

CLINICAL SCHOLARSHIP AND SCHOLARSHIP BY CLINICIANS

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INTRODUCTION

In 1992, AALS Clinical Section Chairperson Bob Dinerstein laid out the rationale for forming the *Clinical Law Review* as a home for clinical scholarship, opening with the “contestable proposition” that “not every scholarly article or book written by a clinician is strictly speaking clinical scholarship.”¹ Clinical scholarship, in Dinerstein’s view, was scholarship drawn directly from and linked closely to the experience of teaching students to be lawyers while situated in law practice.² Hence, clinical scholarship was “apt to be contextual and grounded in the real experiences of real people” and likely to “focus on issues of poverty, underrepresentation, and public interest.”³ Clinical scholarship might add to the larger body of knowledge about how to teach students in clinics by describing and critically assessing the pedagogies associated with role-based learning, or it might develop and critique practice-based models of the lawyering process. However, Dinerstein maintained, “[w]hen a clinician writes a traditional doctrinal article on the Supreme Court’s Fourth Amendment jurisprudence, the article might be scholarship by a clinician but not clinical scholarship.”⁴

The *Clinical Law Review* was established as a peer-edited journal with a publication mission centered on publishing clinical scholarship, defined in its masthead as articles “on lawyering, clinical teaching, legal practice, or related subjects.”⁵ It responded to Dinerstein’s call for “a much-needed home for the growing body of scholarship associated with clinical pedagogy and shunned by traditional law review edi-

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¹ Bob Dinerstein, *Message from the Chair*, SECTION ON CLINICAL LEGAL EDUCATION NEWSLETTER, ASSOCIATION OF AMERICAN LAW SCHOOLS 3 (Vol. 92, No. 2, Sept. 1992).

² *Id.* at 5. See also generally *Symposium: The 25th Anniversary of Gary Bellow’s and Bea Moulton’s The Lawyering Process*, 10 CLIN. L. REV. 1 et. seq. (2003) (collecting essays from authors of lawyering skills textbooks about the impact on clinical teaching and scholarship of Bellow and Moulton’s groundbreaking lawyering process textbook).

³ Dinerstein, *supra* note 1, at 4.

⁴ *Id.*

⁵ MASTHEAD, CLINICAL LAW REVIEW.

tors.”⁶ In the first issue of the *Clinical Law Review*, the editors-in-chief underscored the centrality to its mission of publishing scholarship about clinic pedagogy, highlighting the importance of “disseminating information about innovative approaches and exploring ideas that grow out of clinical teaching experiences.”⁷

In a less prominent way, the *Clinical Law Review* has also served the function of nurturing scholarship by clinicians that is not, strictly speaking, clinical scholarship. Beginning in 2006, the *Clinical Law Review* began to sponsor day-long workshops for clinicians to “to meet with other clinicians writing on related topics to discuss their works-in-progress and brainstorm ideas for further development of their articles.”⁸ Notably, these Clinical Writers’ Workshops expressly welcomed participation by “clinical teachers who are writing about any subject (clinical pedagogy, substantive law, interdisciplinary analysis, empirical work, etc.).”⁹ The focus of the workshops has been not just to develop the field of clinical scholarship, but to provide support and mentorship to clinicians as scholars.

As Dinerstein acknowledged, the line between “clinical scholarship” and “scholarship by clinicians” is not always easily drawn because “at some level all clinician-written scholarship will be informed by a clinical perspective.”¹⁰ Clinicians share with each other the experience of representing clients in communities marginalized by the law and legal processes while employing a pedagogy that emphasizes reflective practice. When clinicians venture into traditional law review scholarship, they cannot help but view the law through the perspective they have developed as reflective observers of the way law operates at its lowest levels of implementation.¹¹ This perspective seems likely to affect the jurisprudential or policy positions that clinicians take in their scholarship and, even more profoundly, may determine the topics about which clinicians choose to write. However, little has been done to explore or document how this clinical perspective might influence legal scholarship produced by clinicians outside the realm of

⁶ Dinerstein, *supra* note 1, at 5.

⁷ Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L. REV. 1, 2 (1994).

⁸ *Clinical Law Review Writers’ Workshop 2019*, CLINICAL LAW REVIEW, <https://www.law.nyu.edu/journals/clinicallylawreview/clinical-writers-workshop> (last visited July 21, 2019). A similar announcement has been posted on the Clinical Law Review website and disseminated via clinic and externship listservs and blogs each year.

⁹ *Id.*

¹⁰ Dinerstein, *supra* note 1, at 3.

¹¹ See Bryan L. Adamson, Bradford Colbert, Kathy Hessler, Katherine Kruse, Robert Kuehn, Mary Helen McNeal, Calvin Pang & David Santacroce, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 369-70 (2012).

scholarship about clinic pedagogy or lawyering.

This essay uses data from the first twelve years of Clinical Writers' Workshops to paint—albeit in broad strokes—a picture of scholarship by clinicians that is not “strictly speaking clinical scholarship.” The *Clinical Law Review* has been organizing, hosting, and facilitating the Clinical Writers' Workshop for over half of the *Clinical Law Review*'s quarter-century of operation. For that reason alone, the workshop deserves a place in the 25th Anniversary Symposium. But the workshop's story is more than just an important part of the *Clinical Law Review*'s history. The workshop has provided clinical writers with a forum in which they can come together, share, read, and discuss law review scholarship grounded in a clinical perspective on the law and legal processes. What clinicians have done within this forum is interesting in its own right.

This essay examines the data set of papers workshopped at the Clinical Writers' Workshop from 2006-2018. While the data set is robust, with over 700 authors workshopping nearly 650 papers, there is nothing to suggest that it is representative of the larger universe of clinicians pursuing scholarship. The clinical writers who attend the workshop are self-selected. Clinical writers may choose to attend the workshop because they are geographically proximate to New York City; because they find engagement with other clinicians helpful in developing their scholarly projects; because they have been encouraged to attend by senior clinicians at their schools; or because they are on the job market and looking for opportunities to network with clinicians from other schools. Moreover, the Clinical Writers' Workshop is structured to support one kind of scholarship: law review publications.¹² The workshop papers therefore do not capture the range of scholarly writing that clinical writers pursue in different forms: policy papers, amici briefs, teaching materials, training materials, and other substantial writing that fit within more expansive definitions of scholarship.¹³

When understood properly within the context out of which it arises, however, the data provide interesting insights into the types of law review scholarship that this self-selected group of clinical writers has pursued and how those types have changed over time. Part I of

¹² See *infra*, Part I for more details about how the workshop is deliberately designed to support and promote law review scholarship. The Workshop has also included workshopping an occasional book proposal.

