of right and wrong answers, and a view of knowledge as a self-contained, finite resource.[29] Likewise, moral reasoning and the capacity to exercise judgment progress in stages.[30]

A. Cognitive and Moral Development

Cognitive development refers to the development of thinking processes. Moral reasoning and reflective judgment are subsets of cognitive development, referring respectively to the ability to make moral decisions and the ability to solve unstructured problems. Reflective judgment and moral reasoning are particularly important for professional education because the professional will rely on higher levels of reasoning when confronting difficult and unstructured problems.[31] The following sections summarize the research of experts in cognitive and moral development. This research suggests that cog-

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guage, psychology, physics and education). The American Bar Association included "opportunities for student reflection" as a learning outcome for externship programs. A.B.A. STANDARDS, *supra* note 1.   **R**

[25] GEORGE E.P. BOX & NORMAN R. DRAPER, EMPIRICAL MODEL-BUILDING AND RESPONSE SURFACES 424 (1987).

[26] Barbara Hofer, *Personal Epistemology as a Psychological and Educational Construct: an Introduction*, *in* PERSONAL EPISTEMOLOGY: THE PSYCHOLOGY OF BELIEFS ABOUT KNOWLEDGE AND KNOWING 3 (Barbara Hofer & Paul Pintrich eds., 2004).

[27] *Id.*

[28] *See infra* Part II (A)(1-5).

[29] *See* infra Part II (A)(1)-(A). The different models described below relate to different aspects of the learning environment. For example, Perry's work was concerned with the development of cognition, Kohlberg's work focused on moral reasoning, and the work of King and Kitchener examined the development of reflective judgment. Schön's work centered on professional education—specifically on the development of what he called reflection in action. Schön, *supra* note 6.   **R**

[30] See *infra*, Part II (B).

[31] SCHÖN, *supra* note 5; SCHÖN, THE REFLECTIVE PRACTITIONER, *supra* note 19;   **R**
Schön, *supra* note 6, at 238-39.   **R**

nitive ability and moral judgment develop in stages. The progression from one stage to the next as described by psychologists and educational theorists parallels the progressions in the Stages of Reflection model described in Part III below.

1. Early Models

Beginning with John Dewey, Benjamin Bloom and Jean Piaget, theorists have attempted to explain the development of the human thought process. Dewey offered a comprehensive model of educational theory.[32] Bloom presented a taxonomy of learning objectives.[33] Piaget focused on the development of cognition in children.[34] Each explained the process of cognitive development with a model of stages, where the subject's development could be marked by passing from one stage to the next.[35]

2. Perry's Stages of Cognitive Development

The work of William Perry extended Piaget's childhood development model through the adolescent, early adult, and mature phases of life.[36] Perry focused the attention of educators to the different "ways of knowing."[37] In his research, he observed not only the ways students learn, but also the change over time in the relationship between the student and knowledge.[38]

Perry's work focused attention on the way learners acquire and retain information. In Perry's nine-stage model of development, students in the early stages adhere to authority and hold strong beliefs in certainty.[39] In middle stages, students develop the capacity to hold competing ideas and to understand different perspectives. Students in

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[32] JOHN DEWEY, HOW WE THINK (1933); JOHN DEWEY, EXPERIENCE AND EDUCATION (1938).

[33] BENJAMIN BLOOM, M. ENGELHART, E. FURST, W. HILL & D.R. KRATHWOHL, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1956).

[34] JEAN PIAGET, THE CHILD AND REALITY: PROBLEMS OF GENETIC PSYCHOLOGY (Arnold Rosin trans., 1973).

[35] DEWEY, *supra* note 32; BLOOM, *supra* note 33; PIAGET, *supra* note 34. **R**

[36] Perry's research involved interviews with college students at Harvard. Perry categorized the responses into stages of development. WILLIAM PERRY, FORMS OF INTELLECTUAL AND ETHICAL DEVELOPMENT IN THE COLLEGE YEARS: A SCHEME (1970); JEAN PIAGET, THE CHILD AND REALITY: PROBLEMS OF GENETIC PSYCHOLOGY (1973).

[37] Dawn Schrader, *Intellectual Safety, Moral Atmosphere, and Epistemology*, 11 J. ADULT DEV. 87 (2004).

[38] Timothy Casey & Kathryn Fehrman, *Making Lawyers Out of Law Students:Shifting the Locus of Authority*, 20 PERSPECTIVES 96 (2012) (discussing the application of Perry's theory to the teaching of legal ethics).

[39] Perry's nine-stage model of development is described in Table 1 of the Appendix. *Infra* Table 1.

these middle stages have a relativistic view of the world, where "truth" is dependent upon the observer's point of view. At the highest stages of development, students acquire the capacity for commitment, or the ability to use universal principles to weigh competing interests. Perry saw a connection between more abstract thinking and a higher level of moral development.

3. Kohlberg's Stages of Moral Development

While Perry focused on cognitive development, Lawrence Kohlberg studied moral development.[40] Kohlberg expanded Piaget's two-stage model into a six-stage model related to the subject's capacity for moral reasoning and the exercise of moral judgment.[41] Kohlberg's research involved extensive interviews with undergraduate students about moral dilemmas.[42] In each dilemma, the researchers asked the participants to decide on a course of action, and then to provide reasons or justifications for the action. Kohlberg sorted the participant responses into categories, which varied by the depth of the moral reasoning.[43] For example, a limited level of moral reasoning would justify a course of action by simply following the law or the order of an authority figure. A more advanced response would include a statement of a principle that offered guidance in the decision. Kohlberg's model contains three levels and six stages.[44]

4. Neo-Kohlbergian Model

Later researchers have modified or extended Kohlberg's model. Notably, James Rest, Darcia Narvaez, Stephen Thoma, and Muriel Bebeau developed the Neo-Kohlbergian Model.[45] They conducted abundant empirical research[46] and, based on their findings, modified

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[40] Like Perry, Lawrence Kohlberg extended the work of Piaget. LAWRENCE KOHLBERG, ESSAYS ON MORAL DEVELOPMENT VOL. 2: THE PSYCHOLOGY OF MORAL DEVELOPMENT, THE NATURE AND VALIDITY OF MORAL STAGES (1984).

[41] *Id*. at 621 app. A ("The Six Stages of Moral Development").

[42] An example is the cancer drug hypothetical where a husband must decide whether to steal a drug to save the life of his wife.

[43] LAWRENCE KOHLBERG, THE MEANING AND MEASUREMENT OF MORAL DEVELOPMENT (1981); ANNE COLBY & LAWRENCE KOHLBERG, THE MEASUREMENT OF MORAL JUDGMENT, VOL. 2: STANDARD ISSUE SCORING MANUAL (1987).

[44] Kohlberg's stages are set out in a table at the end of this article. *Infra* Table 2. LAWRENCE KOHLBERG, ESSAYS ON MORAL DEVELOPMENT VOL. 2, 621 app. A (1981) ("The Six Stages of Moral Development").

[45] The Neo-Kohlbergian model is set out in a table at the end of this article. *Infra* Table 4. James R. Rest, Darcia Narvaez, Stephen J. Thoma, & Muriel Bebeau, *A Neo-Kohlbergian Approach to Morality Research*, 29 J. MORAL EDUC. 383 (2000).

[46] Rest and his colleagues developed a "pencil and paper" instrument for collecting data from subjects. The Defining Issues Test (DIT) allows researchers to collect responses without the time and expense of interviews and response coding. *Id.*

Kohlberg's basic structure.[47] The Neo-Kohlbergian Model uses "schema" in place of stages. The first schema is known as the "Personal Interest Schema," which correlates generally to Kohlberg's second and third stages.[48] The second schema is the "Maintaining Norms Schema," which derives from Kohlberg's fourth stage.[49] Finally the "Postconventional Schema" emerges from Kohlberg's fifth and sixth stages.[50] Significantly, they rejected a strict adherence to a "staircase" model: they postulated that a person might function with capacities from different stages for different types of tasks, or might use qualities from several stages simultaneously.[51]

5. *Reflective Judgment Model*

Professors Patricia King and Karen Kitchener adapted Kohlberg's stages of moral development to the development of judgment.[52] The King and Kitchener Reflective Judgment model described the development of the process of solving unstructured or "ill-defined problems."[53] An unstructured problem has no simple answer. Resolving an unstructured problem involves the consideration of al-

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[47] The Neo-Kohlbergians distinguished their model from Kohlberg's strict "staged" model in five significant ways. First, they rejected the assumption that a person functions in a single stage at a given point in time. Second, the "schemas" on the Neo-Kohlbergian Model are more concrete than Kohlberg's stages. Third, their model includes space for the personal experience of the subject. Fourth, they rejected Kohlberg's assumption that the stages could be applied across different cultures; the Neo-Kohlbergians adopted a more relativistic approach. Fifth, the Neo-Kohlbergians differed with Kohlberg on whether reliable information could be gathered from subjects without interviewing the subject. Rest et al., *supra* note 45, at 384-86.

