

ACCIDENTAL SCHOLAR¹: NAVIGATING ACADEMIA AS A CLINICIAN AND REFLECTING ON INTERGENERATIONAL CHANGE

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INTRODUCTION

It comes as quite a surprise to me that I am now in my fourth decade of clinical teaching. Even more surprising is that I am now a member of the “oldest” generation of clinical teachers. I realized this when I attended the thought-provoking session on intergenerational change and clinical teaching at the 2019 clinical teaching conference.² The presenters asked the members of the audience to raise their hands according to the number of years they had been clinical teachers. I fit into the “30 years or more category,” and I joined that group to discuss the particular features of our generation of clinical teachers. As I looked around, I saw colleagues whom I had viewed as mentors in my early years in clinical teaching. It hit home that these colleagues are now my generational peers. Together, we have seen major changes in our profession, including the role scholarship plays for clinical professors.

This essay is a reflection on the place of scholarship in my life as a clinical teacher. I explore that question in the context of my early experiences in clinical teaching navigating the tenure-track, as well as later experiences as a clinician who has continued to write but has often struggled to find the right balance between clinical teaching and

* Professor of Law and Co-Director, Criminal Justice Clinic, American University Washington College of Law. I thank Susan Bennett and Maya Coleman for valuable comments on drafts of this essay, Evan Chiarelli for excellent research assistance, and Jamie Salazer for bluebooking clean up. I am indebted to my clinic colleagues, both at American University and in the larger community, for many of the ideas in this essay. In my view, when it comes to clinical scholarship none of our insights are solely our own. My heartfelt love and appreciation go to my spouse Maya Coleman and our daughter Moxie, who mean the world to me.

¹ I have shamelessly appropriated the title from Anne Tyler, one of my favorite novelists. ANNE TYLER, *THE ACCIDENTAL TOURIST* (1985).

² AALS Conference on Clinical Legal Education 2019, *Intergeneration Change in Clinical Education: Our Work, Our Lives, Our Programs, Our Communities*, May 6, 2019, https://memberaccess.aals.org/eweb/DynamicPage.aspx?WebKey=198FECF2-47D6-46D6-BC5C-FFE0CA7C0B86&RegPath=EventRegFees&REg_evt_key=533df5e5-ddbf-4bc8-9ae6-f0fbf4276ff4&Site=AALS. The session leaders were Claudia Angelos, Phyllis Goldfarb, Elliott S. Milstein, Dean Hill Rivkin, and Ann C. Shalleck.

scholarship. My relationship with scholarship is steady and strong, but I can best characterize my relationship with writing articles for publication as an on-again, off-again relationship. I have been at times deeply immersed in writing, at other times, quite removed from it. This is by no means a “tell all” memoir, but my seniority in the legal academy affords me the freedom to write candidly without concern for my reputation as a scholar. To admit any struggle with writing is to risk being taken less seriously as a scholar.

My topic is clinicians as writers and scholars. I use the term “clinician-scholar” as a shorthand for clinicians who write and publish clinical scholarship, and other kinds of scholarship. I use the term “clinical scholarship” to include a loose constellation of works that address lawyering theory, clinic design, clinic pedagogy, the role of clinical teachers in law schools, and legal education more generally, including authors that write from a critical perspective.³

I use the term scholar despite some misgivings. A scholar is a “learned person” or “a specialist in a given branch of knowledge.”⁴ The meaning conveys the attractive notion of a person who loves ideas, thinks about ideas, shares those ideas, and writes about those ideas, hopefully for the greater good. My ambivalence stems from the fact that “scholar” can convey pomposity, arrogance and exclusivity.⁵ It can be used to divide law teachers rather than bring them together, i.e. “she will never be a scholar,” “he is not a scholar.” I prefer the term “writer,” and appreciate the fact that the *Clinical Law Review* uses the term writer to describe its annual workshop,⁶ but I use the term scholar because it is embedded in academic culture. The bifurcation of law teachers between “scholars” and “not scholars” is beyond

³ I follow in the footsteps of the first editors of the *Clinical Law Review*, whose foreword to the first volume viewed clinical scholarship in a similar “big tent” way. See Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Why Not a Clinical Law Journal*, 1 *CLINICAL L. REV.* 1, 8 (1994). Other authors in the same volume disagreed about the purpose of clinical scholarship. Compare Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1 *CLINICAL L. REV.* 127 (1994) with Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 *CLINICAL L. REV.* 93 (1994). Steve Ellmann later noted:

The concerns of clinical scholarship are broad, ranging from understanding effective lawyering and learning how to teach lawyering skills well, to shaping the role of clinical and skills teaching—and teachers—in law schools, to studying the character of the legal system as illuminated by clinical practice and addressing the role of law schools in contributing to the pursuit of justice outside school walls.

Stephen Ellmann, *What We Are Learning*, 56 *N.Y.L. SCH. L. REV.* 171, 172 (2011).

⁴ These terms are used interchangeably. See *Scholar*, *AMERICAN HERITAGE DICTIONARY* (5th ed. 2012).

⁵ See DAVID LODGE, *THE CAMPUS TRILOGY: CHANGING PLACES, SMALL WORLD, NICE WORK* (2011).

⁶ *CLINICAL LAW REVIEW WRITERS’ WORKSHOP 2019*, <https://www.law.nyu.edu/journals/clinicallawreview/clinical-writers-workshop> (last visited July 31, 2019).

the scope of this essay but is a troubling development.

Why does the adjective “accidental” accompany the noun “scholar” in the title? The term describes the fact that when I became a clinical teacher I had never considered writing a law review article. A lot changed after I entered the academy; the process was no longer accidental but instead deliberate, and it remains so today.

From that reflection, both from my own experiences and my observations about the culture of clinical teaching, I offer some thoughts on how the path to becoming a clinician-scholar has changed as clinicians have gained a more solid foothold in the legal academy. Clinical programs have experienced gentrification within the larger culture of legal education. Many programs are larger, stronger and more prosperous. The path to becoming a clinician-scholar is both a more difficult path and an easier path than the one that I travelled. Whether harder or easier, the role does change – and likely should change – as clinicians navigate the transition from junior to senior members of their institutions. Clinicians face complex choices in determining the role that scholarship should play in their professional lives.

My hope is that my essay will spark a candid conversation about the role of scholarship for clinicians. My goal is not to debate whether clinicians should write scholarship,⁷ but to discuss the realities and the tradeoffs.⁸ The essay will speak most directly to those seeking or holding tenure-line positions, or positions that require traditional academic writing as a requirement of the job. I use the term “tenure-line” or tenure as a shorthand way to describe these kinds of positions, both because that is the type of position that I hold, and because the nature of these positions varies widely from school to school.⁹

My story is grounded in my career and the context of my law school. I hope that my slightly nostalgic look at the beginning of my career will resonate with new clinicians, as well as lawyers who want to be clinical teachers. Perhaps clinicians in my generation will see something of themselves in this essay.¹⁰

⁷ See Ellmann et al., *supra* note 3 (noting that clinicians have different views on this topic).

⁸ Indeed, decision making goes to the very heart of what clinicians teach. SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (2014).

⁹ See Todd A. Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for “Practice-Ready” Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U.J.L. & POL’Y 129, 148 (2013). Understanding the differences between different types of clinical teaching positions is no simple task.

¹⁰ Narrative is not objective, as many critics have argued, see Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994) (citations omitted), but it is still valuable, as defenders of narrative have so persuasively argued. *Id.* at 485-486.