¹³ Scholarship is defined more broadly at some law schools, especially as it is applied to clinical professors. Many examples may be found at the Center for the Study of Applied Legal Education's online repository of law schools' promotion standards for clinicians. See *Promotion Standards*, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE), available at <http://www.csale.org/promotion.html> (last visited July 21, 2019).

this article describes the development and format of the Clinical Writers' Workshop, highlighting the design elements that promote the production of law review scholarship. Part II examines what the first twelve years of data tell us about the scholarship that clinical writers have chosen to bring to the workshop. Part III concludes by offering reflections on the value of scholarship by clinicians.

I. THE CLINICAL WRITERS' WORKSHOP

The first Clinical Writers' Workshop was held at New York University on Saturday, April 29, 2006.¹⁴ It was scheduled to coincide with the Association for American Law Schools Conference on Clinical Legal Education, which was held in New York City beginning the following day.¹⁵ The first workshop followed what would become a familiar format: papers were divided into discussion groups of four to six; the groups were organized around thematically connected topics; and each group was facilitated by one or two current or former members of the *Clinical Law Review* editorial board. Forty-five clinical writers participated in the first workshop, the papers were divided into nine groups, and seventeen current or former board members served as facilitators.¹⁶ Over half of the papers in the original workshop focused on topics that fell squarely within the *Clinical Law Review*'s publication mission: pedagogy or lawyering.¹⁷ Two of the nine discussion groups were formed specifically around topics related to clinical pedagogy, and another two were formed around issues related to lawyering.¹⁸ The remaining five groups formed around other topics: civil procedure, criminal law, criminal justice, family law, and social justice.¹⁹

Based on the success of the first workshop, the Clinical Law Review Board decided to continue to hold the workshop at New York University Law School (NYU).²⁰ Because the first workshop had been appended to an AALS clinical conference, the board considered the option of offering the workshop each spring in conjunction with the AALS clinical conference, seeking different law school hosts each

¹⁴ 2006 Clinical Writers' Workshop materials (on file with the author) (hereinafter 2006 Workshop Materials).

¹⁵ *Clinical Law Review* "Writers' Workshop" on 4/29/06, ANNOUNCEMENTS, SECTION ON CLINICAL LEGAL EDUCATION NEWSLETTER, ASSOCIATION OF AMERICAN LAW SCHOOLS 27-28 (Vol. 2005, No. 2, Nov. 2005).

¹⁶ 2006 Workshop Materials, *supra* note 14.

¹⁷ See Appendix, Table 3.

¹⁸ 2006 Workshop Materials, *supra* note 14.

¹⁹ *Id.*

²⁰ The author bases the observations about this decision on her experience as one of the three editors-in-chief of the *Clinical Law Review* at the time this decision was made.

year. However, the board ultimately decided to disengage the workshop from the AALS conference and hold it as a separate event in the fall. The workshop was next offered at NYU on October 18, 2008; it was offered again on October 2, 2010; and it has been offered at NYU on an annual basis ever since, usually on a Saturday in late September.²¹

The workshop follows a remarkably stable format, with features designed to promote the production of law review scholarship.²² One of these design features is the creation of deadlines for interim stages of writing within a structure of accountability to others.²³ To participate in the workshop, clinical writers must submit a mini-draft or prospectus of their workshop paper to the *Clinical Law Review* by June 30.²⁴ Participation requires the production of a full draft by September 1,²⁵ which participants circulate to the members of their group to provide sufficient time for group members to read each other's drafts and come to the workshop prepared to discuss them.²⁶

Even at the first workshop in 2006, it became clear that clinicians working and teaching in different parts of the country were interested in pursuing scholarship on similar topics relating to law and legal process, even if those topics did not relate directly to clinic teaching. It was striking for workshop organizers to see how common themes emerged among papers in some of the groups focused on topical areas.²⁷ For example, within the family law group, each paper related in

²¹ Clinical Writers' Workshop Materials, 2006-2018 (on file with the author).

²² Since 2011, the program materials have remained largely unchanged. *Id.*

²³ See Robert Boice, *Writing Blocks and Tacit Knowledge*, 64 J. HIGHER EDUC. 19, 41-44 (1993) (discussing the strategies of involvement, regimen, self-discipline, and social networking among others in a literature review of the most common causes and cures for academic writing blocks).

²⁴ See *Clinical Law Review Writers' Workshop 2019*, CLINICAL LAW REVIEW, available at <https://www.law.nyu.edu/journals/clinallawreview/clinical-writers-workshop> (last visited July 21, 2019).

²⁵ *Clinical Law Review Clinical Writers' Workshop Registration Form 2019* (on file with the author).

²⁶ For example, in 2017, the following message was included in an email sent to all participants as this deadline approached, using language that has been repeated in other years:

It's essential that you circulate your draft by no later than September 1. As Workshop participants have discovered in the past, the success of the Workshop depends upon everyone's reading the drafts of all members of their small group and coming to the Workshop prepared to discuss them. The September 1 deadline is designed to give everyone enough time and opportunity to read their fellow group members' drafts and to think about them before the Workshop takes place on September 23. So, please, even if you feel like your draft is very rough, send whatever you have by no later than 11:59 p.m. on September 1.

Email from Randy Hertz, Co-Editor-in-Chief, *Clinical Law Review*, to author and others (August 28, 2017, 6:56 AM CDT) (on file with the author).

²⁷ As one of the organizers of the workshop responsible for reading the prospectuses

some way to the tension between formal and informal dispute resolution procedures in family issues.²⁸ The papers in the group on criminal justice focused largely on the collateral effects of criminal convictions or proceedings on the lives of defendants and victims in the criminal justice system.²⁹

From these early observations emerged another design feature of the workshop: the deliberate grouping of papers to take advantage of natural synergies among them.³⁰ Editors make the decisions about discussion groups on the basis of the 3-5-page prospectuses that authors submit at the end of June. Sometimes there are clear relationships among the topics of the prospectuses submitted, which can naturally form a group. Most papers fit within more than one category, allowing for multiple possible groupings of papers to reach the ideal size of four or five papers per group. For example, a paper on how to teach clinic students representing domestic violence survivors who have experienced trauma might fit in a “family law” group with papers addressing other procedural issues in family court; it might fit into a “clinical pedagogy” group with other papers addressing clinic teaching in fields where clients suffer trauma, like child welfare or immigration; and it might fit into a “legal education” group with other papers on how legal education should address issues of emotional intelligence or student wellness. Sometimes groups are composed of two or more different types of papers, some of which focus primarily on one topic and others of which focus on a different topic or topics.³¹ The composition

and dividing them into groups, the author speaks from personal experience.

²⁸ These papers included:

Raquel Aldana and Leticia Saucedo, “Mediating domestic violence in Nicaragua”

Margaret Martin Barry, “Mediation and family court”

Yoli Rodero, “Access to justice relating to domestic violence by indigenous people of Ecuador”

Vivek Sankahran, “Procedural protections for parents in custody and adoption”

Frank Vandervort, “Issues in implementing the Adoption and Safe Families Act”

Kele Williams, “Educational needs of children in foster care”

2006 Workshop Materials, *supra* note 14. The author served as one of the facilitators for this discussion group and was able to observe how common themes emerged.