[48] *Id.* at 386-87.

[49] *Id.* at 386-88.

[50] *Id.* at 386-89.

[51] Rest et al., *supra* note 45 at 384-86; James Rest, Development in Judging Moral Issues (1979). Professors King and Kitchener echoed the ideas of Rest and his colleagues about single stage functioning versus simultaneous, multiple stage functioning. The Reflective Judgment Model: Underlying Assumptions, http://www.umich.edu/~refjudg/reflectivejudgmentunderlyingassumptions.html (last visited Jan. 28, 2014) (quoting Patricia King, Assessing Development from a Cognitive Developmental Perspective in College Student Development: Theory and Practice for the 1990² (D. Creamer & Assocs. eds., 1990) ("Although an individual frequently may reason using the assumptions of a given stage, it would be incorrect to assume that she or he can use only one such set of stage-related assumptions at a time, regardless of the circumstances under which stage scores were assessed")). Lamborn and Fischer proposed the idea of optimal and functional levels of development. S. Lamborn & K. W. Fischer, *Optimal and functional levels in cognitive development: The individuals' developmental range*, Newsletter of the Int'l Soc'y for the Study of Behav. Dev., No. 2. (1989).

[52] The Reflective Judgment Model is set out in a table at the end of this article. *Infra* Table 3. Patricia King & Karen Kitchener, Developing Reflective Judgment: Understanding & Promoting Intellectual Growth & Critical Thinking in Adolescents & Adults (1994).

[53] Hofer, *supra* note 18, at 6; King & Kitchener, *supra* note 52.   **R**

ternative arguments, the investigation of additional information, the assessment of the source and reliability of information, and the exercise of judgment.[54]

To better understand the process of solving complex, unstructured problems, the research of King and Kitchener examined two hypotheses: "1) individuals' understanding of the nature, limits, and certainty of knowing (their epistemic assumptions) affects how they defend their judgments; and 2) epistemic assumptions change over time in a developmentally related fashion."[55] From this, King and Kitchener developed a model of reflective judgment that identifies seven critical stages in the development of reasoning.[56]

King and Kitchener's Reflective Judgment Model describes the acquisition of knowledge and experience in a way that is helpful to lawyers because of the focus on solving complex problems.[57] As Schön noted, professionals must have the ability to frame a problem, not merely to solve a problem; they must have the capacity to provide structure to a "mess."[58] Notably, in the legal education context, Professors Laurie Morins and Louise Howell adapted the Reflective Judgment model to help clinical students solve difficult problems.[59]

B. *Summary of the Models of Development*

The following chart synthesizes the various stages for the models described above. Although different, each model describes a progression from a basic level of understanding to a more complex level of understanding and decision-making.

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[54] KING & KITCHENER, *supra* note 52, at 10; *see also* THE REFLECTIVE JUDGMENT MODEL *supra* note 51.   **R**

[55] KING & KITCHENER, *supra* note 52.

[56] KING & KITCHENER, *supra* note 52.

[57] KING & KITCHENER, *supra* note 52, at 10; *see also* THE REFLECTIVE JUDGMENT MODEL *supra* note 51.   **R**

[58] "The task of constructing a technical problem is not itself a technical problem. One gets a technical problem from constructing such a problem." Schön, *supra* note 6, at 238.   **R** Schön's comments are imbedded in a deep critique of professional education. *Id.*

[59] Laurie Morins & Louise Howells, *The Reflective Judgment Project*, 9 CLIN. L. REV. 623 (2003). Morins and Howells identified the problem of "stuckness" and their efforts to use the Reflective Judgment model as a guide in student reflection. They concluded that while the Reflective Judgment model was helpful, it was not sufficient as a guide for the development of students' problem-solving skills. "Although we believe that [the Reflective Judgment model] was a successful pedagogical tool for students in our clinic, and we gained some helpful insights by observing their thought processes, it did not provide as much guidance as we would have liked in designing interventions for 'stuck' students." *Id.* at 659.

Models of Cognitive and Moral Development[60]

Perry's Stages of Cognitive Development	Kohlberg's Stages of Moral Development	Neo – Kohlbergian Schema	King & Kitchener: Reflective Judgment
Dualism (Stage 1-2) *There are right answers.*	Pre-Conventional (Stages 1-2) *Decisions motivated by avoiding punishment or seeking personal reward.*	Schema 1: Personal Interest *Decisions based on the personal consequences of the action on the actor.*	Pre-reflective thinking (stage 1-3) *Rejection of alternate beliefs; most issues have a right answer; right answers emerge from authority.*
			Quasi Reflective Thinking (Stages 4-5)
Multiplicity (Stages 3-4) *The answer depends on one's perspective.*	Conventional (Stages 3-4) *Decisions motivated by conformity, adherence to social norms and compliance with authority.*	Schema 2: Maintaining Norms *Perceived need for clear, uniform rules that create a social obligation to obey.*	Quasi Reflective Thinking (Stage 5) Reflective Thinking (Stage 6) *Beliefs can be justified through reason and evidence; some beliefs are context-specific.*
Relativism (Stages 5-6) *Different contexts produce different answers.*			Reflective Thinking (Stage 6-7) *Solutions may be constructed through comparison of different perspectives and contexts.*
Commitment (Stages 7-9) *Responsible decisions flow from reference to principles; the process of*	Post-Conventional (Stages 5-6) *Decisions motivated by adherence to personal relationships, and to universal ethical principles.*	Schema 3: Post –Conventional *Moral obligations are based on shared ideas, and are open to discussion, scrutiny and change.*	Reflective Thinking (Stage 7) *Conclusions are the most complete or the most plausible given the available evidence.*

C. Andragogical Theory: Learning from Experience

In a groundbreaking article in the early 1980s, Professor Frank Bloch described a theory of adult learning that could be applied to clinical legal education.[61] Using the work of noted psychologist Malcolm Knowles, Bloch explained the theory of adult learning in the context of a law clinic.[62] According to Knowles, adult learning follows

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[60] This table contains only a brief description of each stage of the various models. Each model is set out in more detail in the tables in the appendix. *Infra* Tables 1-5.

[61] Frank Bloch, *The Andragogical Basis for Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

[62] *Id.* According to Knowles, adults acquire knowledge in a way that differs fundamentally from the way children acquire knowledge. Adults need self-directed environments

a five-step process. In step one, the teacher and student create an appropriate learning environment – the environment must be defined by mutual respect, not hierarchical position.[63] In step two, the adult learner assesses his level of competence and educational needs. In step three, the learner defines goals and methods of assessment. In stage four, the learner engages in the actual learning, and in stage five the learner evaluates her performance.[64]

Bloch described the perfect fit between Knowles's theory of adult learning and fits the teaching environment in a legal clinic.[65] Numerous clinical scholars joined the chorus, praising the congruity in Bloch's application of Knowles's theory to the clinical teaching model.[66]

But the idea of a unified theoretical model for teaching proved too good to be true.[67] Professors Linda Morton, Janet Weinstein, and Mark Weinstein described the disconnection between the theory of adult learning and the reality of teaching law students.[68] Noting that Bloch and other clinicians had assumed their students were "adults," Morton, Weinstein and Weinstein challenged this underlying assumption; their collective experience provided evidence that law students were not fully developed adult learners.[69] In other words, the mere age of the learner was no guarantee that the student would be an adult learner. In sum, there was no working definition of "adult" as applied to learning theory.

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where they can learn through cycles of experience and thoughtful reflection. Knowles proposed a new methodology for teaching to the unique requirements of the adult learner. MALCOLM KNOWLES, SELF-DIRECTED LEARNING: A GUIDE FOR LEARNERS AND TEACHERS (1975); MALCOLM S. KNOWLES, ANDRAGOGY IN ACTION, APPLYING MODERN PRINCIPLES OF ADULT LEARNING (1984).

[63] Professor Schrader described the ideal learning environment in a context adaptive to what she calls "epistemic fit." Schrader, *supra* note 37, at 88-90, 96.   **R**

[64] Linda Morton, Janet Weinstein, & Mark Weinstein, *Pedagogy: Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs,* 5 CLIN. L. REV. 469, 476-77 (1999).

[65] Bloch, *supra* note 61.   **R**

[66] *See, e.g.*, Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37 (1995). In an earlier article, Gary Bellow described the unique methodology of the clinical model. Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* THE COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING, 374-90 (1973).

[67] I do not mean to undervalue the contribution of Professor Bloch. His ideas remain critical to the explanation of the value of experiential learning and to the structure of the legal clinic as an educational enterprise.

