2002

Biting Off What They Can Chew: Strategies for Involving Law Students in Problem-Solving Beyond Individual Client Representation

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BITING OFF WHAT THEY CAN CHEW: STRATEGIES FOR INVOLVING STUDENTS IN PROBLEM-SOLVING BEYOND INDIVIDUAL CLIENT REPRESENTATION

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Problem-solving is most often taught in the context of representing individual clients in small manageable cases where students retain primary control and develop a sense of ownership. Increasingly, law school clinical programs are involving students in broader service projects designed to meet the needs of clients that go unaddressed by the legal system. Student involvement in these projects presents challenges for the traditional model of problem-solving taught in individual case representation. This article explores the challenges of translating the problem-solving techniques employed in direct representation of individual clients into the larger context of problem-solving for a client community by examining each step of the traditional problem-solving process. It then demonstrates how the author has used the strategies of compartmentalization, connection, collaboration and continuity to help overcome these challenges, and explores some of the trade-offs and tensions that are involved in such an effort, using the author's work with students developing an assisted pro se prison service project as an example. The article concludes that the challenges are real, but that the"justice education" that the students

* Visiting Professor, American University, Washington College of Law, Clinical Associate Professor, University of Wisconsin Law School. The author would like to gratefully acknowledge her colleagues at the Frank J. Remington Center at the University of Wisconsin for fostering an amazing atmosphere of trust, flexibility, enthusiasm and openness to continuing experimentation in clinical education, particularly its Director, Meredith Ross, and Faculty Director, Walter Dickey. She would like to recognize the students in the Remington Center's Family Law Project whose dedicated work and critical reflection helped put theory into practice and whose story she is privileged to tell: Jonathan Anderson, Jennifer Binkley, Axel Candelaria-Rivera, Carolyn Crawford, Beatriz Diaz, Marney Irish, Kathy Kruger, Stephen Matty, Ed Rue, Heather Spencer, Eric Struve, and Barbara Zabawa, as well as her co-teachers in that project, Pete DeWind and Wendy Paul. This article has benefitted concretely from the suggestions of Justine Dunlap, Susan Bennett, Russell Engler, and Meredith Ross, who read and commented on earlier drafts; more generally from the atmosphere of critical inquiry at the American University, Washington College of Law, in which the ideas in this paper were revised and refined; and immeasurably from the organizers and participants at the UCLA/IALS Fifth International Clinical Conference in Lake Arrowhead, California, at which the article was presented in the fall of 2001. Finally, the author would like to thank her partner, Lisa, for the personal support and encouragement that has formed the foundation and created the space for professional creativity and growth.

experience as a result of involvement in service projects makes it worth the effort.

Among the multitude of skills that make a good lawyer, the ability to effectively analyze and solve problems stands out as one of the most important. The American Bar Association's MacCrate Report put problem-solving at the top of its list of ten skills essential to lawyering, even placing it ahead of the skill of Legal Analysis and Reasoning.[1] The "problem method" of teaching doctrinal law has gained increasing acceptance in recent years, based on the observation of one commentator that "[p]roblem-solving is the single intellectual skill on which all law practice is based."[2] One leading lawyering skills text describes the process of problem-solving as "the essence of professional creativity."[3] Another leading text opens with the statement, "[c]lients come to lawyers seeking help in solving problems . . . [N]o

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[1] The MacCrate Report defines and describes problem-solving as follows:

Skill § 1: *Problem Solving*

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1.1 Identifying and Diagnosing the Problem;

1.2 Generating Alternative Solutions and Strategies;

1.3 Developing a Plan of Action;

1.4 Implementing the Plan;

1.5 Keeping the Planning Process Open to New Information and New Ideas;

AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138 (1992). The MacCrate Report provides further elaboration and commentary on the skill of problem-solving, *id.* at 141-51.

Linda Morton has offered an alternative model, called "creative problem-solving," which takes into account a broader range of questions and issues by incorporating analysis of the needs and interests of the parties, and the values that underlie various solutions. This approach allows for more emphasis on non-legal solutions to the problem, as well as on solutions which attempt to prevent the problem from recurring. *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375, 378 (1998). Despite its broader scope and more holistic approach to problem-solving, the creative problem-solving model she proposes still maintains a basic structure of six phases that is not dissimilar to the model in MacCrate Report. The six phases are: (1) identifying the problem, (2) better understanding the problem, (3) posing solutions to the problem, (4) selecting a solution, (5) implementing the solution, and (6) final analysis of the chosen solution. *Id.* at 381-83. Morton points out that the "[p]hases do not necessarily proceed in the order named" and that the process of creative problem-solving must remain "spontaneous and flexible." *Id.* at 383.

[2] Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992). *See also* Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 B.Y.U. EDUC. & L.J. 1 (comparing the strengths and weaknesses of the Socratic method and problem method of teaching law and arguing for a combination of both methods).

[3] STEFAN H. KRIEGER, RICHARD K. NEUMANN, JR., KATHLEEN H. MCMANUS, & STEVEN D. JAMAR, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS 33 (1999).

matter who the client, [or] what the substantive legal issues . . . *your principal role as lawyer will almost always be the same–to help clients achieve effective solutions to their problems*."[4]

Although there is little controversy over the value of teaching problem-solving in legal education, the process of problem-solving has not been widely examined. Few lawyering skills texts devote attention to the process of problem-solving as a discrete legal skill, divorced from its application in the context of individual client representation skills, such as interviewing, counseling, investigating facts, and negotiating.[5] Law school clinical programs have been an important venue for effective teaching of problem-solving, because they provide law students with the opportunity to represent actual clients in real cases, and thus get the hands-on problem-solving experience that is integral to the lawyering process, most often within a clinical program that provides legal services to indigent or traditionally underrepresented populations.

For pedagogical reasons, many clinics choose to limit their students' work to a few carefully chosen cases that are small and manageable enough to give the students full ownership and control over the cases, to develop the primary relationship with the client, and to see the cases from beginning to end.[6] This individual client case model

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[4] DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 2-3 (1991)(emphasis added). Other texts put problem-solving in a slightly different context. For example, one lawyering skills text describes the "lawyer as creator or problem solver" as a "moderate position" located "somewhere in the middle of the spectrum" of lawyer roles, between the view of the lawyer as technician or hired gun, and the view of the lawyer as wise counselor. ROGER S. HAYDOCK, PETER B. KNAPP, ANN JUERGENS, DAVID F. HERR & JEFFREY W. STEMPEL, LAWYERING: PRACTICE AND PLANNING 19, 17-19 (1996).

[5] An exception is the work of Krieger, et al., *supra* note 3, which devotes a chapter to the topic of "Lawyering As Problem-Solving." *See id.* at 31-44. Krieger, et al. list six steps: (1) problem-identification, (2) gathering and evaluating information and raw materials, (3) solution-generation, (4) solution-evaluation, (5) decision, and (6) action. KRIEGER, ET AL., *supra* note 3, at 33-34. Like Binder, et al., the Krieger text cautions that "[i]n practice, the six stages are not as neatly segmented as this." *Id.* at 34. Although the Krieger text does not have a specific step for evaluating or revising the strategy, the activity of revision is suggested by the authors' emphasis on self-critical reflection on the problem-solving process, and the importance of experience in affecting the solution-evaluation stage. *See id.* at 36.

Binder, Bergman & Price take the more common approach of discussing problem-solving as a process embedded within the skill of counseling. Their client-centered counseling model includes three steps that track the MacCrate's enumeration of problem-solving skills: (1) preliminary problem identification, (2) initial data-gathering, and (3) formulating and evaluating potential solutions. BINDER, ET. AL, *supra* note 4, at 25-28. They caution that the process is "non-linear" because of the need to continually gather additional data in light of changed circumstances and changed perspectives of the problem, thus incorporating the MacCrate Report's fourth and fifth stage of implementing and evaluating and modifying the strategy. *Id.* at 28-29.

[6] *See* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND.

gives students the luxury of providing full representation to a few clients, and an opportunity to carefully dissect, analyze and reflect on the myriad choices and issues that arise in the process of representing an individual client.

Despite the prevalence of the individual case model, law school clinics are increasingly taking up the challenge of involving students in projects that require students to engage in problem-solving more broadly, beyond the needs of an individual client. Sometimes these broader service projects are undertaken as an additional component in clinics that primarily represent individual clients, or in clinics exclusively devoted to community lawyering, or "unbundled legal services."[7] Clinic students in these settings may involve themselves in staffing legal assistance centers for pro se litigants,[8] teaching in com-

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L. REV. 321, 352 (1982) (arguing that the principles of andragogy, or adult learning theory, suggest that law students learn best when they handle cases that allow them to develop a "meaningful co-counsel relationship" with their supervising faculty member, precluding both routine and overly complex cases). *But see* Linda Morton, Janet Weinstein & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469 (1999) (challenging the use of androgogical theory to law students). *See also* Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 180, 192 (1996) (suggesting that teaching students to "accept and assume responsibility for matters of great importance to real clients" might be an important goal of a clinical program and, if so, "smaller cases may be better suited to the goal").

Other authors have concluded that the best educational models include minimal intervention by the clinical supervisor, again suggesting that the most pedagogically sound cases to choose are those that maximize student involvement and ownership in the representation. *See* David F. Chavkin, *Am I My Client's Lawyer? Role Definition and the Clinical Supervisor*, 51 S.M.U. L. REV. 1509, 1531-32 (1998) (concluding that students get the most educational benefit out of client representation where the student's autonomy is maximized); George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1990) (discussing minimal supervisor interference as a feature of a clinical model that seeks to maximize student's educational goals); Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L. J. 301 (1986) (arguing that students should be expected to advance through stages of clinical supervision, beginning with directive supervision, and ending with independent action and minimal supervisor guidance).

[7] *See, e.g.* Mary Helen McNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 CLIN. L. REV. 341 (2001) (describing unbundled legal services programs and evaluating the pedagogical merit of law school clinics based on an unbundled legal services model); Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 135 (1994) (describing the involvement of law students in community projects in addition to representation of individual clients at Columbus School of Law, Catholic University, and four other law schools); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLIN. L. REV. 147 (describing ethical concerns as they arose in a community lawyering clinic at Stanford University); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195 (1997)(exploring the benefits of using transactional community economic development clinics to teach lawyering skills, and using the George Washington University Small Business Clinic as an example).

[8] *See* Michael Millemann, Nathalie Gilfrich & Richard Granat, *Limited-Service Representation and Access to Justice: An Experiment*, 11 AMER. J. FAM. L. 1 (1997) (describing

munity education projects,[9] pursuing legislative reform,[10] or designing other projects to prevent or address some of the underlying economic or political situations that lead to their clients' legal problems.[11] These efforts mirror those of legal service providers, who daily confront the challenge of doling out a limited commodity of lawyers to a growing number of poor and socially marginalized persons in need of legal assistance.[12] Through fundraising, activism, triage, heightened caseloads, pro bono networks of volunteer lawyers, and "unbundled legal services" like legal advice hotlines, legal services organizations try to piece together some combination of strategies to reach out to unrepresented persons who desperately need lawyers to handle the most basic of life's problems.[13]

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the involvement of law students at a University of Maryland clinic in providing limited legal advice to clients as part of a courthouse program).