²⁹ These papers included:

Barbara Fedders, “Sex offender registration and community notification requirements for delinquents adjudicated of sex crimes”

Jenny Roberts, “Ineffective assistance of counsel for failure to inform clients of potential collateral consequences of misdemeanor convictions”

Nina Tarr, “Domestic violence victims and employment”

Yolanda Vazquez, “Immigration consequences of criminal convictions”

2006 Workshop Materials, *supra* note 14.

³⁰ The author participated in the process of developing the groups for the 2006, 2008, 2010, 2011, 2012, 2013, 2014, 2015, and 2016 workshops and writes from personal knowledge and reflection based on her participation in that process.

³¹ An example of this phenomenon is the 2016 group on Health and Disabilities, which included the following papers, two of which related to disability rights, one of which re-

of groups is usually amended several times during the summer as clinical writers withdraw and groups are shuffled and re-shuffled to maintain the appropriate size while continuing to take advantage of opportunities for different kinds of synergies among papers.

Consistent with the *Clinical Law Review*'s mission as a peer-edited journal, the workshop schedule devotes most of its time to in-depth peer discussion and feedback. After a brief welcome, workshop participants disperse to separate rooms to spend the balance of the day in their assigned small groups discussing the drafts that have been circulated.³² Enough time is allotted so the group can spend between forty-five minutes and an hour and a half on each paper, depending on group size. Facilitators use a variety of methods to organize the discussion, but the focus is on developing a robust discussion of each paper with feedback from each member of the group.³³ Because the papers have been circulated with the expectation that participants will read them in advance, little or no time is spent by the authors on presenting the papers (although sometimes discussions will begin with authors describing the kind of feedback that would be most helpful to them). Sometimes facilitators go around the room and ask each participant to give feedback on each paper; others facilitate a more free-flowing dis-

lated to trauma-informed advocacy, and two of which discussed medical-legal partnerships:

Gaines B. Brake, "Shifting Paradigms Without Shifting Duties: Implementing CRPD Supported Decision-Making in the Client-Lawyer Relationship"

Sara E. Gold, "The Trauma About Which Our Clients May Never Speak"

Kate Mitchell, "Poor, Sick, and Young: The Promise and Failures of EPSDT and the Role of Medical-Legal Partnerships in Monitoring and Enforcing Implementation of Children's Medicaid"

Lauren Onkeles-Klein, "Disability Is a Natural Part of the Human Experience and In No Way Diminishes the Right of Individuals to Participate in or Contribute to Society"

Jennifer Valverde, "Bridging Clinical Legal Education, Community Engagement and Preventive Practice in a Law School-Based Inter-Professional Clinic: Benefits, Tradeoffs and Lessons Learned"

Clinical Writers' Workshop Materials 2016 (on file with the author).

³² The workshop programs from 2011 to 2018 have repeated the same schedule, as follows:

9:30 a.m. Welcome

10:00 a.m. – Noon Morning workshop session (in small groups)

Noon – 1:00 p.m. Lunch break

1:00 – 2:30 p.m. Afternoon workshop session (in small groups)

2:30 – 2:45 p.m. Refreshment break

2:45 – 4:15 p.m. Afternoon workshop session (in small groups)

4:30 – 5:30 p.m. Writing and Publication Strategy

Clinical Writers' Workshop Materials 2006-2018 (on file with the author).

³³ The author has served as a group facilitator at all eleven Clinical Writers' Workshops, and she has co-facilitated with nine different co-facilitators during that time. The generalizations described here are based on her experiences facilitating and co-facilitating with different colleagues and on more general discussions among facilitators of the strategies they use.

cussion of each paper within the time allotted. The day ends with a single large-group session on writing and law review publication strategies.³⁴



Overall interest in the workshop has been robust from its inception and has increased over time. Between 2006 and 2018, over seven hundred authors have participated, and 649 distinct papers have been workshoped.³⁵ While the first workshop in 2006 included 45 authors divided into nine groups, the 2018 workshop was over double that size, with 101 authors workshoping 97 papers in twenty-one groups.³⁶ Although several clinical writers have returned to the workshop more than once, the total number of distinct participants is high, nearly four hundred and fifty different clinical writers workshoped papers at the Clinical Writers' Workshop.³⁷

II. WHAT THE WORKSHOP TELLS US ABOUT SCHOLARSHIP BY CLINICIANS

The data from the Clinical Writers' Workshop paint an interesting picture of what clinical writers write about, both in total and over

³⁴ See *supra* note 32.

³⁵ See Appendix, Table 1. The total number of authors is higher than the total number of papers because some papers have been collaborative efforts with two or more co-authors.

³⁶ See Appendix, Table 1. The 2019 workshop is likely to be the largest ever, with 127 prospectuses submitted by the June 30 deadline. Email from Randy Hertz, Co-Editor-in-Chief, Clinical Law Review, to author and others (July 1, 2019, 11:52 AM CDT) (on file with the author).

³⁷ See Appendix, Table 1. This table includes information about how many "new authors" there were each year. Authors who had workshoped a paper in a previous year were not included in this count.

time. To create this picture, I have collected information about all papers workshopped at the Clinical Writers' Workshop between 2006 and 2018. For each paper, I used the title and, where available,³⁸ the initial prospectus submitted by the author, to sort the papers into the following categories: pedagogy, lawyering, doctrine, procedure, and policy. I used the following definitions to categorize the papers:

Pedagogy: focuses on clinical teaching, clinic design, or experiential education

Lawyering: focuses on models of legal representation or models for delivering legal services

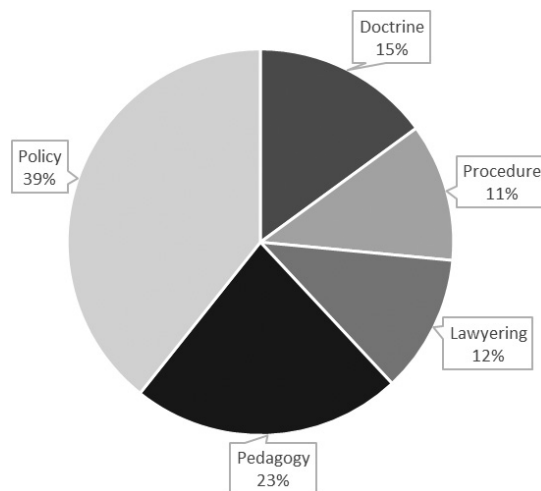
Doctrine: focuses on specific statutory, regulatory, constitutional, or case law and how it is or should be interpreted or applied