[68] Morton et al., *supra* note 64, at 484.

[69] *Id.* at 470. Knowles later revised his theory by noting that the success of the andragogic model depended on the learners entering the process at an advanced level of development. *Id.* at 477.

The fields of psychology, sociology, human development and educa-
tion have all examined the concept of adulthood, but there is no
uniform definition we might use to categorize our students. Al-
though chronological age has been used as a definition of adult-
hood, qualifying all law students as adults (post adolescence), this is
not of much help when we examine students' readiness to learn as
adult learners.[70]

Morton, Weinstein and Weinstein looked to cognitive and devel-
opmental psychology for a more comprehensive model of develop-
ment – one that explained their observations in the field.[71] They
described the work of Patricia Cross, whose model included personal
characteristics, such as physiological age, life phase, psychological de-
velopment stages, and situational characteristics, such as whether the
learning environment was voluntary or involuntary, part-time or full-
time.[72]

Applying Cross's multi-dimensional definition of "adult" to their
students, Morton, Weinstein and Weinstein found they could calibrate
the learning environment to fit with the level of the student's develop-
ment.[73] Students who demonstrated more advanced development
could be allowed into a self-directed, autonomous, experientially
based learning environment, while less-developed students could be
ushered into more structured and directed learning environments.[74]

The accounts from Bloch, Morton, Weinstein and Weinstein in-
form the prerequisites to the development of successful teaching envi-
ronments. Students must have basic training in lawyering skills, so
that the potential barriers, such as lack of confidence or fear of failure,
are lowered or removed.[75] Students must be exposed to a profes-
sional environment. Further, students should have experience in solv-
ing "unstructured problems" that require the student to confront
indeterminacy and uncertainty.[76] Finally, students should have some

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[70] *Id.* at 491-92.

[71] *Id.* at 492.

[72] K. PATRICIA CROSS, ADULTS AS LEARNERS 228 (1981); Morton et al., *supra* note 64,   **R**
at 492-94 nn. 94-105 and accompanying text.

[73] This idea is consistent with Professor Schrader's concept of "epistemic fit." Schrader,
supra note 37, at 96.   **R**

[74] Morton et al., *supra* note 64, at 502-05. Morton, Weinstein and Weinstein reported   **R**
that the Cross model explained some, but not all, of their difficulty in applying a "pure
andragogical model." *Id.* at 505. In addition to the Cross personal and situational charac-
teristics, they identified the following factors: lack of basic legal skills; lack of work experi-
ence; need for certainty; desire for external validation and evaluation; existence of
difference in personality and learning styles; and lack of life experience. Although they
described the relevance of each of these factors, the most important factor was the lack of
experience. *Id.* at 508-12.

[75] *Id.*

[76] *See supra* Part II(A)(5) (discussing the Reflective Judgment Model and solving un-

awareness of differences in personality and learning styles.

The distinct model of adult learning shows promising application in the context of a law school clinic.[77] The success of Bloch's andragogical model depends on the experience of the learner.[78] Bloch's model stands at an aspirational model for a clinical teaching environment, however, it may take some effort to move students to a place where they are able to succeed in an androgogical environment. Increasing the reflective capacity of students may move them toward readiness for a clinical learning environment.

PART III: THE STAGES OF REFLECTION

The Stages of Reflection are consistent with the models from other disciplines described above. A staged approach has been widely adopted since Piaget, and continues to be the preferred method of categorization.[79] Although some researchers (for example, the Neo-Kohlbergians) prefer a model where individuals do not advance lock-step from one stage to another, all of the prevalent models include some form of movement from foundational levels to higher-order levels.[80]

In the Stages of Reflection model described below, the first two stages assist the student with the transition away from a dualistic relationship with knowledge. For example, the first stage asks the student to compare her performance to a relatively objective standard. The second stage asks the student to describe difference and choice – the different ways the assignment could have been completed and the choices the student made in the completion of the assignment. After the first two stages, the student is ready to analyze the reasons she made specific choices.

In the third stage of reflection, the student must identify the internal factors that affected her professional decision-making process. Often the experience of practicing law forces the student to confront

structured problems).

[77] *See infra* Part IV(B). However, an adult learning style is not a panacea, and a number of factors affect the success of the model. As teachers, we must prepare for the reality that some students are not ready to engage as adult learners.

[78] The key to the Knowlesian distinction between adult and non-adult learners is that adults have acquired knowledge through experience, and they have become acculturated to acquiring knowledge through experience. Although some law students lived adult lives before returning to school, the vast majority of law students come almost directly from undergraduate school. In the words of Morton, Weinstein and Weinstein, "the wealth of life experience anticipated by the andragogical model is just not there." Morton et al., *supra* note 64, at 511-12.   **R**

[79] Barbara Hofer, *Personal Epistemology Research: Implications for Learning and Teaching*, 13 J. EDUC. PSYCHOL. REV. 353, 356 (2001).

[80] *Id*. at 355-59.

deep-seated and very personal issues. Frequently, the student encounters a moment of self-realization. Everything from the student's style of communication to manner of dress is open for analysis. The student should develop awareness about his internal preferences, experiences, biases and characteristics. These internal factors shape his individual perspective and exert an influence over his decision making process. These personal factors form a personal, internal context.

In stage four, the student must move from an internal, individualistic perspective to an external perspective. The student must describe the external context of the lawyering performance. The student is not acting in a vacuum, and must be aware of the preferences, experiences, biases and characteristics of the other people involved in the representation. These factors form the external context of the representation.

In the fifth stage, the student should develop an awareness of a broader societal context. The lens of examination becomes much wider, and includes more than the individual lawyer or the specific representation. The student focuses on social structures and political institutions, on economic realities, and on human tendencies.

At the final stage, we ask the student to turn her attention back on herself. However, the object of the reflection is not the action of the lawyering process, but rather the effect of reflection on the student's thought process. We want the student to be aware of her own reflective process and the effect of reflection on her actions. At this sixth, meta-cognitive stage, the student is reflecting about reflection.

The central idea of the Stages of Reflection model is that the teacher can guide the student to the higher stages of reflection by passing through the earlier stages. Reflective assignments should ask the student to consider progressively more complex factors that affect the lawyering performance. Students should advance along a continuum by developing increasingly complex modes of reflection. The early stages of reflection meet the student on terms consistent with early levels of cognitive and moral development. The process of moving from one level to the next in the Stages of Reflection is consistent with the movement from one level of to the next in cognitive or moral development. The table below demonstrates graphically the synthesis between the various models of development and the Stages of Reflection.

Stages of Reflection and Staged Models of Development

Stages of Reflection	*Perry's Stages of Cognitive Development*	*Kohlberg/ Neo-Kohlbergian Stages of Moral Development*	*King & Kitchener: Reflective Judgment*
1. Competence (Prompt: Did you meet the standard of competence?)	Dualism (Stage 1-2) *There are right answers.*	Pre-Conventional (Stages 1-2)/ Personal Interest (Schema 1)	Pre-reflective thinking (stage 1-3) *Rejection of alternate beliefs; most issues have a right answer; right answers emerge from authority.*
2. Difference & Choice (Prompt: Is there more than one way to accomplish your objective? At what point in the performance did you make a choice?)	Multiplicity (Stage 3-4) *The answer depends on one's perspective.*	Conventional (Stages 3-4)/ Maintain Norms (Schema 2)	Quasi Reflective Thinking (Stages 4-5)
3. Internal Context (Prompt: What internal factors affected your choices?)	Multiplicity (Stages 3-4) *The answer depends on one's perspective.*		Quasi Reflective Thinking (Stage 5) Reflective Thinking (Stage 6) *Beliefs can be justified through reason and evidence; some beliefs are context-specific.*
4. External Context (Prompt: What external factors affected your choice?)	Relativistim (Stages 5-6) *Different contexts produce different answers.*		Reflective Thinking (Stage 6-7) *Solutions may be constructed through comparison of different perspectives and contexts.*
5. Societal Context (Prompt: What societal factors affected your choice?)	Commitment (Stages 7-9) *Responsible decisions flow from reference to principles; the process of knowing is constantly evolving.*	Post-Conventional (Stages 5-6)/ (Schema 3)	Reflective Thinking (Stage 7) *Conclusions are the most complete or the most plausible given the available evidence.*
6. Metacognition (Prompt: How did reflection affect your decision-making process?)			

The section below explains each stage in more detail.

A. Stage One: Competence

In the first stage of reflection, the student must compare her performance to the standard of professional competence.[81] Prompts for this stage ask the student to describe the standard of competence and then to apply that standard to her performance. Specific prompts could be any of the following: What would a competent lawyer do in this situation? What would be necessary to achieve a basic level of competence in the performance? Did you meet the standard of competence?