I. BECOMING A CLINICIAN-SCHOLAR

My path to a career in legal academia is in some respects quite traditional, in other respects less so. I have white privilege,¹¹ class privilege and academic privilege. I was raised middle-class in a family where my father was a college professor and my mother was a first-generation college student who obtained a master's degree and taught elementary and secondary school. I attended an elite college and law school and possess traditional credentials for a career in academia. I was fortunate to have many tools for entering an elite, competitive profession.

But I have never completely settled in to my privilege. I have a kind of uncertainty, perhaps rooted in my Midwestern upbringing. My frame of reference has always been shaped by my adolescence spent in rural Minnesota after my parents divorced, and my mother, sister and I moved in with my grandparents. Small town life was wonderful in many ways, but only a small percentage of students in my high school attended college, and my learning curve was steep when I later attended an elite college and university. I had missed out on many cultural resources and cues that many of my friends in college and law school took for granted.

In the early 1980's, I was a student in the Mandel Legal Aid Clinic at the University of Chicago Law School, and from that point on I knew that I wanted to be a clinical teacher. Despite the fact that both of my parents were teachers, I had never considered a teaching career before my clinic experience. Law school was often an unpleasant experience, and I was lucky to find a home in the clinic. I was a lesbian coming out who was not yet out, and a lefty surrounded by conservative students. Ronald Reagan was elected president during my first year of law school, and I remember a straw poll in one of my classes where the vast majority of students supported his candidacy. I was a fish out of water.

Clinicians were my people and I loved representing clients. My experiences as a clinic student inspired me to become a clinical teacher, but my vision of clinical teaching was unrelated to academia. A clinic was simply a place to learn how to be a lawyer.

I participated in the clinic during my second and third years of law school. The clinic was in the basement of the law school in crowded quarters. The offices were so small that when my clinic partner and I met with our supervisor about a case, our chairs barely fit the space between our supervisor's desk and the door to his office.

¹¹ See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019) (exploring the role of privilege in legal academia).

The supervising attorneys were not considered law school faculty and were not integrated in any respect into the life of the law school.

At Mandel, the primary focus of the clinic was casework. As a student attorney, my practice included a mix of small case and big case litigation, including administrative hearings, appellate work and class action litigation. The substantive focus was public benefits, employment discrimination and special education law. The clinic classroom component consisted of a one-semester, one-credit course focused on trial advocacy. As I recall, this was the only credit that the law school awarded for participating in a clinic. I typically worked 20-30 hours weekly in the clinic. This deep dive into clinic lay the foundation for my career in clinical teaching. I loved everything about the experience – the clients, the advocacy, the collaboration, and the intellectual challenge of lawyering, all in the context of social justice work.

After law school, I clerked for a federal judge and then worked as a trial attorney in the Voting Rights Section of the Civil Rights Division of the United States Department of Justice. Two years after I started at DOJ, I believed that I had enough practice experience to teach students about practice, so I applied to clinical teaching positions at several DC area law schools. Five years after graduating from law school, I was hired as a visitor from practice to fill a one-year vacancy in the criminal defense clinic at American University Washington College of Law.¹² There was no intention or expectation that I stay. I took a leave from my position at DOJ, fully expecting to return to that position at the end of the academic year.

I have taught at American ever since, transitioning to the tenure track two years later. Coincidentally, I arrived at American one year after the law school created five tenure-line positions on an integrated tenure track. Our longstanding clinic director had tenure and had just transitioned to a new position as the Dean. Five clinicians were in tenure-line positions, four of whom had taught in the clinic as supervising attorneys and one of whom who was newly hired. A supervising attorney and I were the only clinicians who were not in tenure-line positions. I was clueless about these status differences when I arrived. In fact, I am not sure that I even understood that my colleagues were in tenure-line positions – or the relevance of this fact — until I had been on the job several months.

When I arrived at American, I had never considered writing a law review article. My frame of reference for clinical teaching came from my experiences in the Mandel clinic where scholarship was not part of the equation for clinical teachers. From what I had observed, scholar-

¹² The position became open when a clinician at American who was teaching in two clinics returned to teaching in only one.

ship was not something that clinicians did. Moreover, I knew nothing about legal scholarship generally, let alone clinical scholarship. I was not a member of my law school's only journal, and I had read few law review articles.¹³ Most of my law school classes were large lecture doctrinal courses where the assigned reading was a textbook.

Writing always came fairly easily to me. As a child, I wrote short stories and poetry, and read voraciously. Most of my courses in college required writing, so I learned to write quickly, and had some amazing writing mentors. My work as a clinic student, and later as a law clerk and a DOJ attorney, required me to write often, and I rarely had writer's block. I viewed writing as a craft and took pride in my efforts. I needed a bridge from this type of writing to academic writing.

I was introduced to the idea of scholarship during my first year of teaching. We assigned clinical texts in the clinic seminar, and I saw my colleagues researching and writing law review articles. I planned to return to DOJ at the end of the academic year and did not have a plan for becoming an academic. The idea that there was scholarship about clinic pedagogy and the role of lawyers intrigued me, but my priority was clinical teaching. I was teaching a criminal defense clinic without having practiced criminal law, and learning how to teach and supervise students in a clinic that was structurally very different from the one in which I had been a student. The learning curve for a criminal defense practice was huge. My practice experience was broad and deep, but I knew little about the substantive and cultural aspects of criminal defense work.

That year, I learned that I loved small case criminal defense representation and that the cases and clients were a good fit for learning about lawyering.¹⁴ But it was trial by fire. My clinic practiced in both juvenile court and two different adult courts; in one adult court, clients could elect jury trials.¹⁵ I got a confidence boost early in my first semester when my students won a jury trial involving possession of marijuana. Whether that outcome was due to talented students, the

¹³ Novelist Jane Smiley explains that reading novels is one of the best ways to learn how to write a novel. Jane Smiley, *Five Writing Tips*, PUBLISHERS WEEKLY, Oct. 3, 2014, <https://www.publishersweekly.com/pw/by-topic/industry-news/tip-sheet/article/64221-5-writing-tips-jane-smiley.html>.

¹⁴ For an excellent argument to this effect, see Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLINICAL L. REV. 573, 604 (2006). See also Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009).

¹⁵ For a description of the de novo court system in Maryland, see Binny Miller, *Visibility and Accountability: Shining A Light on Proceedings in Misdemeanor Two-Tier Court Systems*, 63 ST. LOUIS U. L.J. 191, 210 (2019).

jury, the charge, the prosecutor, the judge, the facts or my supervision is impossible to say.

Several things happened during my first year in clinical teaching that changed the course of my clinical teaching career. American decided to hire a tenure-track clinician for the following academic year, and I applied for that position. I didn't know how unprepared I was. While many candidates for law teaching positions had not yet published articles, most had well-developed ideas for an article that they planned to write. My scholarship ideas were undeveloped. I had never seen a job talk, and I did not moot my job talk. I was not offered the position at American, and during the remainder of the year, I learned more about the culture of academia. I realized that a clear idea for a scholarly article was critical to obtaining a tenure-line clinical teaching position, and observed colleagues work tirelessly to write law review articles.

When I was asked to visit at American for a second year, I resigned my position at DOJ, and returned to American for another year with a plan to go on the job market in the fall. My picture of clinical teaching had shifted from seeing a clinical teacher as a legal services lawyer in a law school to seeing a clinical teacher as a full-fledged member of the faculty. I wanted to write about lawyering theory but I followed the advice of a colleague who told me that he didn't feel prepared to write clinical scholarship until he had taught in the clinic for a few years, which in retrospect turned out to be true for me.