[9] *See* Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1920-26 (1999) (describing the involvement of law students in the Families and the Law Clinic at Catholic University in conducting public education seminars on divorce procedures and on teen domestic violence); Antoinette Sedillo Lopez, 7 CLIN. L. REV. 307, 315-16 (2001) (describing involvement of students in a community lawyering project at the University of New Mexico in creating educational materials for their client community); Lucie E. White, *Pro Bono or Partnership? Rethinking Lawyers' Public Service Obligations for a New Millenium*, 50 J. LEGAL EDUC. 134, 138 (2000) (describing the work of students at Harvard Law School in a cooperative program with community support group for users of a local food pantry).

[10] *See* Barry, *supra* note 9, at 158 (describing legislative reform efforts in which students collaborated with other groups addressing domestic violence issues); White, *supra* note 9, at 139 (describing a range of strategies arising out a cooperative project between law students and immigrant groups, including lobbying Congress for legislative change).

[11] *See* Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771 (1998) (describing work in a community development legal clinic at American University, Washington College of Law); Lopez, *supra* note 9.

[12] As Paul Tremblay recently noted, "Scarcity of legal services [for the poor] has been a constant theme and obstacle and, in fact, appears to be increasing." Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2480 (1999). For a fuller discussion of the statistical characteristics of this scarcity problem, see *id.* at 2479-82. Certainly the problem of scarcity is not new. For an early treatment of the ethical problems created by the scarcity of legal services for the poor, see Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978).

[13] Alan Houseman has chronicled these trends in legal services and expanded them into a vision of a comprehensive and unified system for delivery of legal services that includes varying levels of legal service to individuals, as well as coordinated efforts between legal services providers, law school clinics, and other community groups serving the poor. Alan W. Houseman, *Civil Legal Assistance for the Twenty-first Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369 (1998). For short descriptions of some specific programs providing assistance to pro se litigants, see Barry, *supra* note 9. For an overview of some of types of services offered by courts and court administrators to pro se litigants across the country, as well as some of the ethical problems involved in providing limited legal assistance to pro se litigants, see Jona Goldschmidt, Barry Mahoney, Harvey Solomon, and Joan Green, Meeting the Challenge of Pro Se Litigation: A Report and

These larger projects, both inside and outside the law school, often arise out of the noble recognition that representing individual clients neither adequately addresses the need for structural changes in the systems that deny the clients justice, nor helps solve the problem of access to justice for the mass of people who cannot afford or otherwise access individual representation. The rules of professionalism and the logic of the adversary system itself dictate that the problem of unmet legal needs is one that all lawyers are responsible for solving.[14] Confronting and analyzing the complex issues involved in strategizing to meet unmet legal needs must thus be recognized as an important, and perhaps essential, component of law school education.

Yet designing problem-solving experiences for students in these broader contexts presents pedagogical challenges. It is important to conserve the components of the small, manageable cases that make them good vehicles for learning: primary student control, a sense of ownership for the student, and the ability to see a project through from initiation to completion. But how can law school clinics meaningfully involve students in framing and brainstorming solutions to problems that are large, complex, and difficult to grasp? How can students gain a sense of ownership in a problem-solving enterprise that spans several semesters, or even several years? How can law students gain the context and perspective needed to meaningfully define goals, evaluate possible options or measure the success of initiatives they undertake?

In this article, I suggest that the challenges of teaching problem-solving in a broader context are real, but they can be largely addressed by employing four key strategies: compartmentalization, connection, collaboration, and continuity. I begin in Part I by describing my own experience involving my family law clinic students in a larger project of addressing the unmet family law needs of state prisoners. In Part II of the article, I elaborate some of the pedagogical difficulties of involving law students in problem-solving in larger contexts beyond individual case representation. Accepting for purposes of argument

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Guidebook for Judges and Court Managers (1998)(report available from the American Judicature Society).

[14] This responsibility is reflected in Rule 6.1 of the ABA Model Rules of Professional Conduct, governing voluntary pro bono service, the Comment to which states:

> Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

The crucial link between the adversary system as a procedural mechanism, and justice as an outcome, is based on the premise that each side in a legal dispute receives vigorous and partisan lawyering. For a more thorough treatment of the links between provision of legal services and justice, see DAVID LUBAN, LAWYERS AND JUSTICE (1988).

that maximizing student ownership in clinical work is the most pedagogically sound choice, I show how individual case representation in small, manageable cases meets this pedagogical goal at each step of the problem-solving process. I then turn to the broader problem-solving context, where there is no individual client, to detail the challenges that this context poses for law school pedagogy.

In Part III, I return to my experience with the family law clinic, to demonstrate how I employed the strategies of compartmentalization, connection, collaboration, and continuity to overcome some of the challenges posed by problem-solving in the broader context. I explore the tensions and trade-offs that arose in trying to engage and involve students in this larger problem-solving project, and evaluate its educational success. I conclude that, although there are pedagogical challenges in involving students in larger community service projects, which are unavoidable and not fully surmountable, the problems of including these projects as part of students' clinic work are outweighed by the social justice education benefits that such projects offer. Larger community service projects have the benefit of engaging students in social justice issues, and giving them a personal stake in evaluating and creating solutions to those problems, in way that it is not possible to achieve by working solely within the individual case model, on a caseload purposely limited to focus students on the skills and values of individual representation.

I. Setting the Stage: Involving Students in Problem-Solving to Address the Family Law Needs of Unrepresented Prison Inmates

A. Genesis of the Family Law Pro Se Project

The family law project I directed was part of a larger clinical program at the University of Wisconsin, called the Frank J. Remington Center, that has a long-standing contract with the state's department of corrections to provide legal assistance to state prison inmates.[15] Since before I began working there in 1990, the program had maintained a relatively large enrollment of fifty full-time students each summer, who had just completed their first year of law school.
Over the course of the year, the program would accumulate waiting lists of state prisoners who needed legal assistance, and each summer a new batch of students would interview and counsel about 15-20 in-

[15] Although law students began internships in the prisons in 1963, the relationship between the law school and the Wisconsin Department of Corrections was not formalized into a clinic providing legal assistance to inmates until 1969. The Frank J. Remington Center: Education, Research and Service in Criminal Justice 4-5 (2001) (unpublished pamphlet on file with author).

mates each.[16] The students would assess the legal merits of the inmates' potential claims, pursue legal relief where possible, and continue part-time into the following academic year to finish work on cases they had started. There was no attempt to divide the cases into different subject-matter groups; all students handled general legal services on a range of legal topics, including postconviction challenges, immigration issues, resolution of outstanding warrants, debt resolution, and family law assistance.[17]

By 1998, it was clear that the program was not keeping pace with the growth of the state inmate population, and the demand for legal services was outstripping the resources of the program. Family law cases were one of the more time-intensive types of cases that the program handled. As one part of a 1998 restructuring of the program to help meet the needs of a growing inmate population, family law cases were split off into a separate project, designed to attract a new group of students into a two-semester, academic-year clinic representing prison inmates in divorce and paternity proceedings. Summer students who identified an inmate with family law needs could either take the case or refer the inmate to the family law project for the fall.[18]

As director of this newly-created Family Law Project, I had administrative responsibility for screening the family law referrals and deciding which cases to take into the fall-spring project. For pedagog-

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[16] Students were required to continue in the clinic for the fall semester of their second year in law school, sometimes taking on new cases and sometimes merely finishing work on the cases they had picked up during the summer. Many students also opted to continue in the spring semester of their second year, but usually only to finish case work, not to take on additional cases.

[17] This model is similar to that described by Antoinette Sedillo Lopez, *supra* note 9, of providing service to a particular group of clients without specialization as to subject matter. However, because roughly half of the funding for the Frank J. Remington Center came from the Wisconsin Department of Corrections, the clinic could not represent inmates in lawsuits against the prison or prison officials. This precluded any legal representation in issues involving the inmates' conditions of confinement.

[18] *See* Frank J. Remington Center, *supra* note 15, at 10-11. This change had the benefit of allowing summer students to interview and serve more inmates during the course of the summer, both by freeing up time by removing more time-consuming cases from their summer caseloads, and by involving them in "screening interviews" during the second half of the summer. The other type of large, time-consuming cases, postconviction claims of wrongful conviction, were similarly syphoned off into a separate Wisconsin Innocence Project in the fall of 1998. *Id.*

For the first two years of its existence, the Family Law Project did not have students in the summer. Open family law cases were assigned as "transfer cases" to the summer students doing the general legal assistance project. These students were supervised by me on the family law cases and by their regular supervising attorney for the remainder of their prison assistance caseload. For the first time in the summer of 2001, a group of five students was assigned to work exclusively on both continuing and new family law cases. These students then continued in the Family Law Project in the fall.

ical reasons, I chose to limit the students' work in the academic-year project to no more than ten cases apiece, thinking this was the maximum number of family law cases each student could handle in a two-semester clinical project. I meticulously paged through the referrals for family law assistance that had accumulated in the top drawer of my filing cabinet, summarizing each one, and culling those cases that looked like they had the best chance of success, were of the appropriate level of sophistication for law students to handle, or where the inmate seemed especially in need of a lawyer.

Out of an accumulated 150-200 referrals, the family law project ended up taking only 30-40 new cases each year. Some of the clients not ultimately accepted into the family law project were simply the victims of bad timing. They had hearings coming up before the students would start in the project, or they were scheduled for release from prison shortly after the students would start. Others had relatively simple cases that it seemed they should be capable of handling on their own. Still others had unrealistic expectations of what the legal system could offer them, and assigning a law student to work on their potential claims seemed a poor investment of resources. Although I tried in my first year to send individualized letters to each inmate we chose not to represent, giving them information, referral or limited advice, the task soon overwhelmed me. Thereafter, inmates with family law needs got one of two things: full-service representation from a law student modeling the best of legal practice, or a form letter saying, "I'm sorry, we can't take your case."

Of course, the inmates we couldn't help were not alone in their need for lawyers. Statewide and nationwide data indicate that a significant number of people who go to court in family law cases do so without a lawyer.[19] My own appointment to a statewide working

[19] The explosion of pro se litigants in family courts and family law cases has been noted by several authors. *See* Goldschmidt, et al., *supra* note 13, at 8-9 (reviewing studies of family law pro se litigants in Connecticut, the District of Columbia, California, Arizona, and across several states, showing a dramatic rise in the reported percentages of pro se litigants over time); Barry, *supra* note 9 at 1884 (citing a Maricopa County, Arizona study showing that "about ninety percent of the cases involved at least one litigant who was self-represented; both parties were pro se in fifty-two percent of the cases"); Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2047 (noting that "[t]he numbers of unrepresented family law cases have surged nationwide, with some reports indicating that eighty percent or more of family law cases involve at least one pro se litigant"); Forest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L. Q. 421, 427 (1994) (citing statistics indicating that the number of family law cases with at least one unrepresented party had grown from 24% in 1980 to 88% in 1990).