Two goals are imbedded in this stage. First, this initial stage focuses on the professional standard of competence. Students must become familiar with the specific language governing attorney conduct and the standard of competence. Second, this stage places the process of reflection in a familiar context. The means of accomplishing the reflection is intentionally familiar. In earlier academic experiences, instructors presented the students with a legal standard and asked them to compare a set of facts to the legal standard and arrive at a conclusion.[82] Reference to a fixed standard – of lawyer competence – defuses some of the initial "touchy-feely" critique because the assignment is grounded in the substantive law of ethics.[83]

This stage also introduces an element of indeterminacy. The standard of competence is decisively vague.[84] The Model Rules define competence as "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[85] The reflection forces the student to confront a vague and indeterminate standard. Although the rules provide the student with a legal standard, the rules do not help the student understand what the standard means. Without the benefit of experience it is difficult for the student to know

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[81] The standard of competence is described in the Model Rules of Professional Conduct, or in the rules of professional conduct adopted by specific jurisdictions, or state or local bar associations. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT 1.2, 1.3, 1.4; *see also* CAL. R. PROF'L CONDUCT 3-110, 3-500. For our purposes, it does not matter which standard is used, but only that there is an articulated, findable standard.

[82] The Stages of Reflection model is designed for use after the first year. At minimum, the student would have performed this type of "IRAC" (Issue, Rule, Analysis, Conclusion) analysis in a first-year legal writing course.

[83] Perry, *supra* note 12, at 159-60.   **R**

[84] One scholar noted the difficulty in defining an objective standard for competency, stating, "[t]here is no such thing as competency *per se*." George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1991) (excerpted in CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS 125 (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks, & Susan L. Kay eds., 1997)). However, the point here is not whether competency can be defined, but rather, whether the student can focus her attention on her own actions and view those actions from a professional perspective.

[85] A.B.A. MODEL RULES OF PROF'L CONDUCT 1.1 (2013).

what is "reasonably necessary" for the representation.

To summarize the first stage of reflection, the form and the structure of the prompt will be familiar to the student (apply a legal standard to your performance), but the substance will not be familiar (assess the meaning of "reasonably necessary"). The process of asking the student to apply the standard of competence to her performance will generate a higher level of inquiry about what the student knows and what the student does not know. If successful, the student will emerge with a better understanding of the purpose of reflection.

As described below, the first stage of reflection matches with the early and middle stages of cognitive development. By including an aspect of propositional knowledge in the form of a restatement of the standard of competence, the reflection assignment meets the student on the field where he is used to playing. It is familiar ground in terms of the student's relationship to knowledge. This type of reflection includes reference to an external authority.

A Stage One reflective assignment pairs well with a lawyering performance related to legal research. In a typical legal research assignment, there is an "answer" that the student must find through the exercise of professional competence.[86] The student might reflect on his level of knowledge in the area, the professional duty to conduct thorough research, the challenges the student faced in performing the assignment, and whether the student met the standard of competence. Finally the student might comment on steps he would take if he were to receive a similar assignment in the future.

This stage presents a challenge for some students, particularly those who feel less confident in their abilities.[87] Asking a second-year or third-year law student to candidly assess whether she performed competently in a lawyering task has the potential to produce anxiety, particularly if the reflection is required as part of the course.

For example, the following except is taken from a student's reflection on a legal research assignment. In the assignment, the student was asked to watch a video recording of an interview with a client and to prepare a memorandum of law addressing the legal issues presented in the interview. In a separate reflective memo, the student included the following passage.

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[86] The first stage of reflection would be appropriate for many courses outside of the clinical or experiential learning context. The later stages of reflection are more appropriate for courses where the student is engaged with actual or simulated clients.

[87] I thank Adjunct Professor Stacie Patterson, Esq., for her thoughtful dialogue on this issue. Experience has shown no correlation between the confidence and ability of students; often the most confident are the least competent. Conversely, a lack of confidence can be an indicator of higher competence because a greater degree of care accompanies the completion of the task.

> The State Bar of California defines competence in any legal service to mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional and physical ability reasonably necessary for the performance of such service." Cal. Rule of Prof. Conduct, Rule 3-110(B). . . . Though I feel my level of competence in preparing this memo was on par with the "reasonable" standard, there were elements that fell below par for my personal standards. Namely, I fell below my personal standard for diligence by not taking the time or care to research and prepare my outline more efficiently before I started writing.[88]

This reflective memorandum followed the IRAC formula, a structure familiar to the student. The reflection began with recitation of the legal standard of competent performance, here, encapsulated by California Rule of Professional Conduct 3-110.[89] The student then compared her performance to the "reasonable" standard articulated by the rule. The key difference between the reflective memorandum and other research assignments was that the student had to compare her own actions against the legal standard. Interestingly, she noted that she felt she "was on par with" the *objective* standard required by the rule, but failed to meet her own *subjective* standard. By "objective standard," I mean the "reasonably necessary" standard from the Model Rules; by "subjective standard" I mean the student's "personal standard" of what she considered to be competent. She distinguished between "the 'reasonable' standard" and her own "personal standard."[90]

In another example, a student noted a difference between the objective (rule based) requirements and his subjective view of what was required in the performance. "In this situation I think I met the standard for being a competent attorney. This is a minimal standard, though, and I hope I was able to accomplish more than just the minimum."[91]

The reflective process helps the student develop an individual professional identity. Through the reflective process, the student distinguished the "minimal" legal standard for performance from the student's personal standard, which was higher than the minimum. These students demonstrated an internalization of a professional duty. They moved beyond doing "just the minimum" – what the rule told them to

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[88] Student A, Reflective Memorandum (Sept. 21, 2012) (on file with the author). To preserve student confidentiality, student authors are identified by pseudonym – e.g., "Student A." The original student works remain on file with the author, who is Director of the STEPPS Program at California Western School of Law.

[89] CALIF. R. PROF. CONDUCT 3-110.

[90] Student A, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[91] Student B, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

do. They formed their own "personal standard" or rule that governed their behavior. The articulation of a personal standard is an important step in the development of professional identity because it signifies a shift in the locus of authority from the external source – the rules – to an internal source – the student's own personal standard.[92]

The reflective process illuminates various professional values. In several reflections, students included reference to collaboration in the lawyering process.

> If I were to receive this assignment again, I would do a few things differently. . .. I would have used my law firm more. Being in law school, it feels awkward to ask my fellow students for advice on my memo process. After completing the memo, I feel like I could have accomplished more by incorporating the rest of our law firm. I received good tips and ideas from the few people I talked to, and I imagine if I would have talked to more people, more good ideas would have been exchanged.[93]

Another student noted the value of collaboration, but distinguished between "similarly inexperienced" classmates and the "competent attorney."[94] He started his reflection by reviewing the legal standard of "1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service," but added that the lawyer had a duty to "acquire sufficient learning and skill before performance is required."[95] In the process of "acquiring sufficient learning," this student collaborated with his classmates; however, he did not believe his classmates were the same as an experienced attorney.

> In the performance of this assignment, an attorney (or a 2L acting as an associate attorney) must make sure to acquire a level of knowledge of the issues at hand that is reasonably necessary to represent and advocate for the client. . . . As I progressed through the assignment, I found that I was able to brainstorm with my fellow 2L's and bounce ideas off of them, but I do not think that interaction with similarly inexperienced associate attorneys meets the level of interaction with competent attorneys that CRPC 3-110 requires.[96]

The reflections allowed students to elaborate on professional challenges. The issue of time management can be difficult for many students. One student expressed her frustration as follows. "Given my definition of a competent lawyer, my performance missed the

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[92] Casey & Fehrman, *supra* note 38, at 96-98.   **R**

[93] Student B, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[94] Student C, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[95] Student C, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[96] Student C, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

mark in a few ways. While I submitted work I felt to be adequate and I identified legal facts and rules, . . . I felt I mismanaged my time causing the quality of my writing to suffer."[97] Another student commented, "I did not feel that I used my time efficiently."[98] A third speculated about an external review of his time: "If I had turned this memo in to a supervising attorney at an actual law firm, I think her biggest complaint may have been the amount of time that it took me to research the issues."[99]

These few examples evidence an emerging professional identity. Students first identified the objective legal standard of competence.[100] But they did not stop their analysis at that point. They separated the objective legal standard of competence from their personal standard of competence. In addition they noted the value of collaboration, but with the critical recognition of the value of experience. Further they noted the importance of time management.

The reflective process amplified the knowledge, skill and values related to professional identity. The knowledge is the identification of the ethical rule. The skill is the ability to apply the rule – here, introspectively, to one's own performance – as well as the ability to manage time effectively. The values are personal integrity, collaboration and experience. Thus even in the earliest stage, the process of reflection reveals the development of professional identity.