I knew that needed to be able to discuss an article that I planned to write in order to be a serious candidate for a tenure-line position, and I had an idea for a doctrinal article. While litigating a case in Augusta, Georgia as a DOJ lawyer, I learned that powerful deliberative bodies known as local legislative delegations could be manipulated in ways designed to discriminate against black voters. A case like this had never been litigated, and I had some ideas about how this type of discrimination could be addressed under an expansive interpretation of voting rights doctrine.

Quite unexpectedly, one of my colleagues left American to teach at another law school, so there was another slot in our program. I submitted my application through the Association of American Law Schools' hiring process and gave a job talk on my voting rights idea at a few law schools. I wanted to stay at American, so I accepted the position as soon as it was offered.

The hard work of writing scholarship began at the end of that second year. Not by choice, I was on a fast tenure-track, with a little

more than 3 years to write for tenure.¹⁶ At American, we did not (and still do not) have rules about the quantity of scholarship required for tenure. When I started teaching at American, the advice I received was to write one “long” article with many footnotes and possibly a “shorter” article. I wrote two articles before tenure, both were long and had many footnotes.¹⁷ I wrote the voting rights article first,¹⁸ and when I gained more clinical experience and understanding of lawyering theory, I wrote an article about case theory and the role of clients in shaping case theory.¹⁹ Both articles were part of my package for promotion and tenure.

Several things stand out about the process of becoming a clinician-scholar in that time and place. I describe my experiences, and suggest where things may have changed today.

I approached my time on the tenure track with the mindset that scholarship came first and foremost among the institutional responsibilities of scholarship, teaching and service. For me, that mindset was required to write for tenure. Not only because I was on a fast tenure track, but also for other reasons. I was feeling my way as a new scholar with no prior experience writing law review articles, in a culture that was not only new to me, but also one that was new to most clinician-scholars. I was trying to understand this world, and at the same time, I was writing a script, along with others, that future clinicians might choose to follow, or adapt. I felt a responsibility to my clients, my students and my colleagues. I was passionate about clinical education, and wanted clinical teachers to influence theory and practice, and legal education, both broadly and in my own institution. Writing scholarship was one of many ways to go about this project.

A. *Structural Support for Scholarship*

Despite my strong sense of identity, writing scholarship was a lonelier endeavor for me when I started writing than it is now. With the exception of the Arrowhead conferences,²⁰ and the Clinical The-

¹⁶ This fast-track was due to the particular tenure rules that governed law school faculty actions at that time for individuals who were hired in a temporary capacity and later transitioned to the tenure track.

¹⁷ The first, Binny Miller, *Who Shall Rule and Govern: Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, 102 *YALE L.J.* 105, 204 (1992), had 99 pages and 529 footnotes. The second, Binny Miller, *Give Them Back Their Lives*, *supra* note 10, had 92 pages and 375 footnotes.

¹⁸ Miller, *Who Shall Rule and Govern*, *supra* note 17.

¹⁹ Miller, *Give Them Back Their Lives*, *supra* note 10. This article was accepted for publication after I received tenure, but before I was promoted to full professor the following year.

²⁰ The official name of the Arrowhead conference was the UCLA-University of Warwick International Clinical Conference. The conferences were jointly sponsored by the

ory Workshop in New York,²¹ there was no formal support for writing scholarship on a regional or national level. The Clinical Law Review, and its writers' workshops that are now a key feature of the culture of clinical scholarship, did not yet exist.²² In 1989, I attended the Arrowhead conference after I decided to go on the market and before I started writing a law review article, and it played a key role in my development as a clinician-scholar.²³ The conference gave me a window into the world of clinical scholarship, and a framework for thinking about scholarship. It provided an opportunity to interact with the community of clinicians who were writing scholarship and to picture joining that community. To this day, I can remember some of the presentations, and my conversation with other clinicians. The sense of community was heightened by the location in the mountains east of Los Angeles, and the constant interaction because the attendees ate all of our meals together and stayed in rustic accommodations on-site.

Today, I expect that most new clinicians are less naïve about the nature of legal scholarship than I was when I started my career. There are many more law journals now than there were when I embarked on my career,²⁴ and the law school curriculum has expanded to include seminars that provide students with opportunities to write serious scholarship. While these resources vary by institution and by student,

UCLA School of Law and Warwick University in the United Kingdom, and when they were held in the United States they took place at UCLA's Lake Arrowhead Conference Center. See David Binder & Paul Bergman, *The Early Years of Clinical Legal Education at UCLA: Across Substantive Domains*, 11 CAL. LEGAL HIST. 405, 414 (2016). A reference to the first conference, held in 1986, can be found in Paul R. Tremblay, *On Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably Competent Client*, 3 UTAH L. REV. 515-584 (1987) (referring to presenting the article at this conference). The last conference was held in 2005, and papers presented at that conference were published in the Clinical Law Review. See 13 CLINICAL L. REV. [i]-[ii] (2006-2007).

²¹ Steve Ellmann launched the Clinical Theory Workshop in 1985. See Ellman, *supra* note 3, at 172.

²² The Clinical Law Review was launched in 1994 as a collaboration between the Association of American Law Schools, CLEA and NYU law school. The Clinical Law Review provided a forum to publish clinical scholarship and for authors to receive feedback on their work from peer editors.

²³ See *supra* note 20 for the history of this conference. For mention of the 1989 conference, see Peter Margulies, *Who Are You to Tell Me That: Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 N.C. L. REV. 213, 252 (1990).

²⁴ By 1999 there were 330 journals sponsored by law schools. See Tracey E. George & Chris Guthrie, *An Empirical Evaluations of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813, 836 (1999). When I began teaching at American there were two law journals, the *American University Law Review* and the *American University International Law Review*. The first began in 1952 and the latter not long before I started teaching. American University Washington College of Law, *Students, Publications*, <https://www.wcl.american.edu/community/students/publications/> (last visited July 31, 2019). Today there are thirteen law reviews, journals and briefs. American University Washington College of Law, *Washington College of Law Journals & Law Reviews*, https://digitalcommons.wcl.american.edu/WCL_journals/ (last visited July 31, 2019).

the landscape looks different than it did thirty years ago. There are still clinicians who may be lonely, either because they are the sole clinician – or one of only a few clinicians – in their institutions, or because they don't have the resources or access to the broad array of support for clinical scholarship that was flourishing by the mid-1990's. In addition to the New York Clinical Theory Workshop, which began in 1985, the *Clinical Law Review* was launched in 1994,²⁵ and provided opportunities to publish, and later to receive feedback on scholarship.²⁶ Regional workshops flourished in the 1990's, including the Mid-Atlantic Clinical Writers Workshop.²⁷ These forums have supported an exponential increase in the number of clinician-scholars and an enhanced sense of community among those scholars. In fact, the participants in these forums provided valuable comments to me as I finalized my case theory article.²⁸ One purpose of the flourishing fellowship programs is to prepare new clinicians to write scholarship so that they can go on the teaching market.