Wisconsin statistics bear out these trends in other areas of the nation. In one judicial district, which includes thirteen small mainly rural counties, anywhere from 43-53% of family law cases involved unrepresented litigants in the period from 1996-1999. In another

group to assess possible responses to the increase in pro se litigation in Wisconsin[20] raised my awareness of the complexity of both the problem and the ethical issues surrounding different strategies for providing legal services to this growing number of unrepresented litigants.[21] I learned that pro se litigants increasingly had access to court-based assistance centers to provide them with pro se forms, or on-site assistance,[22] the value of which was debatable.[23] I was also acutely aware

judicial district, which includes Wisconsin's largest urban center, Milwaukee, the numbers ranged from 69-72% in the period from 1996-1999. John Voelker, Meeting the Challenge of Self-Represented Litigants in Wisconsin (2000) (unpublished report to Chief Shirley S. Abrahamson, Wisconsin Supreme Court, submitted by the Wisconsin Pro Se Working Group).

20 Voelker, *supra* note 19, at 5-6. The Wisconsin Pro Se Working Group was appointed by Wisconsin Supreme Court Chief Justice Shirley Abrahamson in response to the call for states to study the issue of pro se litigation that was put out by the American Judicature Society. The AJS sponsored a national conference in November 1999, along with the State Justice Institute, Open Society Institute, and the American Bar Association Standing Committee on the Delivery of Legal Services. The conference invited participation by teams from all states to, among other goals, "obtain and share information about the nature and effectiveness of programs developed in various jurisdictions" to support and assist pro se litigants, and "prepare action plans and recommendations on how to meet the challenges of self-represented litigants at the local, state, and national levels." *Id.* at 5. The Wisconsin Pro Se Working Group met for the first time on September 24, 1999, in anticipation of the conference, and continued its work for another year following the conference, in ten subsequent meetings. *Id.* at 6. Its work culminated in a report to the Wisconsin Supreme Court recommending a systematic approach to addressing the needs of self-represented litigants. *Id.* at 11-16.

21 A number of ethical issues surround the provision of legal services to pro se litigants. Non-lawyers who provide legal assistance run the risk of crossing the line into unauthorized practice of law. *See* Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581 (1999) (exploring the historical roots of unauthorized practice of law restrictions); Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. (1999) (questioning the constitutionality of unauthorized practice of law regulations as they relate to rules prohibiting nonlawyers from giving legal advice to pro se litigants). Judges and court personnel have additional concerns about maintaining impartiality, which are complicated by and in some cases conflict with their duty to provide information to pro se litigants and to ensure that pro se litigants are treated fairly. *See* Engler, *supra* note 19, at 2011-13. Lawyers offering education to help litigants represent themselves, or who provide something less than full representation in an "unbundled legal services" model encounter difficulties ensuring that the limited information and advice they give is both accurate and protects the litigant's interests. *See* Elizabeth McCulloch, *Let Me Show You How: Pro Se Divorce Courses and Client Power*, 48 FLA. L. REV. 481 (1996) (questioning whether pro se divorce courses contributed to client empowerment, adequately protected the rights of the pro se litigants, or even educated litigants enough to obtain divorce decrees); Mosten, *supra* note 19, at 430- 33 (describing concerns about malpractice claims and ethical violations as "barriers" to lawyers practicing under an "unbundled legal services" model).

22 *See supra* note 13. Russell Engler has described court-based legal services as follows:

> As the number of unrepresented litigants have swelled, courts have created pro se clerks, attorneys, assistants, law clerks, or offices to assist unrepresented litigants. In some courts, information tables staffed by non-lawyers, court clinics staffed by law students, and "lawyers-for-the-day" programs staffed by volunteer lawyers may be available to unrepresented litigants.

of the institutional barriers that prison inmates faced in performing even simple tasks like filing a motion, scheduling a hearing, or showing up for their hearings, and that they could not access even the limited court-based services that were available. I began to realize that the issues facing incarcerated family law litigants, most of them parents, were not being addressed by anyone in the state. And I had a stack of requests in my filing cabinet every year from inmates who were getting the form letter saying no, even with all the resources of a university and a cadre of eager law students at my disposal.

B. Spring 2000: Studying the Problems of Pro Se Litigants

In the spring of 2000, I decided to bring the problems and voices of the clients we could not represent out of the privacy of my file drawer and onto the seminar table, so that the students in the project could help me address the question of how the Family Law Project could provide something other than all-or-nothing service to these potential clients that they didn't otherwise see. I devoted the spring Family Law Project seminar that year to studying the problem of the explosion of pro se litigation in family law cases, and exploring how it might be addressed in the context of unrepresented prison inmates with family law problems.[24] The students in the seminar had already spent one semester representing inmates in family law cases, and were continuing in the spring with full caseloads. The goal of the semester was not to provide any additional legal assistance to unrepresented inmates, but simply to learn more about the problem of pro se family law litigants in the prison context, and to envision possible solutions. Within the seminar, each student was given the task of choosing and

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> In addition, various information sheets, booklets and court forms are available in many courthouses for many types of proceedings; websites increasingly provide information as well. Courts in Arizona and Utah employ information kiosks "to enable court users to rapidly obtain the necessary forms and instructions for legal proceedings in which litigants often represent themselves". . . The development of court forms has often been accompanied by simplification of court procedures, to increase accessibility and thereby reduce the demand for assistance.

Engler, *supra* note 19, at 1999-2000.

[23] Mary Helen McNeal has been a patient yet persistent critic of the "unbundled legal services" movement and its impact on legal services for the poor. McNeal, *supra* note 7; Mary Helen McNeal, *Redefining Attorney-Client Roles: Unbundling and Moderate-Income Elderly Clients*, 32 WAKE FOREST L. REV. 295 (1997). *See also* McCulloch, *supra* note 21.

[24] The spring classroom component of the family law project met just once a week for a 55-minute period. This seminar component was described to students generally as being devoted to "discuss[ing] work on ongoing cases, as well as some of the general policy issues that arise in representing inmates in family law cases," and was initially conceived as a relatively unstructured opportunity for case rounds and discussion of legal or ethical issues of general interest regarding the family law system, and arising from the students' casework.

investigating one possible solution, or a piece of one possible solution, to the problem of assisting unrepresented prison inmates. The limited expectation was that they would do a "feasibility study" on the possible solution, not try to implement it.

The students chose a variety of types of possible solutions to investigate. Some students chose to try creating a form or informational brochure in an area of particular interest to them, often because of individual case work they were doing.[25] One student talked to prison staff to investigate the possibility of setting up a network of inmate paralegals to assist other inmates with family law questions. Another chose to focus on the particular county in which she was going to practice upon graduation, talking to clerks, judges and administrators about what they did with pro se prison litigants, why they didn't have programs or materials to assist pro se litigants in family law cases, and what it would take to create them.

The seminar class, billed as a seminar to discuss "general policy issues that arise in representing inmates in family law cases," took on the specific focus of issues related to assisted pro se work. The seminar included readings and discussions on ethical topics that arise for both attorneys and non-attorneys providing legal assistance to pro se litigants.[26] It also included visits from members of the statewide legal community working in legal services offices and pro se assistance centers in both urban and rural settings. The students were required to complete in and out of class exercises designed to help them more fully understand the client base they were problem-solving to serve. For example, to prepare for one seminar class, each student was given a stack of ten inmate referrals to read and summarize. They were also each given a packet of completed referral summaries from the previous year that I had prepared for the purpose of selecting clients for the fall. In class, the students discussed as a group the problems that inmates who did not get our assistance might be having. Students also did exercises to help them understand and evaluate the types of approaches being used to assist non-incarcerated pro se family law litigants, and the limitations of those approaches for their incarcerated client base. For example, in preparation for another seminar class, each student was asked to pretend that he or she was a pro se family law litigant, and to evaluate a set of materials from one of the several counties in Wisconsin that made family law forms available to pro se

[25] The projects that fell into this category included developing a pro se form for responding to divorce petitions, developing a brochure explaining abuse and neglect proceedings, and a brochure explaining the differing standards and procedures that governed modification of an inmate's child support obligations and arrearages.

[26] *See supra* note 21.

litigants, or to do a basic search of the internet to see what information they could find.

At the end of the semester, in a truly synergistic moment, the students moved from merely studying the problem to conceptualizing a solution. The plan for the last class had been for the students to share "final reports" about what they had learned from working on their individual projects. Students who were working on forms shared the difficulty of having to simplify and explain concepts to users of the forms, and at the same time communicate the concepts to the courts with legal precision. The students working on brochures described the difficulty of figuring out what type, depth and level of information to include in a limited amount of space. And all students agreed that without on-site assistance, forms and brochures could be only a partial answer. In the course of this discussion, the students came together to conclude that what was needed was a three-part approach: informational brochures, legal forms with written instructions, and on-site assistance in using the forms.

Because it did not have the resources to provide regular on-site assistance at all prisons in the state, the Family Law Project was not going to be capable of fully implementing the tripartite approach that the students envisioned in their seminar. However, the insights of the students in the spring 2000 seminar generated a more limited goal for the students in the Family Law Project during the next year: create a unified system of family law forms and brochures, and pilot an on-site assistance program at one of the prisons to gather data about the assistance that inmates would need so that wider-ranging methods of delivering that assistance within the prison could be developed in the future.[27]

C. Academic Year 2000-2001: Developing and Testing Pro Se Packets

The next fall, I involved the students in the Family Law Project in implementing these goals. As each student arrived in the project in the fall, he or she was assigned a particular substantive law subject area in which to work, alone or in pairs, on creating pro se materials. For example, one team of students worked on divorce, another on child support modification, another on re-opening paternity judgments, etc. To accommodate the extra work, the students' maximum caseload was reduced from ten clients each to seven clients each. The students' work on their individual cases was intentionally tied to their

[27] Some possibilities for delivering service that were envisioned by the students at that time included training inmate paralegals, working with prison social workers, or recruiting volunteer attorneys from the community to do on-site assistance.

work on their pro se packets. While each student was assigned two or three divorces (which touch on all substantive law issues), only the student who worked on the child support modification packet was assigned additional child support modification cases, only the student working on the paternity re-open packet was assigned additional clients who wished to re-open a paternity determination, and so on. Each student thus became exposed to a number of clients facing the problem they were designing pro se packets to address, and became somewhat of an "expert" in that one area of the law.