B.   *Stage Two: Difference and Choice*

In the second stage of reflection, we ask the student to identify different, equally successful ways to accomplish the lawyering performance. The goal of this stage is to move the student from a dualistic relationship to knowledge into a more multiplistic relationship. Students often believe (and hope) there is a single answer. They perceive their task as a mission to discover the single answer and then demonstrate that discovery to the teacher.

But in the professional context, there are multiple sets of correct answers. Once students realize there are multiple correct answers, they realize that they must choose one course of action from among the set of possible courses of action.[101] At Stage Two we ask the student to identify the different means they could use to achieve the same end. Once the student recognizes that different routes lead to

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[97] Student D, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[98] Student B, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[99] Student C, Reflective Memorandum (Sept. 21, 2012) (on file with the author).

[100] At minimum the students identified and recited the relevant provisions of the Rules of Professional Responsibility. A discussion of the precise definition of competency is beyond the scope of this article. *But see* Critchlow, *supra* note 84, at 433-34.

[101] Casey & Fehrman, *supra* note 38, at 3.

the same destination, they discover that they made choices – either consciously or subconsciously – in their performance.

A Stage Two reflection should be matched with a task where the experience of performing the assignment will demonstrate to the student that there is more than one way to accomplish the assignment successfully. A client interview is an ideal assignment because there are many different ways to conduct an interview.

The use of video recording technologies is immensely helpful at this stage for three reasons. First, students can see the performances of other students and observe different ways to achieve the same goals.[102] Second, students can review their own performance and observe the specific places where they made choices. Further they can see where and how they could have used different means to achieve the same goal. Third, teachers can evaluate performances and offer highly specific and individual feedback on student performances. By asking the student to articulate different means to achieve the same end, we prepare students for Stage Three, where we will ask them to assign reasons for their choices.

C. Stage Three: Internal Context

Stage Three builds on the foundation of "Difference and Choice" from Stage Two. In Stage Three, the student considers *why* she made a specific choice. The exploration of the decision-making process – answering the question, "why?" – is at the core of reflective practice. Thus, where Stage One and Stage Two prepare the student for the analysis of the decision-making process, Stage Three asks the student to explain *why* she made specific decisions in the context of a professional performance.

In explaining the rationale for specific choices, the student should refer to the "internal context." By internal context, I mean the preferences, experiences, biases and characteristics owned by each of us that shape the decisions we make.[103] Stage Three is focused on helping the student become more self-aware.

Professionals must obtain a level of self-awareness. Students must recognize that personal characteristics, experiences, biases and preferences affect the lawyering performance. Characteristics include immutable physical attributes, such as race or gender or physical stature,

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[102] Before sharing student performances, the teacher must create an environment of trust. See generally Schrader, *supra* note 37, for a more detailed explanation of the safe learning environment.

[103] Ogilvy, *supra* note 2, at 71-72; *see also* Jane Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1, 12-22 (1997) (Aiken described efforts to help students identify their position of privilege.).

as well as personality traits, such as introversion or attention to detail. Past experiences can also shape the lawyering performance. So, too, personal preferences and biases shape the way individuals perform as lawyers. The goal in this stage of the reflective process is to shine a light on the personal traits and experiences that affect the new lawyer's decision-making process. The ultimate goal is to develop in the student a greater sense of self-awareness.

In the following example, a reflection following a negotiation assignment, a student noted personal characteristics that affected her performance.

> On some level, I think I want to put people at ease and find common ground, rather than get my own way. To be a good negotiator, I expect that a person needs to be comfortable making the other person uncomfortable, at least a little. . . . I tend to want to compromise and I am willing to pay more money just to close the deal. I suspect this has to do with the fact that I am a novice. Hopefully, experience will help me overcome my people-pleasing tendencies. After all, an attorney should be focused on pleasing her client, not everybody else. . . .

> I like to be open and honest and get to the point. Efficiency is always one of my goals. . . I hate wasting time! . . . My impatient nature is not well suited to negotiating or structuring deals. Maybe transactional work is not the best field for me.[104]

Here, the student identified personal characteristics – her preference for efficiency, her desire to put people at ease, her affinity for candor, and her willingness to "pay more to close the deal." She also acknowledged that these personal characteristics may not be the best match to the assigned lawyering task of negotiating a contract.[105]

Another student noted his previous professional experience. "My background involves real estate and business, so I felt a little more comfortable with this negotiation. I think I had an understanding of how to value things, and which things had more value than others."[106] In the same vein, another student referred to her experience in sales. "I have had many years experience in sales and showing clients the value added by making certain decisions. I feel like those skills really helped me in my negotiation."[107] The same student referred to her affinity for numbers. "I am normally a very analytical person. Working with numbers, calculating cost and goodwill defi-

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[104] Student E, Reflective Memorandum (March 25, 2013) (on file with the author).

[105] Whether she is correct about the suitability of her preferences for transactional work is a discussion for another day.

[106] Student F, Reflective Memorandum (March 27, 2013) (on file with the author).

[107] Student G, Reflective Memorandum (Sept. 23, 2013) (on file with the author).

nitely sparked an interest for me. . ..”[108] Similarly, another student noted, “I am generally more risk tolerant than risk averse.”[109] One’s risk adversity can greatly influence the choices one makes in the professional context. In addition to one’s own risk preferences, one must also be attentive to the risk tolerances of others, which brings us to Stage Four.

D.   Stage Four: External Context

In Stage Four, the focus of attention shifts from internal context to external context.[110] Students must be aware of the preferences, experiences, biases and characteristics of the other people involved in the lawyering performance. These other people include clients, other lawyers, judges, and third-party neutrals.

For example, in one exercise students performed a simulated negotiation. Before the negotiation, students received descriptions of different negotiating styles, along with a self-assessment tool to determine their preferred negotiating style.[111] One of the key pedagogic goals was to allow students to experience the way different lawyers would approach the same problem.

The reflections at this stage can include both personal preferences and strategic choices. For example, one student commented that her “default” competitive style did not work because her partner in the negotiation also displayed a competitive style.[112] Because the client’s goals were not oriented to a competitive or distributive outcome, the lawyer changed her style to a more collaborative or accommodating style.[113] In this example, the student has reached the fourth stage of the Stages of Reflection. She reached Stage One when she identified what is necessary for a competent performance of the lawyering task. She reached Stage Two when she identified difference – that there were different ways to achieve the client’s objectives. She achieved Stage Three when she recognized her own preferences, bi-

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[108] Student G, Reflective Memorandum (Sept 23, 2013) (on file with the author).

[109] Student F, Reflective Memorandum (March 27, 2013) (on file with the author).

[110] The shift in focus from internal context to external context is consistent with higher levels of moral and cognitive development, where the focus shifts from the self to the universal. *See infra* Section III(B).

[111] We use the Thomas-Kilman Conflict Mode Instrument (TKI). Under the TKI, there are five core styles for dealing with conflicts: Competing, Collaborating, Compromising, Accommodating, Avoiding. Kenneth W. Thomas & Ralph H. Kilman, Thomas-Kilman Conflict Mode Instrument (1974).

[112] Student H, Commentary, Spring 2011(memorialized in email on file with the author).

[113] In the negotiation exercise, each student represented a party in a transactional setting. The interests of the parties aligned, and both parties placed a greater value on integration than on a distribution of fixed assets. In other words, the parties placed a greater value on the relationship than on the money.

ases, characteristics and experience: she noted her preference for a competitive negotiating style. And she reached Stage Four when she identified extrinsic preferences, biases, characteristics and experiences: she noted that her negotiating partner also displayed competitive tendencies and her client did not favor a distributive outcome.[114]

Importantly, the student demonstrated an *awareness* of the decisions she was making. She reviewed her performance and analyzed the decision points. She consciously and deliberately thought about the ways she might improve her performance. Thus her lawyering performance was shaped by intrinsic as well as extrinsic factors. In the language of reflective practice, she engaged in intentional thought about specific actions in a professional context.[115]

Another student demonstrated awareness of external factors when she noted the difficulty in modulating the levels of formality and familiarity. In her interaction with a client, she made decisions based on her perception of what would work best in the specific context.

