Reflections on a Crit Clinic

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Elizabeth L. MacDowell* & Nina L. Terzian**

For me, organizing to transform the conditions of injustice in the world was when I felt that aliveness, that tying in to something true, a connectedness that vibrates through my veins. We know this isn’t right. We know we aren’t meant to live in this perpetual state of war and stress and unmet needs and loneliness and lies. We can change this. Even before we have an intact political analysis we can feel that things must change, and we in small circles of humanity can change things.¹

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* Professor of Law and Director of the Family Justice and Policing and Protest Clinics at the William S. Boyd School of Law, University of Nevada Las Vegas. Many thanks to the symposium organizers (especially the incomparable Professor Saru Matambanadzo) and participants, and to the symposium editors. Being reunited with the LatCrit spirit again is like finding water in the desert. I also express gratitude and appreciation for the many contributions of my clinic students to my thinking and praxis. Thank you especially to my co-author, the brilliant and thoughtful Nina Terzian, who assisted with research for this essay and whose lightly edited and expanded commentary appears in The Clinic Debriefing section. Many thanks as well to my partner in love and pedagogy, Barbara Bird, for her support and great ideas.

** Attorney at Koeller, Nebeker, Carlson & Haluck, LLP; J.D. 2021, William S. Boyd School of Law, University of Nevada Las Vegas. Thank you to Brian Wall and Stacy Shiroma for bookending my law school experience with such patience, compassion, and integrity, and to my much braver colleagues in this project. Special thanks to the one I kept a home with during the pandemic shutdowns for her unique support. Thank you to my family for maintaining a safe place to land and always having jokes that remind me of home.

¹ Adrienne Maree Brown, St. Louis Racial Equity Summit Keynote, ADRIENNE MAREE BROWN (Aug. 6, 2001), http://adriennemareebrown.net/tag/audre-lorde/ [https://perma.cc/U64E-FYU3].
INTRODUCTION

This essay is a reflection on the first three semesters of the Policing and Protest Clinic (PPC) that I founded with eight intrepid law students in Fall 2020, as a three credit “pop up” directed clinic. The next semester, many of the founding students stayed on as we transitioned to a six-credit clinic—now finishing its second semester. We have had some wonderful successes, one or two false starts, and more conflict than I have experienced in twelve years of teaching. Emotions have run high in general. We founded the clinic in passionate response to the murder of George Floyd and the police violence against protesters during the summer of uprising.² Our mission: to be a community-centered clinic working to increase legal empowerment and uplift the voices of impacted persons and communities.³ As the pre-vaccine COVID-19 pandemic raged amid the pandemic of racism and white

³ Our full mission statement, laid out in the PPC’s Founding Document, reads as follows:

The Policing and Protest Clinic was founded in direct response to the murder of George Floyd by police and the violent police response to the protests calling for justice that followed. We are faculty and students seeking to achieve community informed and centered solutions to police violence and other systemic forms of inequality and subordination, and to support impacted individuals and communities through legal advocacy and other means.

The Founding Document also identifies five founding values (not in order of importance): (1) Centering the concerns of impacted communities and individuals in our decision-making and uplifting their voices in our work; (2) Working collaboratively with community groups, activists, and others who share or support our mission; (3) Taking intersectionality into account in the analysis of problems and solutions; (4) Contributing to the mobilization of the community for social justice goals; and (5) Prioritizing systemic solutions and those that help build lasting support for impacted communities. See Boyd School of Law Policing and Protest Directed Clinic (Fall 2020), (on file with author).
supremacy that brought us together, we gathered through the ether to hope and plan for a better future.

To accomplish our vision, we decided to explore partnerships with grassroots community organizations in Las Vegas working with impacted communities, as well as with other organizations that have the same or similar goals for structural change, such as the ACLU of Nevada, the Las Vegas National Lawyers Guild (also galvanized into being by the George Floyd Protests), and criminal defense organizations. Our work would be across three main areas: legislative advocacy (primarily in Nevada’s biennial legislature), direct advocacy (client case work), and community education (with our first classes focusing on rights during police encounters).