The fall semester's seminar consisted of an initial unit on divorce, which served as a teaching vehicle for basic client interviewing and counseling, as well as an introduction to substantive family law.[28] The remainder of the fall was designed to focus on student presentations relating to the progress on their packets. In the first round of presentations, each student or team researched and presented the substantive law relating to his or her packet. In the next round, they presented first drafts of their forms or brochures.

In this fall semester, my expectations outpaced the work that the students could do. One seminar class turned out not to provide enough time to give meaningful group feedback on the drafts of the packets, so we ended up spending two or three class periods on each packet. We found that the project of developing pro se packets was raising far more complex questions than we had anticipated. As we engaged in the task of creating pro se materials in each substantive law area, students who were also representing inmates in that area began raising questions about whether some types of actions, petitions or motions could ever be effectively litigated by a pro se litigant. We continued to explore alternatives to pro se prison litigation. For example, many prisoners had fallen out of communication with their children, and sought enforcement or modification of visitation orders in divorce or paternity judgments that often predated their incarceration. Because of the contested and controversial nature of these claims, the students working on the visitation enforcement and modification packet had serious reservations about the ability of prison inmates to pursue visitation issues pro se. Instead, they proposed the idea of developing educational classes for inmates upon their arrival in prison, so that they could work on prospective plans for keeping in contact with their children while they were in prison, before communi-

[28] Unlike the relatively unstructured spring semester seminar component, described *supra*, note 24, the fall classroom component had traditionally included both substantive law teaching on custody, child support, paternity, and divorce standards and procedures, and lawyering skills teaching on interviewing, counseling, and negotiating. Instead of meeting once every week, it met twice a week for 55-minute periods.

cation broke down and the matter reached the point of litigation.[29]

The deadline for final drafts of the packets moved from late November to the beginning of the spring semester in mid-January. In January, it moved again, and the student drafts of the packets were not really finalized until mid-March. This delay intruded into the spring semester goal of piloting the forms packets with on-site student assistance at one of the prisons. I chose to slow the process down to allow the student control over the development of the packets to continue, rather than taking the drafts as they were in December and "finishing" them myself over the winter break, because the packets really weren't at the "finishing" stage.

I realized early on that the students would not have either the time or the background and experience to create the forms and instructions for the "procedural" steps in the packets, such as step-by-step instructions for filing documents, serving them, and arranging to appear in court from prison. I had planned to draft these parts of the packets myself, but to include students in working through some of the issues involved in these procedural steps by presenting my own drafts to the group for discussion and brainstorming during the fall seminar. However, we ran out of class time as the group processed each student's work on the forms, instructions and brochures. I ended up drafting general forms and instructions to help prison inmates file documents, serve documents, and arrange to appear in court, which were later incorporated into each of the student's substantive law packet, without involving the students in my decision-making process about how these forms should be developed.

The choice to do these parts of the packets myself was in some ways a good one, because the experience of actually drafting part of the packets helped me appreciate some of the struggles the students were having as they tried to do it, and to communicate better with them about the choices they were making. But doing it in isolation deprived the students of the learning experience that came with that work. I found that drafting instructions for procedural steps raised some very interesting issues about systemic problems surrounding special, or in some cases, non-existent, procedural rules for prison inmates.[30] Because of the complex and time-consuming nature of the

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[29] This type of wide-ranging evaluation and inquiry suggests engagement in the broader, more holistic model of problem-solving called "creative problem-solving" by Professor Linda Morton. *See supra* note 1.

[30] For example, Wisconsin has an elaborate procedure that prisoners have to follow to get a waiver of prepayment of their filing fees in civil cases, which results, not in a waiver of filing fees, but in a court order authorizing the Department of Corrections to empty the inmate's prison accounts, freeze all incoming funds, and forward them to the Clerk of Courts until the filing fee is paid in full. *See* WIS. STAT. § 814.29(1m) (1999-2000). This

work, deciding to involve students in that part of the packet production would probably have meant saving it for a different group of students, and delaying completion of the packets for another year.

When I was setting up the spring semester seminar component for 2001, I had anticipated that at least nearly-final drafts of the packets would be completed by mid-January, and that we could devote seminar classes to fine-tuning our drafts based on feedback from guest speakers: a family court commissioner, a practitioner whose office exclusively assisted coupled with stipulated pro se divorces, and a department of corrections official. However, we did not have the drafts ready during most of the weeks when these guests were scheduled to visit, which limited the feedback we got from the guests, and occupied seminar sessions that could have been devoted to continued group collaboration revising the packets.

Meanwhile, as the late-March deadline for on-site assistance approached, the pressure to finish the packets intensified. I became the focal point of activity, as I completed final edits on student drafts, transforming them into a uniform format and incorporating the instructions I had drafted for each of the procedural steps. I ended up making the final decisions about which student approaches to follow as part of the generalized format alone at home.[31] When I wanted

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waiver of prepayment procedure requires the inmates to get documents from three different sources attesting not only to their indigency, but also to the fact that they have not had three or more actions previously dismissed for failure to state a claim. Although these procedures were designed to curtail frivolous conditions of confinement claims against the state, they apply to family law actions as well. So the simple step of filing a family law petition required its own set of forms and instructions.

Appearing at hearings is another difficulty for incarcerated litigants. Many inmates assume that because the state knows where they are, the sheriff will automatically transport them to the courthouse for their family law hearing, like the sheriff has always done (usually unbeknownst to them, on motion by the state) for their criminal hearings. In fact, personal appearance is not favored for inmates in family law cases except in special circumstances, and inmates must seek the court's permission to appear by telephone. *See Schmidt v. Schmidt*, 212 Wis. 2d 405, 569 N.W.2d 74 (1997). Even if the court grants permission to appear telephonically, the courts do not always realize that the inmate cannot just pick up the phone and call the court, since prison regulations limit inmates to collect calls. *See* WIS. ADMIN. CODE DOC 309.39(4). In our experience representing inmates, we had found that the courts and the prisons would sometimes end up in a standoff that we would have to negotiate, when it came to the question of who would be responsible for footing the cost of the telephone appearance. Therefore, we needed to develop a form motion for telephone appearance that would both secure permission to appear by phone and provide for communication between the court and the prison to resolve the issue of payment and ensure that the inmate would be available to make or receive the call.

[31] For several months starting in October, 2000, I had developed the practice of waking up early, before the rest of my family awoke, to work for an hour or so on scholarship each morning. I suspect that I am not the only clinician who has developed this practice. Clark Cunningham has beautifully described a similar experience split between the world of scholarship and practice as follows:

The theoretical section of this article which follows was largely composed in the

input, I involved the students by bringing drafts back to the individual students who had worked on each packet, or to the seminar for group feedback. But because of the scheduled guest speakers, I did not have enough class time to involve the students in every step of the decision-making at this final and important stage. I was growing discouraged, feeling guilty about the amount of work I was appropriating to get the packets finished, and at the same time wondering if we would get them finished at all.

The fits and starts eventually paid off in a group trip to the prison in late April. During the first two trips to the prison in March, the on-site assistance had consisted of teams of students talking to the inmates who had signed up for pro se family law assistance, evaluating whether the pro se packets would fit the inmates' situations, and giving limited legal information, advice and referral as appropriate. For the most part, the students liked doing it; they hadn't realized how much they knew about family law after a semester and a half. But they were frustrated by not having the packets to hand out. Instead of handing out packets, they had to fill out order forms for the inmates who needed packets.

On April 20, the packets were finally ready, and the students went up as a full group with a box of multi-colored packets of pro se forms and instructions, and a rainbow of colorful brochures. The mood as we left town at 7:00 on a Friday morning only two weeks before finals was nothing short of elated. In a flurry of activity, the students saw all the inmates who had previously ordered a packet, as well as anyone else who had signed up with family law questions, while I floated from table to table in the visiting room, overhearing snatches of their conversations with the inmates and getting involved when they got stumped or wanted to check their instincts against my opinion. On the way home, the excitement still hung in the air, along with a feeling of true accomplishment and completion.

> hours around dawn . . . Indeed, parts were probably written on some of the same days that I consulted with students, met with clients, and went to court on these two cases. At the time, my life seemed split between two utterly different worlds: one silent, solitary, bounded by a sphere of lamplight with the world beyond barely visible in hushed shades of gray, and the other so hectic, so full of sound and glare as to make my monastic contemplations of a few hours earlier fade like a dream.

Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459, 2469-70 (1989). From mid-February to mid-April 2001, the monastic early morning hours I had set aside for my own scholarship were consumed by the demands of editing the students packets. Although beyond the scope of the pedagogical issues addressed in this article, this aspect of the pro se project raises interesting questions about the demands of larger service project work on the time and creative energy of clinicians, and the limitations that scholarship places on the type of cases or other work that clinicians choose to do.

The academic year came to a close with the group of Family Law Project students having attained a deeper appreciation of the problems and issues surrounding the provision of legal services to the poor than previous generations of law students, who had represented only individual clients, had been able to achieve. The students who had worked on the pro se project had been required to generalize beyond the particular personalities and idiosyncracies of a small caseload, and address the legal obstacles facing an entire marginalized population. In doing so, they had learned to look beyond the results in individual cases before particular judges, and gain an awareness of some of the structural problems in the law as it applied to incarcerated family law litigants. They had been forced to examine the role that they were playing as lawyers for their individual clients, and imagine how things might have turned out without someone playing that role, differentiating between claims for which lawyers were crucially needed and those where the client would have fared equally well without a lawyer. They had been compelled to evaluate the deficiencies of litigation as a solution to individual problems, not only for family law clients who have lawyers, but for the majority who do not, and to envision alternative ways to address the problems.

In turn, I had been forced to grow as a teacher as the result of the challenges I had encountered involving students in this much larger problem-solving endeavor that continually threatened to spin out of control. I had learned to appreciate the benefits of the individual case representation model, as well as the unique opportunities and trade-offs that arise in involving students in more broadly conceived service projects. Before mining the rich material this particular experience provided for reflection on clinical pedagogy, it is necessary to examine the pedagogy of problem-solving as it arises in the context of direct representation of individual clients in small manageable cases, to explore why it is that these cases work so well as pedagogical tools for teaching problem-solving. This examination will help to further define the challenges of using broader, more complex, community-oriented service projects to teach problem-solving to law students.