> [I]n some places I let myself get a little too casual and conversational, but I don't think it was too detrimental to the client's perception of me as a professional. I chose to remain more relaxed and causal because I think a client, particularly another attorney, wants to be treated as another person, not as a client who must defer to the expertise of the attorney. I think if I had been too stiff and formal with the client, it could have made him uncomfortable. . . . I felt that too much formality might make the client feel in a more subordinate position[.][116]

Stage Four reflections should include reference to factors external to the student. For example, in a reflection following a negotiation exercise, students explicitly referred to the preferences of the opposing counsel in her decision making process. One said, "In the end, my partner's extreme willingness to compromise and his initial approach heavily influenced my decision."[117] Another noted the effect of negotiating with another lawyer with a style similar to his own. "I recognized that this assignment was and could have been greatly influenced

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[114] The student's description of this scenario raises another question: to what extent is there a difference between the student's awareness of the context and the student's ability to act on her knowledge? Said another way, how much does the actual performance matter? In a professional context it is not sufficient to merely be aware of aspects of the performance; the new lawyer must be able to act on her awareness. The scope of this article focuses on developing awareness through a sequenced and progressive instruction in reflection. The point is that awareness is a prerequisite to action. Even if the student did not act on her awareness, she is in a better position to act in a more effective manner in her next performance.

[115] SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER, *supra* note 19, at 26-36.   **R**

[116] Student J, Reflective Memorandum (March 6, 2013) (on file with the author).

[117] Student D, Reflective Memorandum (March 27, 2013) (on file with the author).

by my partner's style. I feel that I was lucky because we were both collaborative and both had similar styles and personalities."[118]

Other students anticipated the characteristics of the other side and made decisions accordingly. In one instance, a student reflected on her choice of attire.

> I consciously did several things to ensure I was seen as approachable and accommodating. I not only planned out my discussion, but even my appearance. It might seem minor, but I think appearance can go a long way in conveying personality. I chose to wear a dress rather than a suit; I feel a suit, particularly on a woman, is very professional, but in a different way than a dress. It embodies more strength and intimidation. But I wanted to seem approachable and open, so I wore a nice dress instead. I also wore my hair down because pulling it back conveys a little more severity than just leaving it down. However, this choice was made based on my knowledge that my partner was a female. Females often get very competitive with one another so I wanted to minimize any of those subconscious vibes. If my partner had been male, I would most definitely [have] worn a suit. I feel like males tend to be more aggressive and can even be patronizing towards women without realizing [it].[119]

This student demonstrated her awareness of external factors in the context of the lawyering performance. She decided to wear a dress rather than a suit for two reasons. First, she wanted to appear "more approachable and accommodating," and "open."[120] Second, she wanted to minimize the "subconscious vibes" of competition in a female-to-female interaction.[121] The point is that the student was aware of this as a potential issue and she regulated her conduct in an effort to avoid potential conflict – to reach the desired end in the lawyering performance. In her final few lines, the student begins to address gender dynamics.[122] She is ready for Stage Five, where she can engage with the societal context of power relationships.

The reflections at Stage Four show an important step in the development of professional values. Stage Four tracks the models of cognitive and moral development because the student moves from an absolutist to a contextual understanding of the lawyering process. The student is not merely concerned with how she feels or what she perceives. At Stage Four, she demonstrates an awareness of how others

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[118] Student G, Reflective Memorandum (March 23, 2013) (on file with the author).

[119] Student J, Reflective Memorandum (March 27, 2013) (on file with the author).

[120] *Id*.

[121] *Id*. Whether the student is correct about the competitiveness of females is not the subject of this paper.

[122] *Id*.

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perceive her in a professional context. The comments about "the client's perception of me as a professional" show an important shift in the student's thinking: she has adopted and internalized the identity of a professional. In addition, her point of concern has changed from her perception of herself to the client's perception of her.

Stage Four reflections can be paired with any interactive lawyering task. For example, client interviews, counseling sessions, negotiations, mediations, and oral arguments would all be appropriate because they require the student to interact with another person. Research and writing exercises are not effective at developing Stage Four reflections because they tend to be highly individual and they are not dynamic. Video recording of the performance provides a highly effective means for the student and the teacher to review the performance.

E. Stage Five: Societal Context

In the Fifth Stage, students consider not only case-specific factors that influenced their performance, but also systemic power dynamics, political and social realities, and economic forces that affect their decisions. At this juncture, the student should be exposed to different theoretical models that might help explain societal or collective expression of preferences, biases, and experiences.[123]

For example, critical legal theory might assist a student to explain power dynamics, hierarchies, and the historic experience of race in our judicial system might explain the lingering effects of unarticulated biases and preferences.[124] The student should be identifying societal forces and factors that influenced his professional decision making process.

Professor Jane Aiken, for example, has described a clinical student's representation of a gay client whose partner was denied visitation by a hospital policy.[125] When student was unable to execute a power of attorney that would have allowed the visitation,[126] he had to confront a societal bias that affected his exercise of professional judg-

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[123] For example, as illustrated below, Critical Theorists offer a range of perspectives that challenge a student's perception of "reality." Some students will have a level of awareness about societal context, but others will find it difficult to move into this stage without some exposure to theoretical frameworks.

[124] *See generally* DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (1983); ROBERTO M. UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1983); *see also* 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).

[125] Jane Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLIN. L. REV. 1 (1997).

[126] *Id.* at 2.

ment (and the outcome of the representation).[127] Professor Aiken de-
scribed the way the student could create meaning from the experience
through reflection.

> This learning experience should assist the student in seeing how his
> own bias made him unable to anticipate his client's needs, thus lim-
> iting his ability to serve the client. It demonstrates how his unaware-
> ness of his own heterosexuality affects his vision, reinforces the
> status quo, and can heighten his client's pain. More importantly, this
> poignant moment in his relationship with his client can prompt him
> to anticipate the ways his various privileges may have affected him
> in other areas of his life. It is this understanding that will make
> transformational learning possible.[128]

This is an example of an ideal environment to promote Stage Five
reflection. The student must describe not only internal context (his
own characteristics, preferences or biases), but also external context
(the preferences and biases of hospital workers, family members who
opposed the visitation, the judge, and the lawyers on the other side),
and, importantly, societal context (the history of discrimination and
bias against gay relationships, and the reinforcing effect of legal insti-
tutions). Critically, the success of the representation depends on the
lawyer's awareness of these different contexts, and in this example,
societal context would play a large role in the choices made by the
lawyer in the course of the representation.

The best opportunities to develop Stage Five reflection occur in
live-client experiences.[129] The point of this stage of reflection is to
place the student in a position where he can experience events that
challenge his prior experiences. Professor Fran Quigley called this a
"disorienting moment" – where he cannot explain the event through

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[127] Professor Aiken used the student's experience to promote reflection. *Id.* at 3 n. 2.

[128] *Id.* at 3.

[129] The difficulty in creating simulations that relate to societal context stems from the
willing suspension of disbelief necessary to place the student in the role of lawyer in a
simulation. (One author described the willing suspension of disbelief as "[s]omething [that]
happens to 'transport' the person from being a 'spectator' to being absorbed in the charac-
ters and story." ANTHONY FERRI, WILLING SUSPENSION OF DISBELIEF: POETIC FAITH IN
FILM, 8 (2007) (describing the theories of Samuel Coleridge, who coined the phrase "will-
ing suspension of disbelief.")). Simulations are likely to be successful learning tools where
the student accepts the role and engages accordingly. Where the student faces difficulty in
accepting the role, the simulation may not be as effective because the student may simply
decline to engage. For example, a student could fail to engage because of her belief that
"this would never happen in real life." A real representation does not offer the student the
chance to opt out—she must continue with the representation even when difficult and
unpredictable events occur. The student can't say "this would never happen in real life,"
because "this" (referring to an unlikely event or an unpredictable result) actually hap-
pened "in real life." The indeterminacy of a real representation is one of the primary
advantages of learning in the live-client environment—and one of the greatest challenges
to teaching in it.

his prior experience.[130] A commitment to reflection will assist the student in his quest to derive meaning from his experiences.

Stage Five parallels the shift to the highest levels of operation on the models of cognitive and moral development. The student must be able to move from a concrete example to an abstract principle. In addition, the student must think beyond absolute terms to contextual solutions. Finally, the student will begin to articulate universal principles. Moreover, the deeper capacity for cognitive and moral reasoning will assist the student in exercising professional judgment.

F.   Stage Six: Metacognition

Metacognition generally refers to thinking about thinking.[131] Part of metacognition involves thinking about the acquisition of knowledge and the process of learning.[132] The Metacognitive Stage could refer simply to the student's awareness of and relationship to the learning process.[133] The earlier stages ask students to comment about historical actions. We ask them to explain, as best they can, why they made certain decisions. We ask them to consider their own preferences, biases, and experiences of themselves, and the preferences, biases, and experiences of others involved in the lawyering activity. We even asked them to consider societal preferences and biases, histories, and narratives that shaped their performance.

At the Metacognitive Stage, we ask the student to consider how they think. Specifically, we ask them how they think differently, or, how their thinking process has changed, as a result of reflection on the lawyering activity. For example, one student commented on the way his outlook on life had changed as a result of engaging in reflection during the course.