The Nevada legislature was in session for the clinic’s first year, and PPC students participated in bill analysis, drafting, and reporting through a coalition focused on police and criminal law reform. For direct advocacy, we first partnered with the local defense bar, which had quickly organized to provide pro bono representation to the many protesters who were arrested during the first waves of protests in Las Vegas. This gave students the opportunity to collaborate with experienced local defense counsel on cases close to the heart of the clinic. Once those cases were dismissed, we shifted

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5 The founding students also wanted to do something hands-on in the community that was not about legal services, per se, but was synergistic with our goals. After identifying community partners and discovering a funding opportunity in the clinic’s first semester, the students helped to write and obtain a youth leadership development grant to fund a youth-led project supporting community gardens in Las Vegas. We called this project Justice Garden and worked on it with an experienced community gardening nonprofit through the next semester and until the summer heat made working outside too dangerous.

to addressing the damages of hyper-criminalization by taking record sealing cases, which our grassroots community partners urged us to prioritize, and pardons applications, where representation is very costly and unavailable to most potential applicants. Students in the clinic have also represented local community organizations and contributed to an amicus brief on qualified immunity filed in the United States Supreme Court.

These cases, and the ongoing struggles of our comrades in the community, within our circles, and among ourselves, have been infuriating, energizing, motivating, and hard. Students were struggling with the pandemic’s emotional, financial, and health effects, along with the stress of attending law school online while the world seemed to be burning down. As a professor and supervisor, I was in a more secure situation than my students in most ways. But I was nonetheless going through my own personal hardships, including those associated with pandemic anxiety and isolation. In other words, we had big dreams that we were pursuing on a deficit as we came together in sincerity and—due to the pandemic and the sensitivity of our mission—with great vulnerability.

There were also structural aspects of the teacher-student relationship that portended conflict. Although the students and I shared political commitments about equality and justice, we did not share equal power in the hierarchy of the law school classroom. I assessed their performance and graded them. If we sometimes operated as a democracy or collective, the context if not the spirit was my largess. The professional demands and structure of law practice and responsibility for clients exacerbated these issues by raising the stakes and the stress level for everyone, while legitimizing hierarchies. Moreover, the anti-subordination goals and motivations of the course ensured that students would be aware of these dynamics.

In my role as director of the Family Justice Clinic (FJC) at the same law school, I rarely encountered students who were not amenable to the social justice mission of the clinic, but they were often unaware of it at the time of
application. The FJC focused on family law cases at the intersections of structural inequality and the carceral state.\(^7\) In this context, our clients included individuals who were, paradoxically, both targeted and marginalized within legal systems because of their gender identity, sexual orientation, immigration status, or poverty, and due to criminalization and incarceration.\(^8\) Students assisted clients struggling to maintain or preserve their parental rights, and families trying to maintain or gain resilience when child protection agencies became involved in their lives. We also partnered with the law school’s immigration clinic to represent unaccompanied minors in family court proceedings as part of efforts to adjust their legal status. Initially, students often saw “Family” and imagined a more “traditional” practice but did not complain when they got an experience of a different sort. When faced with unexpected legal issues, the students began to accept my role in ways that I saw myself: as a guide or facilitator who might illuminate their path to new ways of understanding themselves, others, the law, and their professional roles. I was up front about my perspectives and received few complaints. Whether they agreed with me or not, my clinic students seemed to thrive overall.

In contrast, students applying to the PPC know what the PPC is about when they apply, and typically express a great deal of informed passion for the mission and work of the clinic in their applications. Within that space, we have created a deeper level of emotional connection and intimacy than I had experienced as a teacher before—even within the generally close connections forged in a clinic setting. Although clinics in the U.S. law

\(^7\) See Ann Cammett & Elizabeth MacDowell, *The Family Justice Clinic: Increasing Access to Justice for Nevada Families in Need*, 19 NEV. LAW. 42 (2011). As reflected in this article, I originally codirected the clinic with Professor Ann Cammett beginning in 2010. I have been the sole director since 2013. The FJC has been on hiatus since Spring 2020.

school model are typically an intimate setting for law practice, teaching, and learning, clinic is not in my experience necessarily a setting fraught with emotional angst, upheaval, and processing. But in the PPC, formed amid counter-hegemonic awakening and resistance and the global pandemic, conflict is at our core.

Conflict emerges with students’ growing awareness of injustice and struggle and their own power through processes of collectivization and organizing. It emerges as students turn their activist gaze toward the profession and the priorities and professional expectations of prior generations. It emerges in the crit classroom, in which barriers to confrontation are reduced, if not eliminated. And it emerges to the challenge of fully purging toxic ways of doing and teaching law.

To begin exploring some of these issues as they manifested in the course, and following the narrative tradition within critical race and LatCrit scholarship, I present below a dialogue between myself and a founding PPC student, my co-author Nina Terzian. In the discussion that follows, I share my meeting with Nina on our PPC Zoom channel to continue a debrief of our first two semesters.