II. Defining the Challenges: The Pedagogy of Problem-Solving and Individual Case Representation

Although people divide and name the stages of problem-solving differently, all provide the same basic sequence of steps or phases to describe the process of problem-solving, which can be generalized into four basic stages: (1) identifying the problem; (2) exploring alternative solutions; (3) developing and implementing a strategy for solving the problem; and (4) revising and modifying the strategy in light of new

information.[32] In Part IIA, I examine the role of the individual client in the way each of these stages of problem-solving is taught in the individual case model of clinical education. I argue that at each stage, the individual student-client relationship and the luxury of time that a limited caseload permits, play vital roles in bridging information gaps caused by law students' lack of legal knowledge and practice experience, and thus make it possible to give students primary responsibility and control over the problem-solving process. In Part IIB, I turn to broader problem-solving contexts and identify with more specificity the challenges posed when there is no individual client to mediate the student's inexperience in the practice of law, and where the problems to be solved are more complex and too large to be solved within one clinical semester or academic year.

The argument laid out in this section assumes two premises. First, it assumes that students learn a skill best by having primary responsibility for employing that skill to accomplish a task that they can see from start to finish.[33] Second, it assumes that law students lack extensive knowledge and experience of law and of how legal systems work. Although either of those premises may be debated, in general or in the case of individual students, I will adopt them for purposes of argument, because my ultimate goal is to show that, even conceding that they are true, it is still possible to overcome the challenges of giving relatively inexperienced law students a sense of ownership and control in a larger problem-solving endeavor that they cannot see from beginning to end.

Moreover, if we accept the premise that the best way to teach a student how to do something is to give him or her direct and primary responsibility for doing it, then we must also accept that the individual case representation model has inherent shortcomings in its ability to teach students lessons about solving the larger structural problems facing client communities. As clinicians, it is important for us to be aware of the implicit, as well as the explicit messages that we send our students by the cases we give them and the way we teach them.[34] The implicit message that we send to students working in the individual case model, representing only a few carefully chosen individuals plucked out of the greater context of need from which they arise, may be that lawyering "skills" like interviewing, counseling and negotiating

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[32] *See supra* notes 1 and 5.

[33] For further support for this premise, see *supra* note 6.

[34] For example, in a recent article criticizing the pedagogy of unbundled legal services clinics, Mary Helen McNeal has insightfully argued that by allowing students to engage uncritically in an unbundled legal services clinic, we may send them the message that "the limited legal assistance model is sufficient to provide justice to poor and moderate income clients." *See* McNeal, *supra* note 7, at 369, 368-74.

are at the heart of lawyering; and that professional "values" like the duty to provide legal services to the poor is an extra, something to do in your spare time if you feel like it.[35] Or, perhaps more dangerously, we raise the students' awareness of the problem that many persons like their clients need legal help, but fail to engage them in the complexities that arise in efforts to address the problem. Without helping the students to envision solutions, we may send them the message that the unmet legal needs of the poor is too overwhelming a problem to solve, and they may conclude that it is therefore not worth their effort.[36]

A. The Role of the Student-Client Relationship in Problem-Solving Pedagogy

In this section, I demonstrate how each component of the individual case model: individual clients, a small number of cases, and the ability for students to see cases from beginning to end, combine to make small manageable cases ideal learning vehicles. The relationship between the law student and an individual client in a traditional clinical setting, coupled with the client-centered approach to lawyering, mediates the law student's lack of legal background and experience by allowing the student access to the information that is most crucial in the problem-solving process.[37] In a client-centered approach to lawyering, the client provides what the law student lacks in the background information necessary to effectively solve the client's problems, because a client-centered approach places a premium on client information regarding facts and goals, and client decision-making about priorities and strategies.[38] A limited caseload permits stu-

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[35] *See* Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 333 (2001) (noting that despite three decades of clinical legal education, students do not carry the lessons about the importance of providing legal services to poor clients into practice, and that "maybe—just maybe—the emphasis on skills training in clinical programs has resulted in too much time being devoted to simulation, performance critique, and structured reflection, and too little to the ways in which lawyers can, and should, use law to pursue social justice and stimulate social reform.")

[36] For a discussion of the problem of "remedial paralysis" in another context, see Katherine R. Kruse, *Race, Angst and Capital Punishment: The Burger Court's Existential Struggle*, 9 SETON HALL CONST. L.J. 67 (1998).

[37] Kimberly O'Leary has noted, in a recent article, that the client-centered model of lawyering may be particularly appropriate for novice lawyers, especially as compared to more directive models of the lawyer-client relationship that require more lawyering experience and skill to employ in a nuanced way. Kimberly E. O'Leary, *When Context Matters: How to Choose and Appropriate Client Counseling Model* 4 T.M. COOLEY J. PRAC. & CLINICAL L. 103, 133-36 (2001)

[38] Binder, Bergmann & Price conceive of their client-centered approach as a type of Copernican Revolution of lawyering, which removes the client's legal issues from the center of the lawyer's problem-solving endeavor, and replaces them with an analysis of the legal and nonlegal consequences that inevitably flow from any proposed solution to the

dents to do the background research and investigation that compensates for their lack of legal experience. Finally, the ability to see a case from beginning to end permits a students to remain involved at the critical stage of revising and modifying the problem-solving strategy.

1. Problem Identification

In the individual client model, students are taught to approach the first step of problem-solving, problem identification, through a variety of techniques that help them view the problem from the client's perspective. The skill most readily associated with problem identification is the client interview, particularly the initial client interview. Lawyering skills texts advocate using open-ended questions and active listening techniques in the initial interview of the client, to get a full and rich picture of the client's situation from the client's point of view.[39] Clinic instruction also commonly includes exercises that help the student understand cultural differences between the student and the client and help the student uncover and confront assumptions that may inhibit the student's ability to really hear what the client is saying.[40]

The central technique employed in lawyering skills literature at the problem-identification stage is listening. The student must listen to get a sense of all the client's concerns, legal and non-legal, because

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client's problem. *See* BINDER ET AL., *supra* note 4, at 5 ("too often lawyers conceive of clients' problems as though legal issues are at the problems' center, much as Ptolemy viewed the Solar System as thought the Earth were at the center of the universe") and *id.* at 10-15 (discussing the prominence and importance to clients of the nonlegal dimensions of their problems). Because the client has more expertise than the lawyer about the nonlegal dimensions of his or her problems, the client's preferences for which solution to seek play an important, if not predominant, role in any problem-solving effort. *Id.* at 22-23 ("active client participation enhances the likelihood of producing satisfactory resolutions . . . by (1) embracing both the legal and nonlegal dimensions of a client's problem; (2) employing the combined expertise of lawyer and client in identifying and evaluating potential solutions; and (3) encouraging decisions to be made by client, who are generally better able than lawyers to assess whether solutions are likely to be satisfactory.")

[39] *See id.* at 47 ("Listening actively is important not simply to insure that you hear and understand a client, but also to motivate a client's full participation"); and *id.* at 70 ("Open questions indicate your expectation that a client respond at some length and allow a client to respond in his or her own words."). *See also* KRIEGER, ET AL., *supra* note 3 at 65-69 (discussing how active listening techniques can help to overcome client inhibitors to communication).

[40] *See, e.g.,* the exchange in the following related law review articles in Volume 4, Issue 1 of the Clinical Law Review: Jane Harris Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 CLIN. L. REV. 1 (1997); Carolyn Grose, *A Field Trip to Bennetton . . . And Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic*, 4 CLIN. L. REV. 109 (1997); Margaret E. Montoya, *Voicing Differences*, 4 CLIN. L. REV. 147 (1997); Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem-Solving*, 4 CLIN. L. REV. 65 (1997).

effective problem-solving will involve addressing both.[41] The student must listen to ascertain the client's goals, both immediate and overarching, because effective problem-solving may involve conflicts between different goals that the client may have.[42] And the student must listen to gain the most complete factual picture possible, using good interviewing techniques to uncover facts that the client may have trouble remembering accurately or discussing freely.[43]

In the small, single case, problem-identification is thus rendered relatively accessible to law students without a lot of background information in law and legal procedure. The student can get an understanding of the information necessary to identify the problem that needs to be solved by listening both critically and empathetically to one person. This is not to say that listening and really understanding one person's needs and perspective is a simple process; just that it is relatively manageable for someone without a lot of legal training or a wealth of practice experience.

2. *Generating Alternative Courses of Action*

After defining the problem, the next step in the problem-solving process is to explore possible alternative courses of action. In the context of individual representation, students are taught to generate possible courses of action that their clients might take, drawing on their understanding of their clients' problems, research and analysis of what the law says and how the legal system operates, common sense analysis of how people think, feel and behave, and further factual investigation into the background of the client's situation. The process of exploring alternatives involves an interactive and discursive blend of factual investigation, legal analysis, and case theory development. Students are generally taught to start with the client's story, and explore any possible legal theories implicated by the story.[44] Students are also taught to generate possible case theories: persuasive stories that meld law and fact and explain why their clients should prevail.[45] The identification of possible legal and case theories then leads to additional factual investigation, which leads to additional legal research,

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[41] *See* BINDER, ET. AL, *supra* note 4, at 5-15.

[42] *See* HAYDOCK, ET. AL, *supra* note 4, at 64-65.

[43] *See, e.g.*, the discussion of facilitators and inhibitors in BINDER, ET AL., supra note 4, at 34-44.

[44] *See id.* at 145-46.

[45] For three different yet complementary views of the role of case theory in lawyering, see Gerald Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); and Edward Ohlbaum, *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMPLE L. REV. 1 (1993). *See also* KRIEGER, ET AL., *supra* note 3, at 119-51 (contrasting three theoretical models of organizing facts: legal elements, chronology, and story).

until a wide range of possible alternative courses of action are identified, along with their possible legal and non-legal consequences for the client.[46]

The student's lack of legal experience might seem to frustrate primary student control over this step in the problem-solving process, because law students may not really know what alternatives are available. However, clinical instruction employs a variety of techniques to draw on the strengths that law students bring to the process of generating a wide range of alternatives. Clinicians encourage students to think "outside the box" about possible solutions to problems, including taking advantage of the students' own freshness and lack of legal experience to generate creative solutions to problems that more seasoned attorneys might overlook in favor of well-worn habits. Some employ collaborative techniques such as brainstorming, to widen the scope of ideas that are considered,[47] or advocate collaborating with clients to help identify and develop approaches to the clients' cases that most closely reflect the clients' needs and goals.[48] The students' lack of experience requires them to pursue much more time-consuming follow-up work investigating the feasibility of the alternatives that they generate than seasoned attorneys would need to perform. But within the individual case representation model, the options are naturally bounded. By limiting the students' work to a single type of case, area of law, or small number of clients, law school clinics can make the time and space for the students' learning curve to catch up with the creativity of their imaginations.

3. Choosing and Implementing a Strategy

After generating a wide range of alternative courses of action, the next step in problem-solving is to evaluate and narrow the options, and to choose between them. Here again, the law students' lack of experience would seem to pose a barrier to their ability to evaluate which alternative course of action is best. But because the student is representing a particular client with a unique set of goals and priorities, the information gap can largely be filled within the relationship to that client.