> I found that the process of reflection made me more thoughtful in

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[130] Fran Quigley, *Seizing the Disorienting Moment*, 2 CLIN. L. REV. 37, 51 (1995); *see also* Aiken, *supra* note 125, at 23 n. 73 -89 and accompanying text (describing how clinical   **R** teachers can teach justice, fairness and morality by exposing students to events that demand a higher level of awareness).

[131] J.H. Flavell, *Metacognition and cognitive monitoring: A new area of cognitive-developmental inquiry*, AM. PSYCHOL. 34, 906-911 (1979); J. METCALFE & A.P. SHIMAMURA, METACOGNITION: KNOWING ABOUT KNOWING (1994); JENNIFER A. LIVINGSTON, METACOGNITION: AN OVERVIEW (1997), *available at* http://gse.buffalo.edu/fas/shuell/cep564/metacog.htm (last visited January 23, 2014).

[132] These aspects of metacognition are often referred to as metacognitive regulation.

[133] Professor Ogilvy describes several forms of reflection that could be included in the metacognitive category. Ogilvy, *supra* note 2, at 77. For example, he describes reflections   **R** where the student considers her knowledge and the gaps in her knowledge, where the student discusses the personal relationship to the course material, where the student monitors her own learning, or where the student discusses his relationship to legal education. *Id* at 77-80. These examples describe a learner's relationship to the process of learning.

all aspects of my life, not just in my lawyering performances. I don't
know if it was your intention, but after your course, I'm much more
contemplative now . . . about everything in my life.[134]

The student demonstrated the Metacognitive Stage because he
noted his awareness of the change in his manner of thinking. While
earlier stages demonstrated a movement from self to universal, the
Metacognitive Stage marks a movement from universal back to self.
But the self at the Metacognitive stage is different from the self at
earlier stages. The student is more conscious of his own actions and
decisions, more aware of the perceptions of others, more integrated
with his professional identity, more conscious of social context, and
able to articulate the changes in his modes of thinking. In sum, the
student at the meta-cognitive level is more contemplative.

G.   Summary of the Stages of Reflection

Research in the disciplines of psychology and educational theory
informs us that the learner's epistemic cognition – the way the student
perceives knowledge – is one of the most important factors in a stu-
dent's learning process. The models described above share a view that
students start with a self-interested perspective and move to a state of
awareness of others and a universal perspective. Further, epistemic
cognition shifts from concrete to abstract as a student progresses to
higher levels of cognitive and moral development. In early stages of
development, students tend to apply their knowledge in absolute
terms; in later stages, they apply knowledge contextually. The re-
search models are consistent with regard to a structure of stages (or
schema), and with respect to movement along three axes: Self-Cen-
tered to Universal; Absolute to Contextual; and Concrete to Abstract.
The research also informs us that students' ability to understand and
solve complex, "unstructured" problems increases when a student de-
velops the capacities to think abstractly, to reason contextually and to
apply universally.

An effective lawyer must achieve high levels of cognitive devel-
opment in the areas of moral reasoning and reflective judgment.
These capacities are imbedded in what we call professional skill or
professional judgment. As teachers, we look to reflection as a way to
increase our student's ability to exercise professional judgment.[135]
Professional judgment includes not only knowledge about a specific

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[134] Student K, Commentary, Spring 2010 (memorialized in email on file with the
author).

[135] I intend the scope of professional skill and judgment to be read as broadly as possi-
ble. I mean to include aspects of personal awareness, social responsibility, career satisfac-
tion and professional identity.

area but also the ability to apply moral principles and solve unstructured problems. Deliberate reflection aids the student in developing professional judgment by forcing the student to increase her awareness of factors that affect her performance, and to think critically about her actions. The Stages of Reflection assist the teacher by providing a way to modulate the reflective process and increase the student's reflective capacity.

PART IV: TEACHING REFLECTIVE PRACTICE

Can you tell me, Socrates, is virtue something that can be taught? Or does it come in practice? Or is it neither teaching nor practice but natural aptitude or instinct?[136]

A. *Engaging Students with the Stages of Reflection*

The Stages of Reflection can be used to develop specific prompts for reflective assignments. In most situations, the reflective assignment will be in response to a specific performance. The reference to a specific performance can assist the student because he will have a concrete experience to which he can refer. The table on the following page contains a series of possible prompts that can be used to promote each stage of reflection. Obviously there are many more questions that could be used to prompt reflective responses. This list should not be viewed as an exhaustive list, but rather, as a starting point.

In teaching the Stages of Reflection, we should not expect to see our students fit perfectly in one stage or another. Rather, the point of teaching reflection in stages is to show the student – and the teacher – that movement is possible. Often the critical step in the teaching process is starting at a low baseline and then moving forward.

B. *The Stages of Reflection in the Clinical Context*

The Stages of Reflection add an important component to the clinical context. Most clinical programs already use reflection in the form of journals or other assignments.[137] These assignments are an important part of the learning process as they offer a chance to separate "action" from the "reflection."[138]

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[136] REGINALD ALLEN, ED., GREEK PHILOSOPHY: THALES TO ARISTOTLE, 3d ed. (1991) at 110, citing PLATO, PROTAGORAS AND MENO, TRANS. W.K.C. GUTHRIE (1956).

[137] A.B.A. Standard 305 does not prescribe the use of journals. A.B.A. STANDARDS, *supra* note 1. While my personal assumption is that reflection occurs primarily in the form   **R** of written assignments, and in my own teaching I have required students to submit reflections in written form, these "opportunities for student reflection" do not necessarily have to be in writing.

[138] Schön describes this concept as "reflection-in-action." Schön, *supra* note 6, at 243.   **R**

Stage of Reflection	Questions or Prompts to student	Connection to Cognitive Developmental
1. Competence	Did your performance meet the standard of a reasonably competent lawyer?	-Adherence to authority and rules -Use of concrete and familiar format -Focus on self – student's own performance
2. Difference and Choice	Are there different ways you could have accomplished the performance? At what point in the performance did you make a choice? Were you aware of the making the choice?	-Shift away from concrete format and dualism – introduction of multiple "right" answers -Focus on self – student's own performance -Some attention to others (other performances may be relevant to defining difference) -Identification of personal decision making
3. Internal Context	Why did you make certain choices in your performance? What personal experiences, characteristics, preferences or biases affected your decision-making process?	-Focus on self -Contextual – every student's experience will be different
4. External Context	Why did you make certain choices in your performance? Did you perceive different characteristics, experiences, preferences or biases in other people involved in the performance? How did your perception of others affect your performance?	-Focus on others and away from self (but the shift is not to level of universal) -Contextual – every representation will be different because different people will be involved -Identification of others' perceptions of self (may include reference to professional identity)
5. Societal Context	Why did you make certain choices in your performance? Were you aware of societal and institutional structures that could affect your performance (collective preferences, biases, experiences, histories, social, political or economic factors)? How did your understanding of societal and institutional structures affect your performance?	-Focus away from self to universal -Identification of social power structures -Identification of role of lawyer in society -Reference to principles that can guide future performances
6. Metacognition	How has your thinking process developed as a result of this performance? How has your thinking process developed as a result of your past reflections?	-Awareness of cognitive process -Application of universal principles back to self -Actualization

If reflection is an important aspect of clinical pedagogy, then the Stages of Reflection can provide transparency to a process many students find difficult. Moreover, the Stages of Reflection can modulate the expectations of teachers about their students' progress and performance. In the process we may find that all of our students progress more rapidly and to a higher level than they would have otherwise.

In terms of a larger strategy of reform in legal education, reflection should be integrated at an earlier stage in the curriculum. Imagine a world where students entering the clinic as third-years would have had two years' experience developing their reflective capacity. Imagine a world where students would have spent an entire academic year in a simulated, virtual law office, where they met on a weekly basis with a practitioner, and where they were required to interview and counsel clients and negotiate and draft agreements, and where they were required to produce guided reflections on each of their performances in line with the Stages of Reflection.[139] These students would be more prepared for their clinical experiences, better prepared to serve their clients, and more aware of their own cognitive development. In sum, they would be closer to being ready to practice law.