9 Clinic is a great place to study the role of emotion in legal education, however. See Kate Seear et al., Exploring the Role of Emotions in Clinical Legal Education: Inquiry and Results from an International Workshop for Legal Educators, 53 LAW TCHR. 487, 489 (2019). As the authors observe, “Although there is a substantial body of work on the use and practice of reflective practice in law, there has been less work on how precisely we should think about and engage with emotions through legal education in general, or reflective practice in particular.”


12 The dialogue is based in part on Nina’s answers to a series of questions I wrote, and we discussed in late Spring 2021. The narrative also draws on an amalgamation of conversations with other students, colleagues, and my own inner dialogues.

13 To encourage collegiality in the working environment of clinic, students and faculty in my clinical courses are on a first name basis and I will use our first names here. See
Prior to this meeting, we had already identified many areas of challenge for the clinic’s counterhegemonic project, and I was especially interested in Nina’s views on making the clinic less hierarchical, especially in terms of the teacher-student relationship. In this context, we also turned to questions of conflict, emotion, and attachment to hierarchy. To prepare for this meeting, we read several critical texts. We chose to hold off on clinical pedagogical works and began by moving our inquiry out of the legal academy altogether, with excerpts of *Pedagogy of the Oppressed* by Paolo Freire\(^\text{14}\) and *Teaching to Transgress: Education as the Practice of Freedom* by bell hooks\(^\text{15}\) (which I began assigning to clinic students following this meeting so we could discuss hooks’s concepts about education together). We then focused on a few articles that explored themes of hierarchy and conflict in the law school classroom, such as Duncan Kennedy’s energizing manifesto, *Legal Education and the Reproduction of Hierarchy,*\(^\text{16}\) and the insightful and relatable *If these Black Boards Could Talk: The Crit Classroom, A Battlefield*, by Anibal Rosario Lebron.\(^\text{17}\)

**THE CLINIC DEBRIEFING**

After the two women chat and catch up for a few minutes, Elizabeth starts the agenda. “Why don’t we begin by talking more about the basic premise we share,” she suggests, “that a more horizontal, democratic clinic classroom is better suited to our social justice goals and values and the change we want to be. I want to hear more of your thoughts about the

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\(^{17}\) See Lebron, supra note 10.
benefits—and challenges—of more democratic or ‘horizontal’ relationships in the clinic setting.”

Nina looks down, shuffling some papers on her desk. “Do you mind if I read to you? I wrote down a bunch of thoughts last night.” Elizabeth smiles and nods and Nina begins reading.

“The purpose of a more horizontal relationship structure is to counteract the hegemonic vertical power structures that predominate in our society and in all institutions that are backed by coercive power. A horizontal structure wherein professors have no (or not much) more power than the students, which would entail a counterbalancing of students gaining more deciding power and influence over the entire structure and trajectory of the clinic, would be beneficial for several reasons: one, it would allow a younger generation of students (millennial/gen z)—who have the passion, education, organization, drive, frustration, people power, and ‘ears to the ground’—to actually have direct control over the movement that they signed up to participate and lead in.”

Looking up, Nina continues talking. “Many of us signed up for the PPC because we thought it would give us a more direct hand in making the changes we need to see in our country and community to have an ethical and equitable society, and in a way that is much safer than the risk of injury and arrest that accompanies frequent protest and potentially more directly successful. While the movement has elders, it is young people who are the face of this movement and have an integral understanding of what is needed and effective at this moment in history. If they do not have decision-making power throughout, then the clinic runs the risk of perpetuating the same power structures it sought to deconstruct.”

Elizabeth nods again. “But Nina, considering the challenges to counterhegemonic relations in law classrooms and law practice, do you think it is really possible to have anything but very weak democracy in a clinical law school course—or possibly any course?”
“That depends on how we define democracy,” Nina replies, “and a weak one at that. But, yes, we must consider the larger structure that we’re in. Starting from the bottom is the clinic course itself, above us are the administrators of the clinical program and the law school, the university, and then the university’s governing structure, and the legislature. Within the context of the larger system, a strong democratic system is not feasible without across-the-board structural change. However, cultivating a robust culture of democratic practices within the microcosm of the clinic course is indeed possible and, as Duncan Kennedy argues, can even have the possibility of facilitating change-making at higher levels of the hierarchical system with organized, well-thought-out action.”

“Amazing answer! This possibility of change from small ripples within reminds me of a book I’m reading and obsessed with: Emergent Strategy, by editor and activist Adrienne Maree Brown,”18 Elizabeth says, leaning forward. “Have you read it?” When Nina shakes her head, Elizabeth continues. “Brown expresses a similar but sinewier concept about the power of small and dynamic interpersonal actions. She also incorporates biology and the natural world into her philosophy in ways that were surprising and illuminating to me. I think her ideas might really resonate with you and the values and concepts we’ve been discussing. I think we should discuss it next meeting and consider whether and how it is useful for your vision.”