Procedure: focuses on how legal systems operate, including issues such as service of process, rules of evidence, or alternative dispute resolution

Policy: focuses on issues of broader public or social policy where there is no clearly controlling doctrine or where the issue involves intersecting areas of law

The categorization of the papers is not perfect: in some cases, it was difficult to discern the topic or to make a judgment about which category of scholarship best fit the paper from the limited information available. Moreover, as discussed below, the way an author frames a topic in the early stages of writing may not reflect the article's later focus.³⁹

TOTAL PAPERS WORKSHOPPED BY SCHOLARSHIP CATEGORY

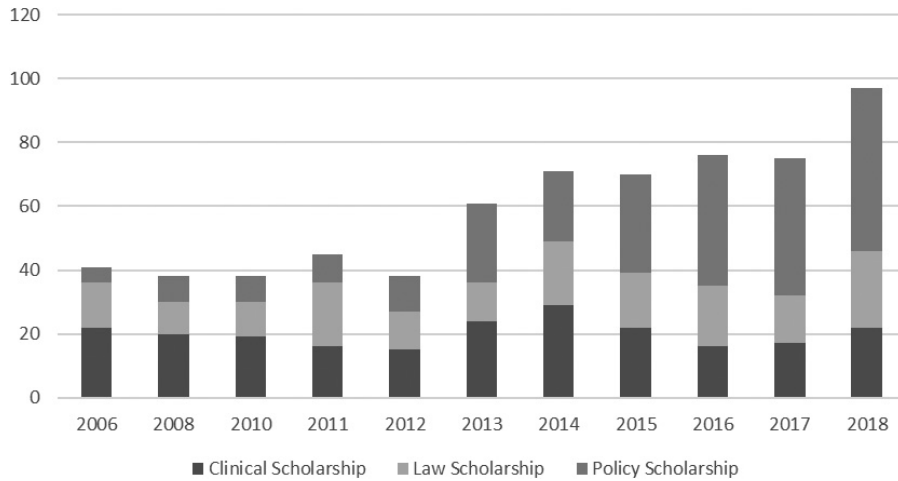


³⁸ For the years 2006, 2008, and 2010, only the title of the paper was available. For 2011-2018, both the title and the initial prospectus were available.

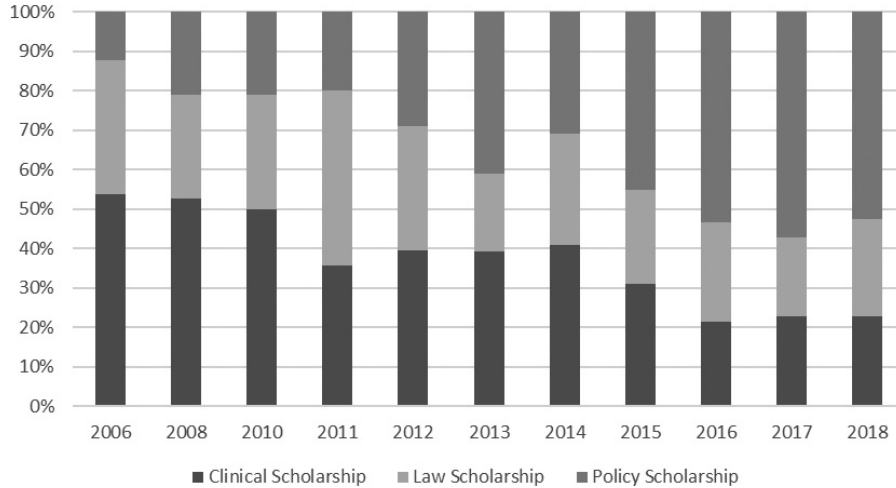
³⁹ See *infra* notes 67-71 and accompanying text.

Those caveats aside, several large-scale trends emerge. First, the data show that only about 34% of the papers in the workshop fall within the ambit of the *Clinical Law Review*'s publication mission: articles about clinic teaching, clinic design, lawyering, or the delivery of legal services. Another 27% of the papers focus on analysis of legal doctrine or procedure. The most common type of scholarship in the Clinical Writers' Workshop is what I call policy scholarship, focusing on issues of broader public or social policy where there is no clearly controlling doctrine, or where the issue involves intersecting areas of law. Policy scholarship made up 39% of all papers workshopped during this period, and its prevalence within the workshop has grown dramatically over time.

NUMBERS OF ALL PAPERS WORKSHOPPED BY SCHOLARSHIP TYPE



PERCENTAGE OF ALL PAPERS WORKSHOPPED BY SCHOLARSHIP TYPE



A. *The Diminishing Role of (Strictly Speaking) Clinical Scholarship at the Workshop*

The first interesting take-away from the papers presented at the Clinical Writers’ Workshop is that what we typically think of as clinical scholarship has played a significant but diminishing role at the workshop. For purposes of analysis, I have considered the papers falling into the pedagogy and lawyering categories to be clinical scholarship. These categories include papers about clinic pedagogy, clinic design, experiential education, models of lawyering, and the delivery of legal services. Clinical scholarship, so defined, accounts for 34% of all papers workshopped between the years of 2006 and 2018.⁴⁰

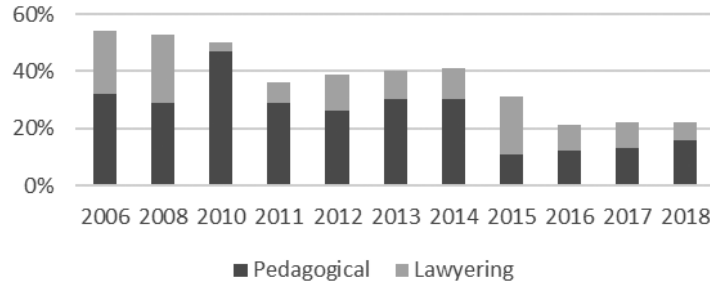
There is a notable trend away from clinical scholarship over the years. In the first three years of the workshop, about half of the papers workshopped each year were clinical scholarship. From 2011 to 2014, clinical scholarship dropped to approximately 35-40% of the papers workshopped each year.⁴¹ From 2016 to 2018—the last three years studied—papers about pedagogy and lawyering have accounted for only 20-25% of the papers workshopped each year. Although a significant percentage of papers remain devoted to subjects of pedagogy and lawyering—more than one might expect to see at other legal academic conferences—the workshop data highlight a shift away from clinical scholarship as the dominant subject-matter of papers that clinical writers bring to the workshop.

⁴⁰ See Appendix, Table 3.