CONCLUSION

In the language of Schön, the reflective practitioner demonstrates an ability to think in action – she is aware of her actions and is capable of directing her actions through a union of thought and action. Critically, Schön distinguishes between "thinking on action" and "thinking in action." The truly reflective practitioner engages in contemporaneous thinking in action, while a non-reflective practitioner might think retrospectively about past actions. The difference is critical because the reflective practitioner – the one who thinks in action – has the capacity to analyze the context and adapt the performance while the decision is still under consideration. In contrast, the retrospective practitioner – the one who thinks back about past actions – does not have the capacity to adapt the performance while it is in progress. The development of this type of thinking in action is particularly difficult for novice practitioners because they do not have experience to guide them in deciding what to consider. The Stages of Reflection model provides a guide for new professionals to develop the habit of reflecting in action. The process involves retrospective examination of decisions (a de-coupling of thought and action), but the goal is to develop the capacity of the new lawyer to think in action. These initial

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[139] This world exists at California Western School of Law, where students are introduced to reflection in their first-year Legal Skills class, and where students complete the STEPPS Program in their second year.

experiences are critical to the future development of the reflective practitioner because they instill a default preference for reflection.

If we develop in our students the habit of reflective practice, we affect not only the legal education curriculum, but also the culture of the practice of law. Even if students never engage in a self-reflective exercise again in their careers, at least they know the option exists. And if they do engage in reflection as a regular part of the practice of law, they have instilled a self-improvement algorithm into their professional performance. Every time they perform a task they will be thinking about whether they met the standard of competence, whether they could have achieved their goal in a different way to accomplish the same task, what choices they made in the process of their performance, and whether personal or external preferences, biases, characteristics and experiences influenced the choices they made in the performance of the task.

In teaching reflective practice, it bears remembering, as Professor Dawn Schrader has noted, that it is critically important to match the learning environment to the learner.[140] The experience of Morton, Weinstein and Weinstein confirms that, as clinicians, we cannot adopt a "one size fits all" attitude toward our teaching and learning environments.[141] Certainly some students will possess a highly developed sense of moral judgment and a refined level of epistemic cognition, and some will not. The Stages of Reflection will allow us as teachers to identify the appropriate level for each student and guide the student as she advances from one level to the next.

The Stages of Reflection model offers an improvement over an unstructured approach, and invites critical inquiry into further refinement of the way we teach reflection. By focusing our attention to the way we teach reflection, we increase our own awareness and heighten our own capacity for development and improvement as teachers.

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[140] Schrader, *supra* note 37, at 87.
[141] Morton et al., *supra* note 64, at 519.

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APPENDIX

[TABLE 1]

Perry's Stages of Cognitive Development[142]

Stage of Development	Characteristics of Stage

Dualistic (Stage 1 - 2)
  1. *Basic Duality*
  2. *Complete Duality*
	Certainty and absolutism; there are right answers

Multiplicity (Stages 3-4)
  3. *Early Multiplicity*
  4. *Late Multiplicity*
	There are no right answers because the answer is dependent on one's perspective

Relativistic (Stages 5-6)
  5. *Contextual Relativism*
  6. *Pre-Commitment*
	Different answers signify different contexts

Commitment (Stage 7+)
  7. *Commitment*
  8. *Challenge to Commitment*
  9. *Post-Commitment*
	Decisions can be made with reference to principles, responsibility flows from decisions, the process of knowing is constantly evolving

[TABLE 2]

Kohlberg's Stages of Moral Development[143]

Stage of Moral Development	Characteristics

Level 1: Pre-Conventional
  1. Heteronomous Morality
  2. Individualistic, Instrumental Morality
	Obedience and punishment orientation; Avoiding punishment
	Self-interest orientation; Seeking reward; Interest in a personal benefit; Expectation to pay for a benefit

Level 2: Conventional
  3. Interpersonal Normative Morality
  4. Social Systems Morality
	Orientation to accord and conformity; Adherence to social norms; concepts of duty
	Authority and social-order maintaining orientation; Law and order mentality; adherence to written law

Level 3: Post Conventional
  5. Human Rights and Social Welfare Morality
  6. Morality or Universalizable, Reversible, and Prescriptive Morality
	Social contract orientation;
	Adherence to interpersonal relationships; beyond legal structures
	Orientation to universal ethical principles; Application of universal respect through principled consideration

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[142] Perry, *supra* note 39.
[143] Kohlberg, *supra* note 44.

[TABLE 4]

Neo-Kohlbergian Schema[144]

Schema	Characteristics	Source
Personal Interest	Justifies a decision as moral right be analyzing the personal stake the actor has in the consequences of the action	Kohlberg's Stage 2 and 3
Maintaining Norms	Perceived need for generally accepted social norms Perceived need for society-wide application of the norms Perceived need for norms that are clear, uniform and categorical Norms establish reciprocal relationship between citizens Hierarchical roles must be established Once must respect authority out of respect for society	Kohlberg's Stage 4
Postconventional	Moral obligations are based on shared moral ideas, contain full reciprocity, and are open discussion and scrutiny	Kohlberg's Stage 5 and 6

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[144] Rest, et al., *supra* note 45, at 386-89.   **R**

[TABLE 5]
King and Kitchener's Model of Reflective Judgment[145]

Stages of Reflective Judgment	Characteristics
Pre-Reflective Thinking (Stages 1, 2, 3) **Stage 1:** Knowledge is assumed to exist absolutely and concretely; it is not understood as an abstraction. It can be obtained with certainty by direct observation.	Beliefs need no justification since there is assumed to be an absolute correspondence between what is believed to be true and what is true. Alternate beliefs are not perceived. *"I know what I have seen."*
Stage 2: Knowledge is assumed to be absolutely certain or certain but not immediately available. Knowledge can be obtained directly through the senses (as in direct observation) or via authority figures.	Beliefs are unexamined and unjustified or justified by their correspondence with the beliefs of an authority figure (such as a teacher or parent). Most issues are assumed to have a right answer, so there is little or no conflict in making decisions about disputed issues. *"If it is on the news, it has to be true."*
Stage 3: Knowledge is assumed to be absolutely certain or temporarily uncertain. In areas of temporary uncertainty, only personal beliefs can be known until absolute knowledge is obtained. In areas of absolute certainty, knowledge is obtained from authorities.	In areas in which certain answers exist, beliefs are justified by reference to authorities' views. In areas in which answers do not exist, beliefs are defended as personal opinion since the link between evidence and beliefs is unclear. *"When there is evidence that people can give to convince everybody one way or another, then it will be knowledge, until then, it's just a guess."*
Quasi-Reflective Thinking (Stages 4 and 5) **Stage 4:** Knowledge is uncertain and knowledge claims are idiosyncratic to the individual since situational variables (such as incorrect reporting of data, data lost over time, or disparities in access to information) dictate that knowing always involves an element of ambiguity.	Beliefs are justified by giving reasons and using evidence, but the arguments and choice of evidence are idiosyncratic (for example, choosing evidence that fits an established belief). *"I'd be more inclined to believe evolution if they had proof. It's just like the pyramids: I don't think we'll ever know. Who are you going to ask? No one was there."*
Stage 5: Knowledge is contextual and subjective since it is filtered through a person's perceptions and criteria for judgment. Only interpretations of evidence, events, or issues may be known.	Beliefs are justified within a particular context by means of the rules of inquiry for that context and by the context-specific interpretations as evidence. Specific beliefs are assumed to be context specific or are balance against other interpretations, which complicates (and sometimes delays) conclusions. *"People think differently and so they attack the problem differently. Other theories could be as true as my own, but based on different evidence."*
Reflective Thinking (Stages 6 and 7) **Stage 6:** Knowledge is constructed into individual conclusions about ill-structured problems on the basis of information from a variety of sources. Interpretations that are based on evaluations of evidence across contexts and on the evaluated opinions of reputable others can be known.	Beliefs are justified by comparing evidence and opinion from different perspectives on an issue or across different contexts and by constructing solutions that are evaluated by criteria such as the weight of the evidence, the utility of the solution, and the pragmatic need for action. *"It's very difficult in this life to be sure. There are degrees of sureness. You come to a point at which you are sure enough for a personal stance on the issue."*
Stage 7: Knowledge is the outcome of a process of reasonable inquiry in which solutions to ill-structured problems are constructed. The adequacy of those solutions is evaluated in terms of what is most reasonable or probable according to the current evidence, and it is reevaluated when relevant new evidence, perspectives, or tools of inquiry become available.	Beliefs are justified probabilistically on the basis of a variety of interpretive considerations, such as the weight of the evidence, the explanatory value of the interpretations, the risk of erroneous conclusions, consequences of alternative judgments, and the interrelationships of these factors. Conclusions are defended as representing the most complete, plausible, or compelling understanding of an issue on the basis of the available evidence. *"One can judge an argument by how well thought-out the positions are, what kinds of reasoning and evidence are used to support it, and how consistent the way one argues on this topic is as compared with other topics."*

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[145] THE REFLECTIVE JUDGMENT STAGES, www.umich.edu/~refjudg/reflectivejudgment-stages.html (last visited January 23, 2014) (citing PATRICIA KING & KAREN KITCHENER, DEVELOPING REFLECTIVE JUDGMENT 14-16 (1994)).