In individual case-representation, this stage of problem-solving is

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[46] *See* BINDER, ET. AL, *supra* note 4, at 146-56. HAYDOCK, ET. AL, exhort students to "think creatively" by moving "beyond the first thought," moving "beyond the traditional," and moving "beyond 'lawyer' approaches." HAYDOCK, ET. AL, *supra* note 4, at 25-27.

[47] Kimberly O'Leary has described several exercises that are useful to help clinical students uncover and imagine a wide variety of perspectives on a problem, in what she calls "difference analysis" or a "perspectives-base" approach to clinical teaching. O'Leary, *supra* note 40.

[48] *See, generally,* Miller, *supra* note 45.

taught within the context of the skill of client counseling. Counseling is generally defined as the process of assisting the client in making decisions about what course of action he or she wants the lawyer to take on his or her behalf, by providing the client with information about possible alternative approaches and the consequences that are likely to flow from each approach.[49] Although this process requires novice law students to do a fair amount of homework and legwork to assemble the necessary information, the particularity of an individual client's situation will naturally limit the amount of information the students need to gather, making it manageable in scope. And the students themselves need not and, in a pure client-centered approach should not, be making the ultimate judgment of what course of action to choose.[50] Because the problem being solved is the problem of an individual client, the solution is ultimately dictated by that client. Again, the presence of an individual client with particular needs, goals and circumstances mediates the student's lack of lawyering experience, because the particularity of the client's situation limits the information the student needs to provide to help the client make a decision, and the preferences of an individual ultimately guide the decision-making process.

4. Revising and Modifying the Strategy

The final step in the problem-solving process is given little more

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[49] Binder, Bergman & Price define counseling as follows:

> Counseling is the process by which lawyers help clients decide what course of action to adopt in order to resolve a problem. The process begins with identifying a problems and clarifying a client's objectives. Thereafter, the process entails identifying and evaluating the probable positive and negative consequences of potential solutions in order to decide which alternative is most likely to achieve a client's aims.

BINDER, ET. AL, *supra* note 4, at 259-60. Haydock, et. al, similarly describe client counseling as "the process of advising clients and assisting clients in making decisions," in which the lawyers: make an assessment of the client's legal problems, suggest options for dealing with that problem, predict the advantages and disadvantages associated with each option, and assist the client in making decisions about the options. HAYDOCK, ET. AL, *supra* note 4, at 74-75.

[50] Lawyering skills literature varies in its view on advice-giving. For example, Binder, et al. take the view that lawyers should carefully guard any advice-giving so as not to unduly influence the client with their own views. *See* BINDER, ET AL., *supra* note 4, at 279 (lawyers should give advice "only after . . . hav[ing] counseled a client thoroughly enough . . . [to] base [the] opinion on the client's subjective beliefs"). Haydock, et. al, draw the line between lawyer and client decision-making in a different place. *See* HAYDOCK, ET. AL, *supra* note 4, at 86-87 (arguing that lawyer recommendations or advice about what course of action to take will not unduly sway a client who has been given the appropriate information to make an effective decision). Krieger, et al. start with the assumption that "most clients want client-centered counseling, and that client-centered counseling produces better decisions," and suggest trying to persuade the client to choose without relying on an attorney recommendation before acceding to the client's preference for "recommendation only" counseling. KRIEGER, ET AL., *supra* note 3, at 212-13.

than passing attention in the literature on lawyering skills. Law students are warned that they "need to remember that client decisions do not necessarily last"[51] and that it is important to keep checking back with the client to see if the client's goals have changed or shifted over the course of the representation.[52] The reason that the important step of revising and modifying a strategy is mentioned primarily as a caveat is probably because the problem-solving is taking place within the context of an ongoing client relationship or legal case, where the need to revise and modify a strategy will be easy to identify as its implementation unfolds. Again, the continued presence of the student in the life of an individual case plays an important role in making it clear when the strategy is working and when it is not. If the individual representation spans more than one group of clinic students, then the lessons of revising and modifying may be lost on the students who counseled the client at the choosing and implementing a strategy stage of problem-solving. But where clinics choose cases that students can see from start to finish, the students can stay involved as the need to modify the strategy unfolds.

This survey of the pedagogy of problem-solving in individual client representation points out that the student-client relationship plays an important role in making it possible for law students to maintain primary ownership and control of the problem-solving process as they learn to be lawyers. Most of the information that the student needs at the stage of identifying the problem comes directly from listening to the life circumstances, needs and goals of an individual client. Although the student needs to do further research and investigation at the stages of generating possible solutions and choosing and implementing a course of action, the particularity of an individual client's situation reduces the universe of possibilities into a manageable size for someone without much legal background or lawyering experience. If the student is working on a case that is small enough to see from beginning to end, then the student is also present for the stage of modifying and revising the strategy as circumstances unfold. Assuming that primary ownership and control is the best vehicle for teaching, the use of small, manageable cases in which students assist individual clients in the process of problem-solving makes good pedagogical sense.

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[51] HAYDOCK, ET AL., *supra* note 4, at 90.

[52] *Id.* at 67 ("The third cardinal rule about eliciting direction is to discuss the issue frequently. Clients' lives and businesses change; so too, do their goals and preferences.") *See also* BINDER, ET. AL, *supra* note 4, at 290 (emphasizing the importance of clarifying client objectives before counseling a client on options, because the client's objectives may have changed, or the subsidiary decisions involved in implementing a course of action may elicit new goals that are different from the client's overall objectives.)

B. *Broadening the Context: The Challenges of Problem-Solving Outside the Student-Client Relationship*

When the problem-solving process is removed from the context of the representation of an individual client, giving students ownership and control is much more challenging. In the broader context of problem-solving for a client community, the problems are more difficult to identify and address. Some of the challenges are created for any problem-solver simply by the context. It is more challenging because the scope and complexity of the problems for which solutions are being sought, along with the absence of a single client with particularized needs and goals, make each stage of problem-solving process more difficult to execute. Other challenges arise because law students lack the background and experience of lawyers, and because the length of time it takes to go through the problem-solving process makes student turnover inevitable.

1. *Problems for Any Problem-Solver in a Broader Context*

The size and scope of a broader problem outside the context of the individual client context poses challenges at every stage of the problem-solving process for any problem-solver. At the problem-identification stage in problem-solving for a client community, the problems are much more difficult to locate and identify because there is no one client with an individual perspective to understand and appreciate. Instead, one encounters a multiplicity of differing needs and perspectives that converge at some points and conflict at others. It takes time and experience to hear the diversity of voices needed to even begin to identify the problem.[53]

At the stage of generating alternatives for a wider-reaching problem, the challenge comes in defining the problem in a way that makes it manageable for the process of brainstorming. The process of generating alternative solutions is designed to transform something small and particular into something multiple and diverse. Generating alternative solutions to a problem that is already multiple and diverse can quickly make it overwhelming.

The main problem at the stage of choosing and implementing a strategy in the broader problem-solving context is that there is no client whose individual goals can provide a touchstone against which the utility of different alternatives can be measured. Often problem-solving alternatives will impact persons in a variety of different roles, in a variety of different ways, and it is difficult to know how to evaluate or

[53] *See* Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157 (1994).

prioritize them. Without the goals of a single-minded client as an anchor, it can be difficult to know how to begin to choose between alternative approaches to solving a problem.[54]

The difficulty of finding a way to choose a single strategy or course of action puts a premium on the last stage of the process: revising and modifying the strategy in light of new information. However, when working outside the context of any one relationship or case, the feedback on how useful the strategy is in achieving the goals of the problem-solving is less accessible. As a result, it is important to build in "feedback loops," consciously designed methods for getting input on the results of one's strategic choices, to see what adjustments need to be made.

2. *Law students' lack of experience*

When the goal is to give law students ownership and control over problem-solving in this broader context, further challenges arise. Experience with a community or client base over time can help a practiced lawyer overcome some of the difficulties of hearing the diversity of voices and perspectives that come to bear on identifying a broader problem and choosing alternative approaches to solving it. Students who lack this experience do not come to the problem-solving process with an understanding and appreciation of the territory in which they are operating, and may have trouble hearing the multiplicity of voices associated with defining the more systemic problem they are seeking to solve. The students' lack of familiarity with the context of the problem will also limit their ability to think creatively and expansively about possible solutions. However, once acclimated to the context, the students' lack of experience can be a boon, as it is in individual case representation, by making them less jaded and more open to thinking "outside the box" that experience creates.

3. *The problem of turnover*

The reality of involving students in problem-solving in a broader context is that the entire problem-solving process will not occur within the clinical experience of any one student or group of students. As discussed above, it is especially important in broader-based problem-solving endeavors to create channels for seeking continued feedback

[54] This is not to say that an individual client always provides one clear answer to the question of how to proceed. A single client may have a variety of goals and concerns that may come into conflict in the process of decision-making. *See* BINDER, ET AL., *supra* note 4, at 33 ("[n]eeds exist contemporaneously and are often in conflict') and 66 ("[s]ometimes clients express confused and contradictory feelings . . . Recognize that contradictory feelings are the norm, not the exception.")

from the community or client base that the students are working to benefit. Yet no one group of students in a law school clinic will be around long enough to participate in this learning over time. In addition to creating feedback loops, a clinic will have to develop a structure or method for creating institutional memory, so that the lessons learned in one year will be passed on in the next year.[55]

To summarize, the process of problem-solving for a larger client community poses challenges for the models and methods of problem-solving usually taught in clinical education. Because the process occurs outside the context of an individual attorney-client relationship, students cannot draw on the usual client-based interviewing and counseling methods to help them identify the problem and choose a course of action or strategy to attempt to solve it. They also lack the legal background and lawyering experience that can help them conceptualize problems more broadly. This lack of experience can be a mixed blessing at the stage of generating possible alternative courses of action, however the size and scope of broader problems can quickly make the process unmanageable for any problem-solver. Finally, the shortcomings in the problem identification and strategic choice stages of problem-solving in the broader context demand the creation of "feedback loops" to help evaluate the strategies that are tried. The annual, if not semi-annual turnover in student clinic participation makes it difficult to create institutional memory, even though it holds out the promise of infusing the process with fresh perspective and new energy.

Yet there are powerful reasons to involve students in broader problem-solving projects that seek to address the needs of a client community beyond individual case representation. Larger projects often arise, as the assisted pro se project in my family law project did, out of a burning need to do something to address real and pressing needs that our clients experience. Some of the same pedagogical insights that would lead one to conclude that maximum student ownership in individual case representation is the best way to teach lawyering skills also suggest that actively engaging students in grappling with the bigger social problems may be the best way to position them to be responsible members of the legal profession after they graduate.[56] A social justice education requires more than just expos-

[55] On the other hand, the involvement of new generations of students can benefit the problem-solving process at the stage of modifying and revising the strategy. Students with new and fresh perspectives have less ego investment in choices that were made in the past, and may bring greater energy to the task of evaluating choices in light of new information. They may be better situated to receive information about how well a strategy is actually working without filtering it through preconceptions about how it was designed to work.