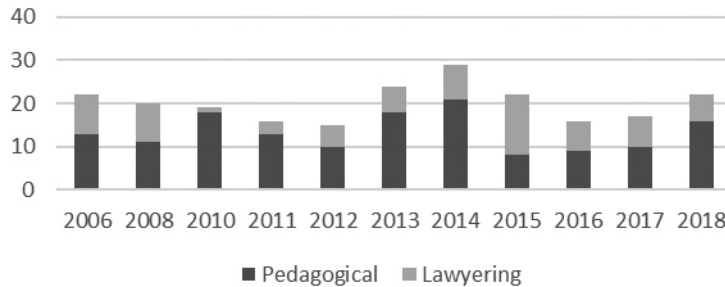
⁴¹ See Appendix, Table 3.

The data also show that the diminishing presence of clinical scholarship at the workshop has coincided with the rise in total numbers of papers workshopped, which started in 2013.⁴² Although the percentage of total clinical scholarship papers workshopped per year has fallen from around 50% of the papers in earlier years to about 20-25% of papers workshopped in more recent years, the actual number of clinical scholarship papers has fluctuated less dramatically. The actual number of clinical scholarship papers at each workshop continues to fall within the range of 15-20 papers per year.⁴³ This suggests that there may be a steady engagement in clinical scholarship by clinical writers, but it is not growing as the workshop expands in size.

CLINICAL SCHOLARSHIP AS PERCENT OF PAPERS WORKSHOPPED



NUMBERS OF CLINICAL SCHOLARSHIP PAPERS WORKSHOPPED



B. Scholarship by Clinicians

The other types of scholarship that clinical writers have brought to the workshop would not generally fall within the *Clinical Law Review*'s publication mission because they do not focus on "lawyering, clinical teaching, legal practice, or related subjects."⁴⁴ All told, this "scholarship by clinicians" made up over 70% of the papers workshopped between 2006-2018 and covered a wide range of topics. I

⁴² See Appendix, Table 1.

⁴³ *Id.*

⁴⁴ See *supra* note 5.

have approached the analysis of “scholarship by clinicians” by dividing the non-clinical scholarship papers into two main types: (1) law scholarship, which includes the categories of scholarship about doctrine and scholarship about procedure; and (2) policy scholarship, which tackles social or public policy issues without a focus on any particular doctrine of law or procedure. Policy scholarship has come to dominate the workshop in recent years and may represent a future direction in which scholarship by clinicians is heading.

1. *The Steady Pursuit of Scholarship About Doctrine and Procedure*

Among the non-clinical “scholarship by clinicians,” there has a steady stream of papers that I have categorized as “law scholarship” about doctrine or procedure. Into the category of scholarship about doctrine, I coded papers that focused on specific statutes, regulations, rules, cases, or constitutional doctrines and made specific recommendations about how the law should be interpreted or applied. Into the category of scholarship about procedure, I included papers about legal procedures or legal process, including papers about service of process, rules of evidence, alternative dispute resolution, and criminal sentencing procedures.

I have differentiated “law scholarship” from “policy scholarship” based on a paper’s focus on specific legal doctrines, rules, or procedures. This is not to say that law scholarship is unrelated to public policy; most of the papers about doctrine or procedure embed their analysis of law within the context of a social or public policy problem. However, the focus of the analysis in these papers and their proposed solutions is directed toward law. Examples include analyzing the proper standard for retaliatory hostile workplace environment claims;⁴⁵ proposing a domestic violence exception to the ten-year marriage rule that qualifies surviving divorced spouses for Social Security benefits;⁴⁶ and arguing for a challenge to the privatization of immigration detention centers based on constitutional doctrine.⁴⁷

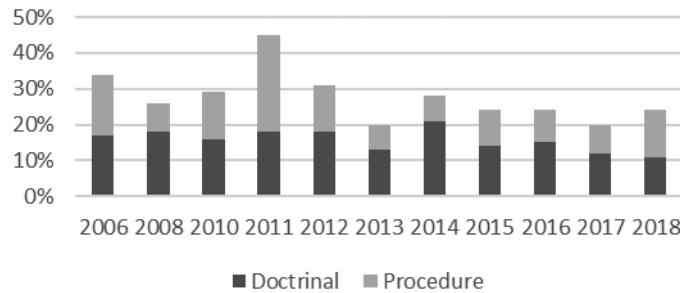
⁴⁵ Anne King, “Retaliatory Hostile Work Environment and Workplace Protections,” Clinical Writers Workshop Materials, 2013 (unpublished prospectus) (on file with the author).

⁴⁶ Sarah Boonin, “Ten Years Too Long: How Social Security’s Marriage Duration Requirement Gambles on Women’s Lives,” Clinical Writers Workshop Materials, 2014 (unpublished prospectus) (on file with the author), later published as Sarah R. Boonin, *Ten Years Too Long—Reforming Social Security’s Marriage Duration Requirement in Cases of Domestic Violence*, 39 HARV. J. L. & GENDER 369 (2016).

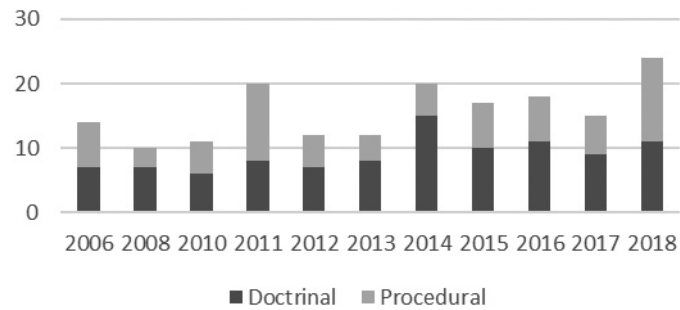
⁴⁷ Anita Sinha, “Delegating Detention: A Constitutional Challenge to the Private Immigration Detention System,” (June 2015) (unpublished prospectus) (on file with the author), later published as Anita Sinha, *Slavery by Another Name: “Voluntary” Immigration Detainee Labor and the Thirteenth Amendment*, 11 STAN. J. CIV. RTS. & CIV. LIBERTIES 1

From 2006-2012, law scholarship usually hovered around 30% of the papers workshopped each year.⁴⁸ Since 2013, those percentages have declined slightly, dropping to about 20% per year.⁴⁹ However, like the clinical scholarship papers, the total number of law-focused doctrinal and procedure papers has not changed much over time. Instead, the number of papers has stayed relatively stable, growing slightly as the total number of papers in the workshop has increased, but not growing enough to keep pace with the expansion in the overall size of the workshop.

LAW SCHOLARSHIP AS PERCENT OF PAPERS WORKSHOPPED



NUMBERS OF LAW SCHOLARSHIP PAPERS WORKSHOPPED



2. *The Explosion of Policy Scholarship*

While the number of papers about clinical and law scholarship topics has either diminished or failed to grow at the same rate that workshop has grown, there has been a surge of workshop papers of another type: papers primarily addressed to issues of public policy. The emergence and growth of policy-based scholarship is perhaps the most surprising trend that the data reveal. Scholarship about policy is

(2015).