Structural support for the time required to produce scholarship is also critical. While my law school asked a lot from clinicians – each year we taught one course outside of the clinic curriculum and served on law school governance committees²⁹ – I benefitted from several critical structural supports. Prior to coming up for tenure, clinicians received a one-semester release from supervising students in the clinic, although we continued to teach our “non-clinic” course and to teach in the clinic seminar. Also, the nature of the misdemeanor and minor felony practice in my clinic created space for writing in the summer.³⁰ Most cases finished before the end of May when students graduated. This was the flip side of an intense one semester clinic where I

²⁵ See *supra* note 22.

²⁶ I am not unbiased. I have published in the *Clinical Law Review*, see Binny Miller, *Teaching Case Theory*, 9 *CLINICAL L. REV.* 293 (2002), and served on its Board of Editors for a six-year term, from 2003 to 2009. See *infra* Part III.A for a discussion of my work in connection with the Review.

²⁷ See Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 *SETON HALL L. REV.* 653, 659 n.22 (1993). The Mid-Atlantic gathering is a writing workshop; other regional conferences include feedback on scholarship as part of their overall agenda.

²⁸ Miller, *Give Them Back Their Lives*, *supra* note 10, at 485.

²⁹ I served two years on the admissions committee and one year on the appointments committee. One of the reasons for an integrated tenure track is for clinicians to be involved in law school governance, particularly in areas that have a major impact on the life of an institution. I taught an interviewing and counseling simulation course while I was on the tenure track, and after that taught a variety of courses.

³⁰ See Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 *CLINICAL L. REV.* 235 (1997); Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9 *CLINICAL L. REV.* 879, 880 (2003) (noting that large case clinics pose challenges for academic leaves).

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often supervised two to three trials each semester, including jury trials, and worked with students to resolve cases for other clients. Once I finished grading my non-clinic course, June and July were mostly free for research and writing.

B. Building a Scholarly Community

Although formal support for scholarship has grown, a strong community can provide important informal support in the process of becoming a clinician-scholar. I was fortunate to have a dean who was a clinician, and to have a community of clinician-scholars at American. By the time that I joined the tenure track, I had five colleagues on the tenure track. At that time, faculty in our clinic were solidly tenure track, with the exception of one supervising attorney, a visitor each year who rotated through two clinics, and the occasional visitor to support a clinician's writing leave. I was a year behind my least senior colleague, so I had the opportunity to watch and learn from the experiences of more experienced colleagues and to seek advice.

Over a period of several years, many of my clinic colleagues wrote their articles in the trailer, known as the Cassell Annex,³¹ that housed most clinic faculty offices and student work space. In an earlier article, I noted that the Annex "was built of aluminum and was a repurposed building, which had originally been built as temporary quarters to house members of the military during World War II."³² Looking back, I see the colleagues who gathered in that space as a kind of informal writing group, except that we had little time for much substantive exchange. Because all of us were roughly in the same place on the scholarship learning curve, and were under the same kind of pressure in the race to tenure, we didn't have the kind of time – or the experience with scholarship — to mentor each other in the way that a senior colleague could. Also, I was writing about voting rights, a specialized area unrelated to my colleagues' expertise. Others were writing in lawyering theory,³³ clinic theory and pedagogy,³⁴ family law,³⁵ and housing law and homeless-

³¹ Binny Miller, *Herding Cats: Role Ambiguity, Governance, and Law School Clinical Programs*, 41 U. BALT. L. REV. 523, 532 (2012).

³² *Id.*

³³ Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 604 (1990).

³⁴ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993); Nancy Cook, *Shakespeare Comes to the Law School Classroom*, 68 DENV. U. L. REV. 387 (1991); Richard J. Wilson, *The New Legal Education in North and South America*, 25 STAN. J. INT'L L. 375 (1989).

³⁵ Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L. J. 459 (1990).

ness.³⁶ For one year, we were joined by a visitor from The Catholic University of America Columbus School of Law who was working on a magnum opus on domestic violence.³⁷ Still, over the course of several years some of us did exchange drafts and provide feedback.

We often worked late at night and on weekends. We chatted with each other during breaks, joked around, and commiserated. Two wise colleagues answered my grammar questions.³⁸ We were in this sense a support group for each other. Having this community made a huge difference. I was lonely when everyone else had tenure, and I had to finish the marathon without company.

The condition and isolation of the clinic space was problematic in many ways, but as I have written elsewhere,³⁹ it created a strong sense of community and forged bonds between us. In retrospect, that isolation may have been an ideal environment for writing scholarship. It was a busy place during the day, with students and faculty crammed into a small space, but at the end of the regular workday, it was fairly quiet.

The clinic space at American vastly improved after we moved to a new building, where we were housed in the same space as the rest of the law school. Today, many clinics do not inhabit temporary trailers, and clinics as a whole have gentrified. That's largely a good thing, but I wonder if clinicians have lost something in the loss of our scrappy underdog identity.

Advice from more experienced clinicians is as important today as it was when I began my career. Despite my colleagues' relative inexperience, I received some excellent advice about writing scholarship – all of which continues to hold true today. I learned that I should write about something I was passionate about and should be able to explain why my ideas mattered in the world, to actual people. This was a way of saying that social justice was important. I learned that a law review article could start with only one good idea that was new (or new-ish), and that it was helpful to begin to work with that idea by writing five to ten pages. The next step was to explain how that idea was similar or different from what others had written, and then use a story or stories to explain the idea. Read, read and read more scholarship, both for ideas and for footnotes. Write from an outline, or if that doesn't work, write something that is an incoherent mess and tackle that mess. Write

³⁶ Susan D. Bennett, "No relief but upon the terms of coming into the house"—*Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System*, 104 *YALE L. J.* 2157 (1995).

³⁷ Catherine F. Klein, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 *HOFSTRA L. REV.* 801 (1993).

³⁸ Susan Bennett and Bob Dinerstein know who I am referring to.

³⁹ Miller, *Herding Cats*, *supra* note 31, at 532-33.

and rewrite the article so that the writing is as good as you can make it. Eventually this process will result in an article. I learned that I should share a draft article with a few colleagues on the non-clinic faculty whose expertise intersected even a little with the topic of the draft, or who lacked expertise but could give me good feedback.

I wanted my writing to make a difference in the world. I was highly motivated to write for this reason, and in order to obtain the job security I needed to continue to do the job that I loved. I also had a chip on my shoulder. I had a strong desire to not only demonstrate that I was a capable academic based on my still developing sense of the requirements of legal academia, but also to show that all clinicians were capable academics. I was on a mission to show that clinicians were the equal of faculty who did not teach in the clinic, but the rules for that mission were not clear because I started teaching at the point when tenure line positions for clinicians were just starting to take off. Many schools did not have tenure for clinicians, and many of those that did provided tenure only to the director of the program.⁴⁰

My sense of community was strong. I attended several clinical conferences, where I established a strong bond with clinicians from other schools. I saw myself as part of a large community of clinical teachers and a smaller community of clinicians writing scholarship. The fact that I was seeking tenure in unison with colleagues in my clinical program heightened my conviction. I did not want to be viewed as a second-class citizen and I did not want other clinicians to be viewed in this way. I viewed myself as part of a movement within legal education and I wanted that movement to succeed. In this sense, the clinical movement, and the clinicians who were a part of it, provided an underground, somewhat invisible type support that was critical to me.