[56] The debate over whether clinical experience should preference lawyering skills or a

ing students to cases with poor people, and hoping that they draw insight into larger social problems from that experience.[57] We can try to expand our students' view of the social problems that plague their clients with readings and discussions in seminar, or use supervision sessions to help them generalize from their clients' experiences. But if the goal is for them to leave law school with a personal and professional responsibility to act as problem-solvers for social justice issues, then there is no substitute for actively engaging them in trying to solve some of those problems as law students.

If one of our pedagogical goals is to provide students with exposure to problem-solving in a broader context in which they can grapple more effectively with issues at the heart of social justice, it is important to understand and address the pedagogical challenges of designing a clinical experience that gives students primary ownership and control over a broader problem-solving endeavor. I will therefore return to the concrete example of my family law project experience, to analyze the strategies I employed in trying to overcome these challenges and to evaluate their pedagogical success.

III. Overcoming the Challenges: Employing the Strategies of Compartmentalization, Connection, Collaboration, and Continuity

In designing a clinical experience to give students meaningful ownership and control over a problem-solving project for a larger community or client base, I found it useful to employ four distinct types of strategies, which I will call compartmentalization, connection, collaboration and continuity. In Part III.A., I describe these strategies more fully. Briefly, compartmentalization strategies divide the hugeness of the endeavor into manageable components so that each student has a piece of the process over which he or she exercises primary and ultimate control, and each group of students has a piece of the process that they can see from beginning to end. Connection strate-

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social justice agenda has actively roiled through the history of clinical legal education, perhaps taking a recent turn toward favoring social justice education over skills training. *See* Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millenium*, 7 Clin. L. Rev. 1, 12-16 (2000) (discussing the history of social justice education as an explicit goal of clinical education); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. Rev. 1461 (1998) (tracing the history of the social justice mission of clinical education); Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 How. L. J. 31, 32-34 (1993)(discussing how the service mission of clinical education interacts with and affects its pedagogical mission).

[57] *See* Jane H. Aiken, *Provocateurs for Justice,* 7 Clin. L. Rev. 287 (2001) (arguing that exposing students to cases is not sufficient to complete their "justice education" and outlining other strategies for moving students through stages of critical thinking and justice readiness that enable the students to make a life-long commitment to pursuing social justice).

gies are designed to put the student in touch with the nature and complexity of the problem, to compensate for the students' lack of broad-based legal experience, and the lack of an individual client whose circumstances ground the problem-solving endeavor. Collaboration strategies help counterbalance the isolating effect of compartmentalizing the students' work. Finally, continuity strategies aim to connect the work of the problem-solving project between generations of students over time.

In Part III.B of this section, I examine how my role as a supervisor changed in the broader problem-solving context. I note that because of my greater experience representing prison inmates and my involvement with the project over time, I necessarily played a more directive role in supervising the students than I would in supervising their individual case work. However, to the extent that I was also grappling with the uncertainty of addressing new challenges, a different type of partnership emerges between me and my students, which opened up space for student creativity and input.

A. Employing the Strategies to Maximize Student Ownership

1. Compartmentalization Strategies

To preserve each student's sense of ownership and control in the problem-solving endeavor, it is essential to break the problem down into pieces that each group of students can manage within their time in the clinic, and that each individual student can call his or her own. In the Family Law Project, I employed both types of compartmentalization. First, each semester the project had a limited task with finite expectations, which had an ending point in sight by the end of the semester. Second, each individual student had ultimate ownership and control over one piece of each semester's endeavor.

One logical and workable way to divide a problem-solving project into component parts is to have different generations of clinic students work on different stages of the problem-solving project. The work in the family law project tracked this type of compartmentalization. In the spring 2000 semester, the goal was simply to understand the problem of pro se family law litigation involving prison inmates, and to generate possible solutions. In other words, the students stayed within the first two stages of problem-solving. They achieved a sense of completion at the end of the semester when they moved, as a group, to the stage of choosing a course of action based on their semester-long process of exploring alternatives. In the following academic year, the goal was to begin implementing the course of action chosen by the students the previous semester by creating pro se materials and piloting them at one site. The students achieved a sense

of completion in taking the completed packets to the prison for the pilot on-site assistance project. That project, and the data it generates, will set the stage for the next group of students to evaluate the success of the choices made by the previous students, and to modify or refine them accordingly.

Within each stage, though, it was also important to give each individual student a task within the larger problem-solving endeavor over which he or she had primary responsibility. In this way, each student had an individual stake in the work, knowing that if he or she didn't do the work, it wouldn't get done.[58] Hence, in the spring 2000 semester of the family law project, as part of the problem-identification process, each student had primary responsibility for investigating and reporting back on one piece of a possible solution. In the following year, each student or pair of students had his or her own substantive law packet to work on. Each student had to grapple individually with the issues involved in the problem-solving process, and each student benefitted from a sense of personal accomplishment by completing a discrete task within the larger stage of problem-solving that the group was working on together.

Sometimes the goals of compartmentalization, which include the goal of having the students complete a phase of the problem-solving work by the end of their clinic involvement, conflicted with the goal of primary student ownership and control. For example, I rushed the process of producing the pro se packets so that it would be completed before the students left the clinic at the end of the year, skipping student involvement in grappling with some of the interesting questions raised by drafting the procedural steps in the packets and appropriating the decision-making involved in those parts of the packets myself.

Similarly, the choice to divide the student work on the pro se packets by subject area worked well in a lot of respects, but created the need to bring students' differing approaches together more quickly than group collaboration could manage, within the time we had. The fact that each student was assigned a particular area of law made it manageable for them to develop enough expertise in their areas to meaningfully participate in problem-solving about how to structure information in their packets. But the choice to divide the work on the packets along subject-matter lines ultimately dictated that the differing approaches that students took towards organizing and formatting the packets would eventually have to be resolved, and as

[58] As David Chavkin has noted, "It is a far different experience for the student in making and implementing decisions with the client if the student does not believe that the clinical supervisor is always there to pull the student's 'fat out of the fire.'" Chavkin, *supra* note 6, at 1531-32.

the academic year ticked away, I eventually chose to bring the varied approaches together by instructor fiat, rather than collaborative group decision-making.

Compartmentalization alone is not a good pedagogical choice. Part of the point, after all, is to have the students reflect on the larger problem, and simply dividing the work up and doling it out to individual students, like research assistants writing research memos, would not have achieved that goal. To meaningfully involve students in the broader problem-solving effort, they must understand how their individual work fits into the larger project, and have a stake and a say in how the goals of the larger project evolve over time. Isolating the various pieces of the work product from one another also inhibits the opportunities for sharing and the expansiveness of thinking that comes when more than one person's perspective is reflected in the problem-solving process. The problem of isolation takes on added significance outside the context of individual representation, where the client's preferences provide a natural external check on the student's judgment of what choices to make in solving the problem. It is important to find ways to both build connection between each student's individual work and the perspectives of those persons the student is working to benefit, and to build in opportunities for collaboration between students and others, so that a variety of perspectives is included in the problem-solving process.

2. *Connection Strategies*

In traditional problem-solving for an individual client living in poverty, it is important for students to both listen to the individual, and to work on overcoming their assumptions about what that client's life is like. This is especially important at the stage of identifying the problem, and continues to be important for getting input from the client as the strategy for solving the problem is chosen and revised. When there is no one individual client to whom the student can listen, the process of forging connection between the student's work and the lives of the persons for whom the students are working is more cumbersome.

In the Family Law Project, in-class exercises helped to some extent. For example, it helped the students in the spring 2000 semester, in their task of identifying the problems of unrepresented prison inmates with family law problems, to read and summarize some of the accumulated requests for assistance, and to see the summaries of the referrals from the year before. They reported that it was particularly powerful to see the summaries of their own clients, who had been accepted into the project, within the context of the summaries of the

clients who had not been accepted. And requiring the students to review existing pro se materials or do an internet search for self-help legal information helped the students understand how difficult it would be to use even available information, if you were incarcerated.

By far, the most important way in which the students in the family law project connected with the lives and perspectives of the client community was to represent some clients directly.[59] All students were enrolled in the clinic for two semesters. The ability of students to engage in meaningful problem-solving increased as their experience in direct representation increased. In the spring 2000 semester, when students were actively engaged in problem identification, they had already spent a semester representing clients. The following year, the students began working on pro se packets immediately, but expressed frustration and confusion with the project for much of the fall semester. Much of the delay in implementing the packets probably came as a result of their inability to engage in meaningful problem-solving without some direct representation under their belts.[60]

The choice to "specialize" the subject-matter of the students working on the pro se packets was an important way to make their workload manageable, and coordinating that specialization with their individual caseload was also an important way to help them connect with the client base for whom they were creating materials. After interviewing and counseling 3-4 clients with similar legal issues, the students could begin to see patterns that helped them identify some of the challenges of drafting forms and instructions to explain the law to a larger number of inmates with similar problems.

Even though they were directly representing a few clients, I

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[59] Others who have examined the role of students in clinics providing assistance to pro se litigants have also noted the importance, even the necessity, of the students' also working in full-representation cases. *See* Barry, *supra* note 9, at 1922 ("The case exposure [that the students had through representing clients in approximately three cases] gave them a sense of how the domestic relations branch of the court works, which in turn brought to life the information that they were expected to convey in the pro se clinics, and insight into the value of the project"); McNeal, *supra* note 7, at 386-87 (discussing the importance of prior lawyering experience to " better equip . . . [students] to handle the level of responsibility the unbundled setting entails" and to "best position a student to appreciate the unbundled clinic and its accompanying curriculum")

[60] The critical role of direct representation suggests that these larger projects are best offered to students in the second semester of their clinical experience, or as an "advanced" clinical seminar for students who have completed the prerequisite individual client representation clinic. This has implications for clinic design, and suggests that there might be a trade-off between offering a more in-depth "social justice" training, and the skills training in individual case representation that can be attained in a one-semester clinic. For a more comprehensive review of this and other issues involving pedagogical goals and clinic design, see Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLIN. L. REV. 109 (2001).

found it was important to find ways to increase the students' exposure to as many other individuals in the client base as possible. For example, during the spring 2000 semester, I received a frantic request from an inmate who had just been served with divorce papers and needed to respond within 20 days. One of the students in the clinic had chosen, as her individual project, to investigate creating a divorce response form for inmates to use. Her individual caseload included two clients who had filed pro se responses while waiting for our assistance. After reviewing available divorce forms from several counties in Wisconsin, she noted that most pro se packets were designed for petitioners, not respondents, and she noted that divorce respondents were particularly excluded from assistance by our project because of having to spend months on a waiting list before we would get to them. Although the clinic could not take this inmate's case because of its timing, I asked her to call the inmate and talk him through the process of filing a response. In her direct representation of respondents, she had not had the opportunity of seeing and talking to them during that stage of drafting and filing the response. The experience of talking an inmate through that process helped her identify some of the information needs that a response form and instructions would need to meet.