⁴⁸ See Appendix, Table 3. There was one outlier year: in 2011, where the percentage of law papers grew to 45% of all papers workshopped, due to a one-time upswing in papers about procedure.

⁴⁹ *Id.*

the largest category of scholarship in the workshop, representing 39% of all papers workshopped between 2006-2018.⁵⁰

I have defined the category of policy scholarship to include papers that focus on issues of broader public or social policy where there is no clearly controlling doctrine or where the issue involves intersecting areas of law. Policy papers are not necessarily divorced from discussion of law: some discuss the role of law in creating a social policy problem;⁵¹ and others talk about the public policy issues surrounding a particular type of law.⁵² However, policy scholarship is not primarily focused on the critique or interpretation of a particular doctrine of law or procedure; its focus is on the analyzing a social or policy problem as it arises in a legal context.

A closer look at some of the specific policy topics that these papers address can help illustrate the nature of policy scholarship. The 2013 Writers Workshop was the first workshop to see an increase in policy scholarship—so much so that the organizers created two groups specifically around policy topics: one on the topic of “Neighborhoods” and the other on the topic of “Schools.”⁵³ Three of the four papers in the Neighborhoods group focused on policy issues: a paper discussing zoning policy;⁵⁴ a paper addressing urban exclusionary housing;⁵⁵ and a paper on the pressures on small nonprofit community associations.⁵⁶

⁵⁰ *Id.*

⁵¹ See, e.g., Laila Hlass, “Publicly Charged: A Critical Examination of Restrictions on Immigrants’ Use of Public Benefits” (June 2018) (prospectus on file with the author) (arguing that the rhetoric of “anchor babies” attempts to penalize and exclude immigrants’ access to welfare represent a nativist reaction to the 1965 Immigration and Nationality Act, which is analogous to the racial animus and Civil Rights backlash leading to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) welfare legislation).

⁵² See, e.g., Shanta Trivedi, “Assuming Harm: How Our Current Laws Fail to Protect Children” (June 2017) (unpublished prospectus) (on file with the author) (surveying state child custody statutes to show that the assumptions about harm embedded in them run counter to social science).

⁵³ Clinical Writers’ Workshop Materials, 2013 (on file with the author).

⁵⁴ Anika Singh Lemar, “Aesthetics in Local Zoning Ordinances: The Good, the Bad, and the Ugly” (June 2013) (unpublished prospectus) (on file with the author), *later published as* Anika Singh Lemar, *Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics*, 90 *IND. L.J.* 1525 (2015).

⁵⁵ John Mangin, “Urban Exclusionary Housing and What Not To Do About Gentrification” (June 2013) (unpublished prospectus) (on file with the author), *later published as* John Mangin, *The New Exclusionary Zoning*, 24 *STAN. L. & POL’Y REV.* 91 (2014).

⁵⁶ Robin Jacobs, “The Squeeze from All Sides: How to Save Small Neighborhood Nonprofits to Save a City” (June 2013) (unpublished prospectus) (on file with the author), *later published as* Robin Jacobs, *Building Capacity Through Community Lawyering: Circumstances of the Leaders, Small Community Associations, and their Attorneys*, 24 *J. AFFORDABLE HOUSING & COMMUNITY DEV. L.* 29 (2015). The fourth paper argued for the use of disparate impact doctrine in Fair Housing Act claims based on an analysis of how urban redevelopment decisions are made. Valerie Schneider, “In Defense of Disparate Impact: An Opportunity to Realize the Promise of the Fair Housing Act” (June 2013) (unpublished

All four of the papers in the group on “Schools” dealt directly with educational or school policy issues, discussing the school-to-prison pipeline;⁵⁷ an examination of the role of law in shaping the whole school environment;⁵⁸ an empirical study on the perceptions of school resource officers;⁵⁹ and an argument for education as a public good.⁶⁰ In more recent years, the workshop has continued to include papers clustered around several recurring public policy issues including policing, mass incarceration, economic justice, school choice, the school-to-prison pipeline, low-income wage-earners, various immigration policies, economic justice, and affordable housing.⁶¹

The prevalence of policy-based scholarship has grown over time. During the first few workshops, held from 2008-2011, policy-based scholarship hovered around 20% of the papers workshopped each year.⁶² Between 2012-2015, the percentages rose to approximately 30% to 40% of the papers workshopped each year. Since 2016, papers about policy have represented 50-55% of the papers workshopped each year.⁶³ Looking just at the percentages, the growth in policy scholarship papers is almost a mirror image of the decline in clinical scholarship papers, which represented over 50% of the papers in the early workshops but have dwindled to about 20% of papers in more recent workshops.

However, percentages do not tell the whole story, because the raw number of total papers at the workshop has also increased dramatically over time. As previously noted, focusing on percentage figures overemphasizes the decline in clinical scholarship papers;⁶⁴ and it simultaneously undersells the growth in policy scholarship pa-

prospectus) (on file with the author), later published as Valerie Schneider, *In Defense of Disparate Impact: Urban Redevelopment and the Supreme Court's Recent Interest in the Fair Housing Act*, 79 MO. L. REV. 539 (2014).

⁵⁷ Samantha Buckingham, “The Stigmatizing Effects of the School-to-Prison Pipeline” (June 2013) (unpublished prospectus) (on file with the author), later published as Samantha Buckingham, *A Tale of Two Systems: How Schools and Juvenile Courts Are Failing Students*, 13 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 179 (2013).

⁵⁸ Susan Cole & Michael Gregory, “Advocating for Safe and Supportive Schools: The Role of Law in Shaping Whole School Environments” (June 2013) (unpublished prospectus) (on file with the author).

⁵⁹ Kim Ambrose, “Analyzing the Role of the School Resource Officer on Educational Environment from the Students’ Perspective: A Law School Clinic’s Collaborative Empirical Study of High School Students’ Interactions with and Perceptions of School Resource Officers” (June 2013) (unpublished prospectus) (on file with the author).

⁶⁰ Tina Fernandez, “Education as a Public Good” (June 2013) (unpublished prospectus) (on file with the author).

⁶¹ Clinical Writers’ Workshop Materials, 2016-2018 (on file with the author)

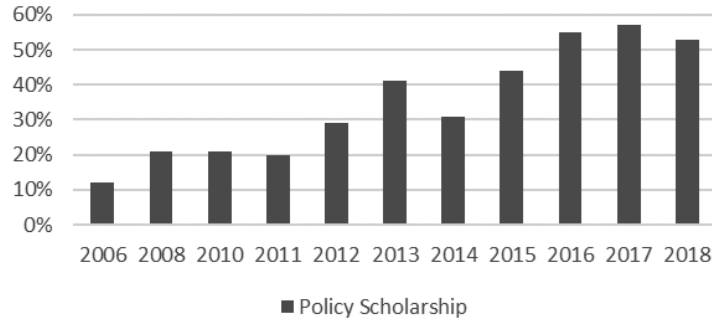
⁶² See Appendix, Table 2 and Appendix, Table 3. In the first year of the workshop, it was even lower, at only 12% of papers workshopped. *Id.*

⁶³ See Appendix, Table 2 and Appendix, Table 3.