All of these factors – keeping the job that I loved, the time and intensity of clinical teaching, writing something that mattered, my identity as a clinician and sense of community with other clinicians – set the tone for my approach to scholarship. In order to write, I adopted a rigorous schedule that resembled my life as a law student when I spent most of my time in the clinic. The difference is that it was a schedule that lasted four years. During much of the academic year, I came into the office early and did most of my clinic and law school work until late afternoon, when I would take a short run with a colleague and take a nap on my office couch. The remainder of the evening I worked on scholarship, often until eleven or midnight, later if I was on a roll. I came back on weekends. As I describe earlier in

⁴⁰ *Id.* at 530-31, 548.

the essay, I was often joined by other colleagues, which made the experience a better one.

That intense involvement in scholarship was exhilarating. I was constantly thinking about the article that I was writing, thinking about material that I had read, and was deeply immersed in creating a product that was entirely new to me. There was also fear associated with this enterprise – fear of failure, fear of not being good enough and not knowing what was good enough. One of my colleagues referred to her home office where she often wrote her articles as “the room of pain.” I understood that. The writing process could be excruciating. It was a wonderful, terrifying, and exhausting intellectual endeavor. It was all of these things mixed with love, and a little bit of hate.

Now, I can’t imagine an undertaking like this and wouldn’t want it. It was an unhealthy lifestyle. Working this hard, under stress, took a toll on my personal relationships, including the relationship with my then-partner. Both of my grandfathers died during this period. I was very close to both of them; my mother’s father was like another father to me because I lived with my mother’s parents for most of my childhood and adolescence. Grieving their deaths, along with the death of my beloved grandmother (my mother’s mother) the year before I started teaching, was impossible when I was consumed by work. I could not have kept up this pace had I been a parent or had any significant caretaking responsibility.

II. REFLECTIONS ON THE EMERGENCE OF THE CLINICIAN-SCHOLAR

Becoming a clinician-scholar today is very different than it was thirty years ago. There are many more formal structural supports, including fellow or practitioner-in-residence programs. But in some respects, the process of becoming a clinician-scholar is harder today than it was when I started clinical teaching. Much of my process was accidental, making it up as I went, in a world where it was unclear what was expected of me and what a scholar was. This was frightening in some respects, but it allowed a kind of openness and freedom that allowed me to figure out who I wanted to be. It was like litigating in a forum with no rules, something that I have experienced often as a lawyer and clinician. Now there are more rules, and while those rules provide clarity, they also may be more confining. Deliberate scholars have replaced accidental scholars. The necessity of a scholarly agenda and the publication process are two examples of this phenomenon.

Candidates for law teaching positions are advised to have a scholarly agenda, which has been described as “the set of questions, issues or problems you hope to explore in the next three to five years of your

career.”⁴¹ While establishing a scholarly identity has merit,⁴² there are drawbacks. In clinical teaching, this is challenging for candidates who have not served as fellows in clinical programs that provide access to the kind of mentoring that can assist them in developing a scholarly agenda. Some aspiring clinicians may not be in a financial situation where they can afford to hold a fellowship position. This affects who can enter the legal profession and particularly affects clinicians from disadvantaged backgrounds, including some clinicians of color.

I also see another pernicious aspect to scholarly agendas. The very process of framing a scholarly agenda may discourage clinician-scholars from pursuing an article that they are passionate about writing or trying new things. Scholarly agendas were not part of the conversation when I became a clinical teacher. I wrote my first article about voting rights because the doctrine was fascinating, and it was the only topic that I felt I knew enough about to write about. I never considered writing a series of smaller pieces on the same theme, which I likely would have done if I were starting law teaching now. I transitioned to writing about lawyering theory because I was excited about the new scholarship in this area. When I started my article, I had been teaching case theory as storytelling with my clinic colleagues for several years. There was no scholarship about case theory, and I saw an opportunity to explore an idea that other clinicians had not.

For me, it was exciting to write both a doctrinal article and a lawyering theory article. The articles required me to think in different ways and write for different audiences. My guess is that this is less common for new clinician-scholars, and many write exclusively in doctrinal or policy areas. This phenomenon can only partly be laid at the foot of scholarly agendas. The appeal of these topics to relevant audiences – law schools who hire candidates (and later promote them) and student journals who publish their work – are likely factors, and not all clinician-scholars want to write clinical scholarship. Their writing is no doubt influenced by their work as clinicians, but something is lost when clinician-scholars are not writing any clinical scholarship. We

⁴¹ Yale Law School, *Applying for Teaching Positions, Scholarly Agenda*, <https://law.yale.edu/studying-law-yale/areas-interest/law-teaching/current-candidates/applying-teaching-positions/scholarly-agenda> (last visited July 31, 2019). Oddly, Yale distinguishes clinic candidates from academic candidates, *id.*, and notes that a scholarly agenda is “more central to the academic hiring process than to the clinic hiring process.” The Yale approach is not the prevailing view at other law schools. Columbia Law School provides sample scholarly agendas on its website. Columbia Law School, *Careers in Law Teaching Program, Samples: Scholarly Agendas & CVs*, <https://www.law.columbia.edu/law-teaching/services-current-candidates/samples-scholarly-agenda-cvs> (last visited July 31, 2019).

⁴² Stephen J. Aguilar, *Establishing Your Scholarly Identity*, *INSIDE HIGHER ED.*, July 26, 2018, <https://www.insidehighered.com/advice/2018/07/26/shaping-scholarly-identity-helps-you-do-what-you-want-academe-opinion>.

miss the opportunity to learn from their experiences.

The publication process and the selection of articles has also forced clinician-scholars today to be deliberate in their approach. In my view, this elevates strategy over substance, and requires an excessive focus on the process of publishing articles rather than the substance of writing. Barry Friedman outlines many of these factors in his lengthy article on this topic;⁴³ I will address one of these factors – online submission platforms. I have used these platforms for submitting my two most recent articles for publication and found them to be an easy way to reach a large number of potential publishers. But I have seen that the strategy required for junior clinicians to maximize the placement of articles is not easy to learn and takes a huge amount of time. And it often leads to incredible stress around the decision making process—how and when to expedite, which offer to accept, and other factors. The process for fellows going on the market is especially stressful. Is it better to publish with a specialty journal at an elite school, or a general journal at a less elite school? Is it the journal ranking or the school ranking that makes the most difference? And to whom? In many cases, there is no “one size fits all” answer to this question because the audience – law schools who hire candidates – may differ in their approach to these questions. The answer to these questions is often “it depends.”

The “old” days had their drawbacks. Before email, I mailed articles to law journals and waited for a return phone call or letter. My strategy for my first few articles involved developing a list of 20 or so law journals that were either at elite schools or might have a track record of publishing articles similar to mine, sending my article to those schools, and then having a “back up list” of other journals. This was in some respects a random process, but it was not a complicated one. There was no expediting, although there was a kind of “trading up” process. If one journal in my “top 20” accepted the article and I had preferred another, I might have called that journal and asked them to take a look at my article. But there was no effective process for multiple journals to be in the mix. There was still trepidation about placing an article, and where an article was placed, but there were fewer factors to consider.