3. *Collaboration Strategies*

Collaboration is already an important part of many clinical programs, which intentionally pair students so that they can work on cases together, or have built-in opportunities for students to share their work on individual cases with the rest of the clinic students in "case rounds" discussions.[61] Collaboration can be an especially useful tool at the stage of generating possible alternative solutions to a problem, because it brings a diversity of perspectives into the problem-solving enterprise.

In broader problem-solving efforts, it is equally important to build in collaboration, both among students in the clinic, and between students and others in the community who are working on solutions to the problem. Collaboration among students can be built into the process in much the same way as it is in representing individual clients: through group brainstorming exercises, class discussions or individual

[61] For discussion of the benefits of collaborative learning, see Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation:" Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957 (1999). For a discussion of the benefits of collaboration in lawyering, see Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process of a Diverse Profession*, 17 VT. L. REV. 459 (1993). For more specific discussion of collaboration within the clinical context, see David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994).

presentations to the group.

In the spring 2000 semester of the family law project, the real magic of collaboration occurred at the end of the semester, when the students unexpectedly moved from generating alternative solutions to the problem to choosing a strategy after sharing their reports and listening to each other. In the following fall semester, when the students were working on their individual brochures and sets of pro se forms and instructions, group presentations became an important way for the students to share their drafts with one another, and discuss the common challenges they were encountering and the choices they were making to meet those challenges. Although each student was working on a different packet, they were encountering similar issues, and the class presentations gave the group the opportunity to identify what those issues were and explore different possibilities for addressing them. Although I intervened at the end to make final decisions, the format of the packets had to some extent already become an amalgam of different approaches that students had tried in previous drafts, adopting each other's methods when another student's innovation inspired imitation.

Collaboration between students lawyers and other professionals working to address the same problems from different perspectives was also an important part of the problem-solving process, especially in light of the limitations that not having a relationship with an individual client placed on the problem identification and choice of strategy stages of problem-solving. The problem-identification phase of the students' work in the first spring semester of the Family Law Project was enhanced by weekly visits, during the middle part of the semester, from lawyers and non-lawyers who were working on various pro se assistance projects around the state. Although poorly timed, the visits the next spring from the lawyer doing assisted pro se work and a family court commissioner who had drafted forms and instructions for a court-based pro se assistance center also added valuable insights to the students' work on their forms and instruction packets.

4. Continuity Strategies

The process of addressing a wider-ranging problem cannot be conducted in one semester, or even one academic year. Different groups of students will be working on different phases of solving the problem, and will need to be able to pick up where the last group left off. Probably the biggest challenge in involving students in active problem-solving in a project that spans several semesters or years is to provide continuity by giving students a sense of the process that has come before, and to give them meaningful input into the direction of

the project after they leave.

In my experience, I found that I became the primary vehicle for achieving continuity between different generations of students. In making the decisions about how to compartmentalize the students' work, I synthesized the lessons from the problem-identification and strategizing semester to the following year, in which the second generation of students implemented the vision that the first generation of students had created. Because I was the only remaining member of that first group, I carried the institutional memory.

Other strategies are available for achieving continuity, other than using the clinical supervisor as the vehicle for communicating lessons learned over time. Continuity can be built into the structure of a clinic engaged in a larger problem-solving project by staggering the student enrollment, so that new students can work together with students who have already engaged in the project for one semester, or by hiring experienced students as project assistants or student supervisors after they have completed the clinic.[62] This approach is being tried for the first time in the family law project, as four summer students dedicated to family law work began in the summer 2001 project, with the requirement that they continue into the fall, when the new students start. Continuity will also occur naturally as new students become actively involved in revising and modifying the pro se packets that previous students formulated, and a bond forms between the generations of students, carried through the product itself.

B. The Changed Nature of Supervision

As perhaps evident from the foregoing discussion, I found that in this broader problem-solving context, all my familiar rules of clinical supervision changed. Although I do not consider my own experience in the family law project to have been completely successful in maximizing student ownership and control, many of the ways in which it fell short were caused, not by the context itself, but by my desire to rush the students into the work before they were ready, and toward completion on a time-frame that did not permit true collaboration to run its course. By using a combination of the strategies outlined above, I found it was possible to meaningfully involve students in problem-solving in a broader context beyond individual case representation, and upon reflection, I think I could have done it even better. However, while use of the strategies detailed above can help to maximize student ownership in bigger service projects, the student

[62] *See* Wizner, *supra* note 35 at 335-36 (describing the Yale model, which uses students who have completed clinic as "senior associates" to "pass on the 'tribal lore' of the program" to newly-entering clinic students).

ownership over the problem-solving process was never ultimate ownership, and it may be a stretch to describe it even as primary ownership. The crucial role that the client plays in individual representation, of narrowing and particularizing the context in which the problem arises, and of providing the key information needed to solve the problem, had to find a substitute. The role that the supervisor plays in filling the informational and contextual gaps, and in providing continuity between stages of problem-solving over time, will invariably change the supervisor-student relationship in ways that undercut student ownership and control over the problem-solving process.

For example, I found that there was simply no way to give the students enough experience in a limited amount of time to adequately understand all the dimensions of the client community they were working to represent. To help the students connect with their client base, I continually played the role of client-proxy at different stages of problem-solving, because of my greater exposure over the years to clients in prison with family law problems. This set up a dynamic quite unlike the dynamic in my supervision of the individual representation cases. In cases where we were representing individual clients directly, the student, by virtue of having met the client, had better and more complete information about the case than I, who rarely met clinic clients, possessed. By contrast, in tackling broader problems, we were operating on the basis of the information we had about prison family law clients in general, and there was no way to bring the students to my level of experience and put us on an equal footing. They needed my participation because of my expertise, but I could not participate without being the expert.

Likewise, to provide continuity between different generations of students, I played the role of guide and expedition leader, which continually threatened the goal of giving students primary and ultimate control over the problem-solving process. The necessity of providing institutional memory and carryover from the first generation to the second generation of students forced me to be much more directive than I would normally be in student supervision of an individual case, to bring the lessons of one semester into the next. For example, I simply told the students in the second project year the answers that the previous year's students had reached about what strategy to employ to solve the problem, and told them to implement the general approach that the previous group of students had outlined. I did not revisit that decision-making process with them, nor seek their input into the general goals or strategies of the project.

This more dominant role as expert and expedition leader was

counterbalanced, however, by the changes I experienced as the result of venturing into what was, for me, unknown territory. In my experience teaching in the more traditional clinical paradigm, in which students represented only individual clients in small manageable cases, I had become used to being able to predict the types of issues that were likely to arise in resolving the cases, both in the substantive law and in the attorney-client relationship. As a supervisor, I would make choices about what information to share and what information to withhold so that the students could find it out on their own. I strategized about how to prepare students for what I predicted would lie ahead for them, recycling experiences from previous semesters into hypotheticals or simulated class exercises.

In working on a larger project, I could not necessarily carry over the lessons from one semester to the next, because the terrain was always changing. I could not go back and teach an earlier phase of the problem-solving process again, only this time with new students. I was forced to move out of my comfort zone and travel into uncharted waters together with my students. I almost never had to "hide the ball," because a lot of the time I wasn't sure where the ball was.

As a result, my supervision emerged in some respects as more of a partnership between the students and me than I had experienced in the past. It was not a partnership of equals, because I knew more than the students did. But it was a partnership in which I, like my students, shared all I knew and all the limits of what I knew. My lack of certainty about what I was doing opened up space within the relationship for the students to give input, critique my suggestions, and share in the decision-making. And my inability to predict where we were going opened up unique opportunities for rich discussion of social justice and the role of law and lawyers in achieving social justice goals.

CONCLUSION

The challenges of involving students in larger problem-solving endeavors beyond individual case representation are real, but they are not insurmountable. The challenges can be largely met by remaining aware of the need to compartmentalize the students' work, so each student invests a sense of ownership in one piece of the project, and to consciously structure the clinical experience to allow for connection between the students and the clients they are serving, collaboration between students and with others in the community, and continuity between the work of students in different years of the project. And while the student participation does not look the same as the it does in the individual case model, the "partnership model" of supervision that emerges has its own pedagogical benefits.

The biggest benefit by far was the social justice education that working on a larger project afforded my students. After actively involving my family law students in the complexities of problem-solving for pro se litigants, I saw a dramatic difference between the ability of those students to understand the broader issues surrounding the need for legal services among the poor and the awareness of students I had taught in the past. A court date did not go by in their individual cases without them pointing out the pro se litigants in the courtroom or in the hallway, and noticing how they tried to articulate their positions, and how they were treated. The students also noticed the signs in the clerks' offices about not giving legal advice, and they knew volumes about what those signs meant to people coming through the doors with handwritten pleadings. Their eyes had been opened to a world that they might not otherwise have seen, a shadow world that goes on in the courtroom after the cases with attorneys are over. And they saw that world in terms of potential solutions.

An experience I had with the students who had drafted the pro se packets at the end of the academic year illustrates this point. As is my custom, I used the last class period in the spring to request feedback from the students on their clinical experience, and to get their suggestions for how to improve the clinic in the coming year. To my surprise, the students focused, not on their experience in the service project, but on the inefficiencies of the clinical teaching methodology in their individual casework. "Why don't you have forms that we can use, instead of making us draft our own motions from scratch? It seems like we had to re-invent the wheel every time." I turned on my rote explanation of the theory behind the method: they needed to develop strategies for learning how to practice law themselves, instead of thinking that it's all in a big book somewhere. It was part of the process of learning to be lawyers. But they continued to press: "What about the clients? Wouldn't they be better off if we hadn't wasted half the year trying to figure out what we were doing? Maybe the clinic would have been able to represent more clients if we had more streamlined procedures." My explanations suddenly felt more feeble, more fumbling.

On the way back to my office, I realized that what I should have said was, thank you. Thank you for thinking of the clients instead of yourselves. Thank you for not taking for granted that the privilege of your learning curve is bought at the expense of the poor. I realized that through their work in the service project, the students had developed an attitude toward serving the needs of clients beyond their individual caseloads that had generally eluded students working only on individual cases in the past. I was used to hearing those questions

asked at the beginning of the semester out of the students' insecurity, rather than at the end of the semester, in reproach. Here, it was a reproach born out of a perspective on how the clinic could be doing things better, not for the students, but for the clients. My hope is that the lessons my students learned from their engagement in problem-solving to meet the unmet legal needs of prison inmates will be more than fleeting; that they will be lessons the students can carry out of the doors of the law school and into the practice of law; that they will be lessons that will help the legal profession in its larger project of shaping solutions in the direction of justice.