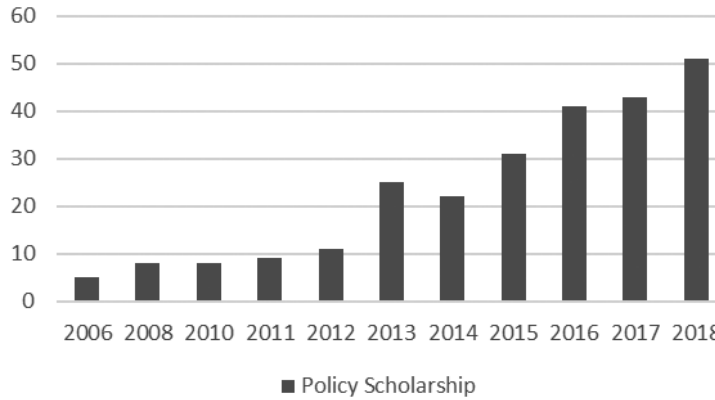
⁶⁴ See *supra* notes 42-43 and accompanying text.

pers. During the first few workshops, just a smattering of papers focused directly on policy, with the numbers staying in the single digits each year.⁶⁵ Beginning in 2013, the number of policy papers more than doubled from 11 to 25; and the number has topped 40 papers a year for each year since 2016.⁶⁶

POLICY SCHOLARSHIP AS PERCENT OF ALL PAPERS WORKSHOPPED



NUMBER OF POLICY PAPERS WORKSHOPPED



Although the data reveal that the Clinical Writers’ Workshop has turned in a decidedly policy-oriented direction in recent years, the explanation for why this has happened is less easy to discern. The change correlates with the growth of the workshop overall. However, the data do not clearly support a causal explanation based on the influx of new clinical writers in the past three years. In fact, as the percentage of policy-based scholarship has grown in the 2016-2018 workshops, the percentage of first-time authors has declined, suggesting that more recent increases in attendance are attributable to a higher percentage of clinical writers who return to the workshop.⁶⁷

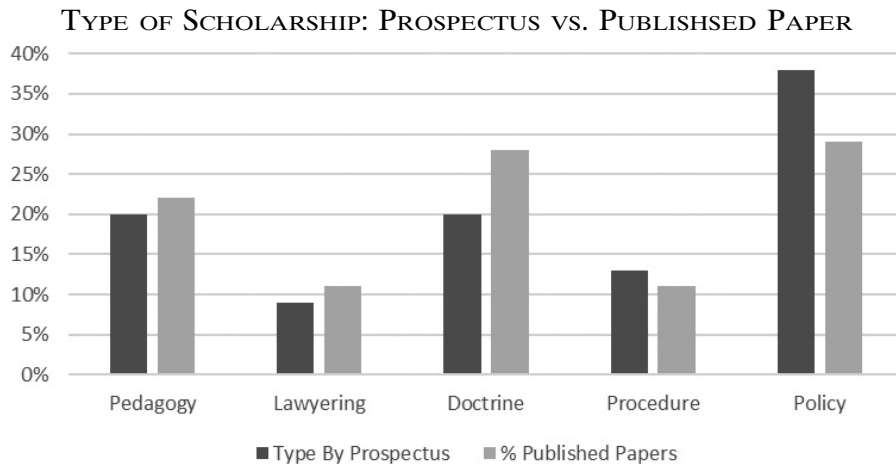
⁶⁵ See Appendix, Table 2.

⁶⁶ *Id.*

⁶⁷ See Appendix, Table 1.

It is also possible that the prevalence of policy scholarship results from the fact that the papers were coded based the 3-5-page prospectuses that authors submit by June 30 for the papers they plan to workshop in September. Some of the papers coded as policy scholarship at the prospectus stage writing might mature into other types of scholarship during gestation. A clinical writer may begin an idea for a law review article by noticing a social problem that needs to be addressed, and as the article develops, the writer may become more concrete about a proposed solution, shifting the focus of the paper in the direction of scholarship about doctrine.

There is some evidence that this kind of shift occurs. A recent Westlaw search revealed one hundred and nineteen unique references to the Clinical Writers' Workshop, all of them in footnotes expressing the authors' gratitude for the opportunity to develop their ideas for the article at the workshop.⁶⁸ Among these published articles, 29% would be classified as policy articles in their final form, although 38% were coded as policy papers based on the prospectuses submitted by the authors.⁶⁹ There is a corresponding rise in published papers that focus on doctrine among the published papers: scholarship about doctrine represents 28% of published articles, compared to 20% of the prospectuses from this group.⁷⁰ Clinical scholarship papers also saw a slight increase, where a prospectus was initially coded as a policy paper but was later framed as a paper about lawyering or pedagogy in its published form.⁷¹



⁶⁸ Westlaw-List of 121 results for adv: "clinical w/5 writers workshop" (July 27, 2019) (on file with the author).

⁶⁹ See Appendix, Table 4.

⁷⁰ *Id.*

⁷¹ *Id.*

However, it is also apparent that a healthy number of workshop papers remain policy scholarship even after being fully developed for publication. Nearly thirty percent of the published papers that acknowledge the Clinic Writers' Workshop in the introductory footnote are focused primarily on policy. Even if an initial policy-based prospectus eventually morphs into doctrinal, pedagogical, or lawyering scholarship, its early iteration focusing on a policy issue demonstrates the centrality of the policy issue to the clinical writer's interest in the subject.

III. THE VALUE OF SCHOLARSHIP BY CLINICIANS

Although this essay has been premised on an analytical framework that defines "clinical scholarship" narrowly as scholarship about pedagogy and lawyering,⁷² the "scholarship by clinicians" that clinical writers bring to the workshop is not disconnected from their clinical work. Rather, this "scholarship by clinicians" is deeply rooted in the social justice mission of clinical legal education.

The social justice mission of law schools has been described as embracing "the dual goals of hands-on training in lawyering skills and provision of access to justice for traditionally unrepresented clients."⁷³ Clinics have been seen as providing the primary vehicle within law schools for social justice legal education because in clinics, law students are exposed directly to the conditions of social and economic injustice in their representation of low-income clients.⁷⁴ The social justice mission carries with it a mandate to inculcate law students with a sense of responsibility to use their power as lawyers to seek social change to the conditions of injustice they have experienced.⁷⁵

Although the social justice mission grew out of a liberal tradition that viewed law as a meaningful vehicle for that change,⁷⁶ clinical writers' focus on policy scholarship may reflect an understanding that social injustice requires solutions that fall outside the law. Clinics are by their nature intersectional: they are places where law, procedure, ethics, and social policy come together, and clinicians are well-positioned to appreciate the depth, complexity, and intractability of the issues

⁷² In his inaugural essay, Dinerstein set forth a broader definition of clinical scholarship, which encompassed scholarship with a "focus on issues of poverty, underrepresentation, and public interest." Dinerstein, *supra* note 1, at 4.