III. LIFE AS A CLINICIAN-SCHOLAR: THE EBB AND FLOW OF SCHOLARSHIP AFTER TENURE

I experienced a notable break in writing scholarship after tenure. I was burned out after four furious years on the tenure track, time in

⁴³ Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297, 1380 (2018).

practice and law school, and the feverish pace of writing scholarship. Part of my sabbatical was a deliberate escape from academia. After I completed my case theory article and wrote two short pieces about voting rights, I left DC to hike alone on the Appalachian Trail. My plan was to do a thru-hike on the Appalachian Trail from Georgia to Maine. The hike was a chance to spend time outdoors in a way that I had not done since before law school. I went in search of an experience that was physically, not intellectually, demanding, and with the desire to embrace life outside of academia. Ironically, it was the privilege of academia, together with the support of my partner, and an unencumbered lifestyle that allowed me to do the hike. After four months, I reached the border between New York and Connecticut, but returned to DC and clinical teaching on crutches with a bruised bone in my foot and other orthopedic injuries.⁴⁴

Once I started writing again, having tenure afforded me the ability to make choices. I did not approach scholarship with the idea that once I had tenure I would stop writing, but my scholarly output has ebbed and flowed over the years. Continuing to write, and to write consistently, has been hard. I have retreated from the singular focus on scholarship that characterized my early academic life and moved towards pursuing scholarship on a parallel path to teaching and service.

No discussion about my professional choices would be complete without the context of how my personal life changed in the middle of my clinical teaching career. I sometimes reflect on the fact that I lived my life backwards. In my twenties, thirties and forties, I had family, friends and partners. But I did not have the experience of being a family with a child, as so many of my friends and colleagues did. After I became a parent, I made more explicit choices around my work life and my personal life. My spouse and I decided to become parents through adoption. We planned that process purposefully, and we became parents, in my case shortly before I turned fifty. Our daughter is now a teenager. Before we adopted our daughter, we became parents to a son, and that adoption was disrupted when his birth mother revoked her consent to the adoption. We adopted our daughter six months later. When our daughter was nine, we became temporary foster parents to a child with severe emotional challenges. That relationship was disrupted when the foster agency was unable to provide her with needed mental health services.⁴⁵

⁴⁴ I wrote an essay about this experience that I have shared with other clinicians. It is not a traditional academic piece, but one day I might publish it.

⁴⁵ Binny Miller & Maya Coleman, "Everything you need is in here": *Missing Elements in a Trauma-Sensitive, Multiracial Framework for Foster Parenting*, 6 *IND. J.L. & SOC.*

The story of those experiences, and the tradeoffs between work and family, is beyond the scope of this essay. I am no expert in work-life balance and others have written eloquently about this issue.⁴⁶ And I admit to some ambivalence about the idea – our clients don't have work-life balance so why should we? I simply want to note that my choices about work did not occur in a vacuum; they were affected by the context of my personal life.

After I returned from my sabbatical, I began the next phase of my life as a clinical teacher post-tenure. I was making up for lost time. I use this phrase somewhat facetiously. I knew that I would return to scholarship, but there were other contributions that I wanted to make to my institution, legal education more broadly, and the world beyond legal academia. The first major project that I wanted to undertake was to chair the Admissions Committee at American. Before U.S. News & World report issued its rankings, admissions was a hands on process and choices about applicants had a larger impact. I asked the Dean to appoint me as the chair, and then chaired several other committees during a time period when I was heavily involved in committee work.

I returned to writing after a hiatus of several years. Time to write in the summer and later, additional sabbaticals, were critical to this endeavor. Not all of this time was available for writing. As other clinicians have written, duties to clients can subsume time that is theoretically available for writing. Nancy Maurer writes that “On the eve of my sabbatical, the clinic received an unfavorable decision from the U.S. District Court in one of our longstanding special education cases.”⁴⁷ Phil Genty observes that after almost 12 years in law teaching he “approached [his] first sabbatical with a single goal: to free myself from cases . . . It did not work out that way.”⁴⁸

But despite other work, I made time to write. Writing is a source of immense satisfaction to me, but I battle with every article that I write. My first articles in the post-tenure period followed themes in my case theory article. *Telling Stories About Cases and Clients*⁴⁹ explored the ethical issues involved when clinicians – and others – tell client stories in law review articles, a practice by then that had become

EQUAL. 112, 143 (2018).

⁴⁶ See, e.g., Lara Bazelon, Opinion, *I've Picked My Job Over My Kids*, N.Y. TIMES, June 29, 2019, <https://www.nytimes.com/2019/06/29/opinion/sunday/ive-picked-my-job-over-my-kids.html>.

⁴⁷ Maurer, *supra* note 30, at 880.

⁴⁸ Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 286 (2000).

⁴⁹ Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000).

quite common, and remains so today. *Teaching Case Theory*⁵⁰ was designed as a clinic pedagogy article that could assist clinical teachers in teaching case theory and that could be excerpted and given to law students.

My next project was completely fortuitous. A doctrinal professor at another law school discovered that I wrote about the lawyer-client relationship and asked me to be a co-author for a book on law and popular culture. I hadn't participated in a book project – in fact, this is my only book project to date – and it sounded intriguing. *Law and Popular Culture*⁵¹ had eleven co-authors, including another clinician (Carrie Menkel-Meadow) and a legal writing professor (Philip Meyer), and there was a book contract already in place.

My next two articles explored the role of faculty who administer clinical programs or experiential education programs. When I rotated into a two-year term as the director of the clinic at American, I searched for scholarship on the subject and found none. After I finished serving as the director, I wrote *Herding Cats*⁵² as a reflection on that experience and a jumping off point for discussing different models for structuring the roles of clinic directors. By that point, our law school had transitioned to a structure where the clinic director role was absorbed in the position of an associate dean for experiential learning, a practice that was then becoming more common. My next article, *Cultural Brokers*⁵³ explored the complexity of a role that required navigating between the different cultures of experiential learning programs.

My two most recent articles are different from each other, and from my previous articles. I was driven to write *Everything You Need Is in Here* after my experience parenting a foster child. I wrote the article with my spouse, who is a clinical psychologist, to explain through a personal story how the foster system fails to address childhood trauma. My spouse and I both had – and still do — worked with clients who have experienced trauma, and my experience working with youth in the juvenile justice system provided the underpinning for how I thought about trauma.

Lastly, *Visibility and Accountability*⁵⁴ addresses how appeals

⁵⁰ Binny Miller, *Teaching Case Theory*, 9 CLINICAL L. REV. 293 (2002).

⁵¹ DAVID RAY PAPKE, ET. AL, LAW AND POPULAR CULTURE, TEXT, NOTES AND QUESTIONS (2007). A second edition of the book was published in 2012.

⁵² Miller, *Herding Cats*, *supra* note 31.

⁵³ Binny Miller, *Cultural Brokers in the Changing Landscape of Legal Education: Associate Deans for Experiential Education*, 2 J. EXPERIENTIAL LEARNING 98 (2017). This piece was more of a thought piece than a reflection because I have not been an associate dean.

⁵⁴ Miller, *Visibility and Accountability*, *supra* note 15.

from trial court decisions and court observation can make misdemeanor two-tier court systems more accountable. Since I started clinical teaching, I have practiced in Maryland's system that provides defendants with the possibility of a trial "appeal" after an initial trial, and I had for some time been interested in writing about the problems in these systems. In one clinic case, a sentencing judge had quadrupled our client's sentence after he filed an appeal from his first trial, and I argued a successful appeal from that sentence.⁵⁵ That experience provided the impetus for examining this particular injustice in the larger context of two-tier court systems.

These articles lack a common theme that can be succinctly captured in a scholarly agenda, but writing this essay has allowed me to see connections in my work that I had not seen before. All, to some degree, grew out of my experiences, either as a clinical teacher or a lawyer, and all explicitly incorporated those experiences, some articles more than others. All are framed by the back and forth between theory and practice. Most address role in some respect – the role of lawyers, clients, clinical teachers, clinicians as institutional actors, and parenting in the context of a multi-racial family. One is doctrinal, while two others address how court structures and bureaucratic structures treat vulnerable people. The others run the gamut of clinical scholarship, from lawyering theory, to clinic pedagogy, to the role of clinical teachers in law schools and to pedagogy more generally. Race is a frame for three articles, the first two written before tenure, the third published recently. With the exception of the voting rights article, I have never strayed very far from my roots as a clinical teacher and as a member of the clinic community.