⁷³ Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 12 (2000).

⁷⁴ Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1936 (2002).

⁷⁵ *Id.* at 1935.

⁷⁶ Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *HOWARD L.J.* 31, 33 (1993).

their clients and client communities face. These issues may require multifaceted solutions, fall within the intersection of different areas of law, or be viewed through entirely different frameworks of law or policy.

Some may object that the production of academic scholarship is not a meaningful response to social injustice. Law review scholarship has never played as prominent a role within the clinical community as it plays within the legal academy as a whole.⁷⁷ The majority of clinicians hold positions that do not require the production of traditional law review scholarship.⁷⁸ Even those who advocate for inclusion of clinicians on a unitary tenure-track tend to view scholarship requirements with caution, fearing that the demands of practice-based clinic teaching are likely to interfere with the production of law review scholarship.⁷⁹ The underlying message is that clinicians have better things to do with their time than produce lengthy, heavily-footnoted articles destined to disappear into journals that are rarely read by anyone except other academics.⁸⁰

However, this kind of critique misperceives something important, which is that the product of law review scholarship may be less valuable than the process of creating it. By engaging in scholarship, clinical writers get an opportunity to step back from their clinic teaching and connect it to something larger and perhaps more visionary. By committing their thoughts to writing, they are forced to discipline and shape their initial ideas into defensible arguments. By sharing their work with other clinical writers, they are able to engage the synergies that exist among others who are struggling to capture and frame in writing the social and political meaning of their clinical experiences. Even if the papers they produce for the workshop never end up in published form, the process of creating them may have changed the clinical writers' perspectives as teachers of social justice and as reflective practitioners.

The *Clinical Law Review* was formed with a mission to provide a

⁷⁷ See generally, David Barnhizer, *The University Ideal and Clinical Education*, 35 N.Y.U. L. REV. 87 (1990).

⁷⁸ ROBERT R. KUEHN & DAVID A. SANTACROCE, THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE) 15 (2017) (23% of clinicians are tenured or on a unitary tenure-track). Approximately two-thirds of clinicians who are not on a unitary tenure track report that their school has different standards for retention and promotion of clinicians. *Id.* at 17-19.

⁷⁹ Adamson, et al., *supra* note 11, at 398-401; Nina Tarr, *In Support of a Unitary Tenure System for Law Faculty: An Essay*, 30 WM. MITCHELL L. REV. 57, 68-70 (2003).

⁸⁰ See generally Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of the American Legal Academy*, 64 TENN. L. REV. 1135, 1138-40 (1997).

Fall 2019]

Scholarship by Clinicians

327

publication home for pedagogical scholarship that was unpublishable elsewhere. By providing that home, it has helped the legal academy take pedagogical scholarship seriously, and it has helped the field of pedagogical and lawyering scholarship grow and thrive. When the Clinical Writers' Workshop opened its doors to clinical writers working on law review scholarship of any variety, it invested in the process of scholarship by clinicians, providing a forum in which clinical writers could incubate scholarship about law, procedure, and public policy, take advantage of the insights of other clinical writers, and explore the synergies that exist among their work.

APPENDIX

TABLE 1: PARTICIPANTS AND PAPERS AT CLINICAL WRITERS' WORKSHOP

	2006	2008	2010	2011	2012	2013	2014	2015	2016	2017	2018	All Years
Authors	45	39	45	52	42	69	75	77	79	80	101	702
First time at workshop	45 100%	31 79%	36 80%	50 96%	29 69%	41 59%	46 61%	47 61%	38 48%	45 56%	39 39%	447 63%
Papers	41	38	38	45	38	61	71	70	75	75	97	649
Discussion Groups	9	10	9	13	11	15	15	17	16	17	21	152

TABLE 2: PAPERS WORKSHOPPED BY SCHOLARSHIP CATEGORY

	2006	2008	2010	2011	2012	2013	2014	2015	2016	2017	2018	All Years
Policy	12% 5/41	21% 8/38	21% 8/38	20% 9/45	29% 11/38	41% 25/61	31% 22/71	44% 31/70	53% 40/75	57% 43/80	53% 51/97	39% 253/649
Pedagogy	32% 13/41	29% 11/38	47% 18/38	29% 13/45	26% 10/38	30% 18/61	30% 21/71	11% 8/70	12% 9/75	13% 10/75	16% 16/97	23% 147/649
Lawyering	22% 9/41	24% 9/38	3% 1/38	7% 3/45	13% 5/38	10% 6/61	11% 8/71	20% 14/70	9% 7/75	9% 7/75	6% 6/97	12% 75/649
Doctrine	17% 7/41	18% 7/38	16% 6/38	18% 8/45	18% 7/38	13% 8/61	21% 15/71	14% 10/70	16% 12/75	12% 9/75	11% 11/97	15% 100/649
Procedure	17% 7/41	8% 3/38	13% 5/38	27% 12/45	13% 5/38	7% 4/61	7% 5/71	10% 7/70	9% 7/75	8% 6/75	13% 13/97	11% 74/649

TABLE 3: PAPERS WORKSHOPPED BY SCHOLARSHIP TYPE

	2006	2008	2010	2011	2012	2013	2014	2015	2016	2017	2018	All Years
Policy Scholarship	12% 5/41	21% 8/38	21% 8/38	20% 9/45	29% 11/38	41% 25/61	31% 22/71	44% 31/70	53% 40/75	57% 43/80	53% 51/97	39%
Clinical Scholarship	54% 22/41	53% 20/38	50% 19/38	36% 16/45	39% 15/38	39% 24/61	41% 29/71	31% 22/70	21% 16/75	23% 17/75	23% 22/97	34%
Law Scholarship	34% 14/41	26% 10/38	29% 11/38	44% 20/45	32% 12/38	20% 12/61	28% 20/71	24% 17/70	25% 19/75	20% 15/75	25% 24/97	27%

TABLE 4: PUBLISHED PAPERS THAT ACKNOWLEDGE THE WORKSHOP

	Lawyering	Pedagogy	Doctrine	Procedure	Policy
Published Papers	11% 13/119	22% 26/119	28% 33/119	11% 13/119	29% 34/119
Prospectuses of Published Papers	9% 11/119	20% 24/119	20% 24/119	13% 15/119	38% 45/119
All Prospectuses	12% 75/649	23% 147/649	15% 100/649	11% 74/649	39% 253/649