A. *Supporting Other Clinician-Scholars*

Another aspect of my scholarly work – and the scholarly work of other clinicians — may be largely invisible. That work involves investing in the scholarship of other clinicians. This kind of scholarly endeavor is hidden and may not be seen as scholarship. It is not a factor in measuring "productivity," and may have little impact on a scholarly reputation. This presents a choice about how much time to invest in supporting the work of other clinician-scholars, in light of the tradeoffs.

Like many other experienced clinicians in other clinical programs, I mentor new clinicians. In our practitioner-in-residence program, we have the specific goal of facilitating the transition of our practitioners from practice to full-time clinical teachers. Many make

⁵⁵ *Abdul-Maleek v. State*, 43 A.3d 383 (Md. 2012).

this transition, and this requires reading drafts of papers, participating in writing workshops, mooted job talks and the like. This occurs across our program, and is not limited to the faculty in a particular clinic. I am doing less hands-on reading of my colleagues' scholarship than I once did, but I am always involved in counseling and advice concerning jobs and writing. From time to time I review the work of clinicians at other law schools in connection with promotion and tenure decisions. I have done less of this lately as other demands on my time have increased.

Like many other authors in this symposium, I have served on the Board of Editors of this journal. The piece that I published in the *Clinical Law Review*⁵⁶ before I joined the Board was a better article because of the input I received from my editor. I knew that I would enjoy the process of collaborating with authors to help them convey their ideas more clearly, and to help them write better articles. I like concrete projects where I can see real progress. This is not a surprising revelation for a clinician.

During my six-year term on the Board, I edited many articles on a variety of topics, some of which I knew very little about. I worked with single authors and joint authors, clinical teachers and professors in other disciplines. I learned a lot and became a better writer in the process. When I finished my Board service I told Randy Hertz, one of the editors-in-chief, that this collaboration was my most enjoyable and rewarding professional service. It remains so today, along with facilitating writing groups at the annual clinical law review writer's workshops.

B. Scholarship within a Life of Teaching and Service

I can trace the ebb and flow of my own writing to choices that I made to put my energy and resources into other activities. These activities include institution building, both inside and outside of my law school, in clinical and nonclinical endeavors, as well as an active re-shaping of the lawyering work in my clinic. Some activities required intense spurts of energy over a short period of time, others required long haul work over many years. Many clinicians have made similar choices— starting projects, creating new clinics or new clinical experiences for their students, teaching new courses and supporting the scholarship of other clinicians, serving in important roles in academic administration, doing pro bono work and engaging in myriad other activities.

In addition to my deep dive into service in my own institution

⁵⁶ Miller, *Teaching Case Theory*, *supra* note 26.

that I discuss earlier in this essay, there was a decade (2003-2014) when I participated actively in clinical education activities on a national level. Shortly before I finished serving on the Board of Editors of the Clinical Law Review (2003-2009), I was elected to the Board of the Clinical Legal Education Association,⁵⁷ and served for six years (2008-2014) after running for election a second time. I decided to run for CLEA near the end of my Board term because I didn't think that I could do justice to both organizations and also do the core work of clinical teaching – supervision and mentoring students – and participate actively in my own institution, including a two-year stint (from 2006-2008) as the director of our clinical program. At that time, the clinical director position rotated among tenure-line clinicians and required a substantial time commitment. Most notably, our program administrator resigned during my tenure, and I occupied a dual position, that of program administrator and faculty director, for nine months as the position transitioned to that of a managing attorney type position.⁵⁸

Several years before I became involved in clinical work nationally, I worked with DC area lawyers, including several clinicians at other law schools, to launch the Mid-Atlantic Innocence Project. The project began in 2000 as a fledgling organization with no paid staff whose mission was to investigate claims of innocence in DC, Maryland, and Virginia.⁵⁹ An acquaintance volunteered to serve as the part-time unpaid executive director and approached me to see if I wanted to join the project and if American could provide office space and in-kind support.

The Project was housed at American, and I was actively involved as a member of the working Board for five years, building the organization from the ground up. The first few years of the Project required intensive work — screening potential clients, working with pro bono counsel and setting up a clinic-like arrangement so that students at American could investigate cases. During one semester, I supervised students for credit, and later worked with a colleague to create a course on wrongful convictions. A full-time director, and then addi-

⁵⁷ CLINICAL LEGAL EDUCATION ASSOCIATION, <https://www.cleaweb.org/>. CLEA is an organization of clinical teachers that advocates for the interests and concerns of clinical teachers in a broad range of legal educational and other settings. I was the first clinician at American to be elected to CLEA, others joined the Board soon thereafter.

⁵⁸ See Miller, *Herding Cats*, *supra* note 31, at 524, 534-46 (describing this position); *id.* at 542 (describing the resignation of our program administrator).

⁵⁹ MID-ATLANTIC INNOCENCE PROJECT, <https://exonerate.org/our-mission/> (last visited Jul. 25, 2019). Since the project began in 2000, it has secured the release or exoneration of 33 individuals. At that time, regional organizations were following in the footsteps of the Innocence Project in New York, which had a national focus.

tional staff, were hired, and the organization became self-sustaining.⁶⁰

Later, I changed the focus of my substantive work in the clinic, and experimented with different clinic structures,⁶¹ when the work described above had wound down. I continued to supervise students in small-case criminal cases, but I saw a need for representation in other areas, and wanted to learn new skills. When my colleague Jenny Roberts joined the clinic, I had more flexibility to represent clients in new practice areas. For me, learning new skills and mastering new doctrine and procedures is like being a clinic student all over again, but with more experience. When two clinic clients were convicted at trial, the clinic represented them on appeal on issues that addressed systemic flaws in Maryland's *de novo* system. I am not an appellate lawyer, but I learned something about being an appellate lawyer by writing briefs with students and arguing the cases before Maryland's highest court.⁶²

At the same time, I gained some expertise in the complex world of juvenile disposition for clients with unmet mental health needs. The clinic represented a 13-year old client facing minor charges who had suffered significant trauma as a young child, and then represented him for five years in multiple cases as he moved through different levels of the system, narrowly avoiding transfer to the adult system. This required a deep dive into the often-troubling world of "rehabilitative" placements,⁶³ and an intense collaboration with our Disability Rights Clinic. In spite of the juvenile system, when our client turned 18, he was working and doing fairly well. In part because of my experience with this client, my clinic now represents clients in parole proceedings and in post-verdict proceedings who were convicted as juveniles and received excessive sentences in the adult system.

The clinic community doesn't often talk about the demands of different types of clinics in terms of tradeoffs for scholarship. Of course, supervision loads matter, but so do the nature of the work and the type of supervision. This essay is not about the difference between clinics, externships and hybrid arrangements, or the role of fellows in supervision; these labels and arrangements are often inadequate to describe the actual work and the nature of our relationships with our

⁶⁰ The Project moved to George Washington University Law School in 2009.

⁶¹ In addition to the one-semester clinic format, I have experimented with a full-year clinic, and a one-semester "plus" clinic where many students who participated in the clinic in the fall rejoin the clinic in the Spring.

⁶² See *supra* n.55. Maryland's student practice rule does not allow students to appear in the Court of Appeals. Md. R. 19-220 (d).

⁶³ See Yael Zakai Cannon, *There's No Place like Home: Realizing the Vision of Community-Based Mental Health Treatment for Children*, 61 DEPAUL L. REV. 1049, 1128 (2012).

students. This is a controversial subject, and the only clinic I know well is the live-client clinic that I teach and similar work that colleagues in my program do. I have no experience with transactional work, or legislative lawyering, or the myriad other kinds of work that clinics do, so I can't speak to these experiences. I do not claim that representing clients in criminal cases is harder than representing clients in civil cases. But I can say that directly supervising students representing actual clients in litigation means that I am always engaged in the intense time and emotional demands of lawyering and of supervising students.

But these demands vary with the client and type of case, and within a live-client context there are choices to be made in this regard. Long relationships with clients create different demands than short term ones. Representing youth can be different than representing adults. Interdisciplinary work is challenging, particularly where a client's mental health needs confront the legal system. For me, representing clients who have suffered severe trauma, in particular, those clients that my clinic has represented over the "long haul,"⁶⁴ is extremely difficult work.⁶⁵ This is true of many juvenile clients, and clients in prison serving effective life sentences. It is harder when a client's case doesn't end well, when it seems that the commitment to a client didn't make a difference. A recent turn in the life of our juvenile client provides a stark example of this fact. I happened to be reading the local newspaper several months ago when I saw that our client, now an adult, had been charged with first-degree murder in a street altercation that seemed to have all the hallmarks of an incident that triggered a trauma reaction.

In looking back, I can see where my choices in representing clients, and the kinds of cases that I took on, had an impact on scholarship. Some cases require a lot of work over the summer. Others are emotionally demanding in ways that make focused time for scholarship challenging. Others require adapting the clinic seminar so the students are prepared for representing clients. And in taking on new work I forged relationships with clinicians and other lawyers in the community that were rewarding but also required immersion in new practice areas.

For the most part, I have not been intentional about balancing time for scholarship with my own clinic work and my work in my clinic

⁶⁴ Susan D. Bennett, *On Long-Haul Lawyering*, 25 *FORDHAM URB. L.J.* 771, 790 (1997).

⁶⁵ See Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 *U.C. DAVIS L. REV.* 1203, 1266 (2004).

and law school community. Being a clinical teacher is a little bit like being a kid in candy shop. One of the goals of clinical legal education is to transform legal education,⁶⁶ and that requires participating in many aspects of legal education and our own institutions.⁶⁷ Committee work can provide insight into our institutions and the tools to be more effective clinicians in our law schools.⁶⁸ Academia provides clinicians with the autonomy – and sometimes the flexibility – to be involved in a wide range of activities. It can be hard to choose, and it was not always easy for me to be deliberate.

Not only do I want to transform legal education, I want to see change in the world, and I also want to learn and grow and remain intellectually engaged. I am a product of my liberal arts education. I like learning new things; I like learning a little bit about a lot of things. Scholarship is just one means of doing this, teaching and service is another. If I found teaching and service less interesting, I would likely tilt more towards scholarship. But I enjoy all three things. Not always, of course, and not always at the same time. There are ups and downs with all three, and there have been times when I breathe a sigh of relief when the academic year has ended. My point is that scholarship, teaching and service all have intellectual content.

Not only that, but scholarship, teaching and service are not entirely separate activities. The clients that my clinic has represented have inspired me to write scholarship. And my work as clinic director resulted in two articles, neither of which I had an inkling that I wanted to write when I was the director. My connection to the scholarship of others has helped me become a better scholar. The intellectual content of my committee work has helped me think about how institutions are structured and how they function. This in turn has made me a better lawyer and teacher. I could go on and on.

CONCLUSION: LOOKING AHEAD

It is not an easy thing for a clinician-scholar to figure out the place of scholarship once there is an actual choice to be made about writing scholarship. However valuable scholarship is – and good scholarship is valuable – it is not just something to do because you “have to” – there are many other important things that clinicians can do in

⁶⁶ See BRYANT, MILSTEIN & SHALLECK, *supra* note 8.

⁶⁷ See Frank W. Munger, *Clinical Legal Education: The Case Against Separatism*, 29 CLEV. ST. L. REV. 715 (1980); Philip N. Meyers, *When Worlds Collide: Exploring Intersections between Legal Writing and Clinical Pedagogy, Scholarship and Practice*, 4 J. ASS'N LEGAL WRITING DIRECTORS 1, 8 (2007).

⁶⁸ Andrea A. Curcio & Mary A. Lynch, *Addressing Social Loafing on Faculty Committees*, 67 J. LEGAL EDUC. 242, 262 (2017).

the world. While there is still much work to be done, clinical legal education has transformed legal education. In order to do this, I believe that clinicians should participate in all aspects of legal education, and also maintain a solid foothold in the world outside of legal academia. This can be a daunting task.

Clinicians are tempted to try to do it all. I am no different in that respect. Now that I am in my second year of chairing the law school's appointments committee, I realize that I can't do it all, if I ever could. In my appointments capacity, I now spend a lot of time reading the scholarship of other law professors, and those who want to become law professors. Their writings have inspired me to focus more on my own writing. I hope to write a book one day, a book that would be different and more clinical than the one that I co-authored many years ago. I long to see the day when four of my clients (three convicted as juveniles), serving horrifically long sentences in Maryland prisons, are released so that they can return to their families. I want to spend more time with my teenage daughter before my spouse and I become empty nesters. I am fortunate to have a father, stepmother and mother-in-law who have aged gracefully, but I want to have room in my life to accommodate their needs as they age. Writing this essay has made me aware that I want to be more intentional about my choices.

All clinician-scholars are writing scholarship within a life of teaching and service. I encourage newer-clinician scholars to seek out the outstanding support that is available in our community of clinician-scholars. It is necessary to learn the ins and outs of getting articles published, but I hope that this process does not subsume the real substance and value of your scholarly work. Have a scholarly agenda, but don't allow it to limit your options or your creativity. The fellowship programs are one important place where the realities and tradeoffs between teaching and scholarship become apparent. I encourage more experienced clinician-scholars to consider how you mentor newer clinician-scholars, and how you structure your law school's program for training new clinicians. There are many ways to be of assistance – by serving as a sounding board for ideas, issuing invitations to workshops and conferences, reading drafts, being a cheerleader, and sharing tips about your own writing process. There are choices and tradeoffs between mentoring others and doing your own work.

I am concerned that as clinicians are increasingly integrated into their institutions – and this is largely a good thing – we will lose our unique identity as clinicians. This topic is beyond the scope of this essay, but in the context of scholarship, my concern is that clinical

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scholarship will take a back seat to other kinds of scholarship.⁶⁹ Hiring and tenure committees, and the faculty who serve on them, rule. Writing about other issues is immensely valuable as a means of influencing and connecting with courts, academics, practitioners, activists and others. Still, I hope that clinician-scholars will continue to write clinical scholarship, whether now or after they become established in their careers. We have so much to learn from each other.

⁶⁹ For a comprehensive review of the papers workshopped at the Clinical Writers' workshop, see Katherine R. Kruse, CLINICAL SCHOLARSHIP AND SCHOLARSHIP BY CLINICIANS, 26 CLINICAL LAW REV. 407 (2019).