Elizabeth takes a sip of water and continues. “Going back to our course goals and overall context, what do you think we should strive for in the clinic as we shift to a more horizontal structure? What should we prioritize in your view?”

“I’ll continue my response from your first question,” Nina begins, “because I think that my discussion of students’ motives for joining clinic and our desire and ability to lead was leading into what changes should be

18 See ADRIENNE MARÉE BROWN, EMERGENT STRATEGY: SHAPING CHANGE, CHANGING WORLDS (2017).
made to promote greater democracy and student satisfaction in this clinic. The first is that students must be the decisionmakers at every step of the process. This means that there should not be pre-determined goals or projects that are handed down from professors. Like when you told us at the start of last semester that we would be doing record sealing because of feedback from the community. That was a great idea, but the way it was communicated left students feeling that the decision was already made and their agreement with that project was a mere decorative element.”

“So, it sounds like the communication, rather than the record sealing cases themselves, was a point of contention?” Elizabeth asks.

“Not exactly,” Nina replies. “We understood and agreed that record sealing was an important contribution. But the final decision to do record sealing rather than more direct work with people affected by protests or police brutality should have involved our input and agreement.”

“I hear you,” Elizabeth says, nodding. “We determined quite a few things as a collective, from my perspective, including the core focus areas of legislative advocacy, community education, and direct advocacy. But I made most decisions for our direct advocacy work to prepare and administer the course, and relayed them to the class, including on the record sealing, pardons, and amicus cases we’ve taken. I can see how that would have been counter to your expectations of how we would work together, based on our past processes and the nature of our collective goals. Lebron discusses ways to involve students in decision-making on the syllabus, for example.”

Nina pauses a moment before responding. “I think better communication could also help close the gap between professors’ needs and our needs as students looking to have more direct control over our learning and activism,” she finally says. “For example, the professor could send the clinic students proposals through email, so that students have time to confer among themselves to decide whether it fits with their values and their understanding of the clinic’s mission. Egalitarian communication and
letting go of the coercive and veto power vested in being a professor is something that should be strived for.”

Chuckling, Elizabeth says, “I agree, and yet feel some internal resistance at the same time. That’s my cue to start interrogating my motives and concerns.”

“Right!” Nina laughs, then grows serious. “These changes may be difficult for individuals accustomed to being in a position of authority, especially if the position was held for a long period of time,” she says. “But it is like becoming a white ally or accomplice: this requires self-reflection, introspection, non-hostility, being open to constructive feedback that may feel like an attack on the ego and divesting from the conferred benefits of inherent privileges granted by a higher position in society or a given structure.”

“In the clinic context,” she continues, “this also directly concerns grading and feedback. Students have an inherent and valid suspicion that their disagreement with a professor’s decision or other discrepancies will result in being punished, unjustly criticized, or unfairly graded for their work. In most law school courses, real transparency (much less democracy) about grading does not exist. Professors must address the inherently inegalitarian structure that they hold hierarchy in and divest themselves from some of that power by allowing students to have a role in deciding their grades. Granting students decision making power over grades would also allow professors to learn more about the strengths and efforts of a student that may have been overlooked or may systematically be undervalued in our current system.”

“I really like the general idea,” Elizabeth says, nodding. “You remember I proposed a plan for your class to be involved in the evaluation process, but it didn’t gain traction. It wasn’t necessarily the best plan, and I think students didn’t have the will to discuss it because some trust had already been lost, as you noted. The addition of more cases into clinic that second semester really threw things off, it seemed.”
“Your leadership style became more hierarchical, for sure,” Nina replies. “That time you told us by email that our record keeping was ‘unacceptable’ is an example.”

Laughing, Elizabeth remembers, “You used organizing tactics against me!”

“Damn right!” Nina retorts, laughing back.

“I know I didn’t teach you all how to stand in solidarity and support one another, but I was very proud when you stood up to me!” Elizabeth said.

“Well, as you admitted,” Nina replies, “if most of us were doing something incorrectly, then there was a lack of clarity and understanding about the rules or the rules needed revision or both.”

“Exactly!” Elizabeth says excitedly, “That’s our work together! I regretted not acting from that insight and with love and compassion in that moment. I resorted to the law firm model that I was trained in, where partners often deemed mistakes by new associates as intentional failings. Reflecting on this interaction, I realized that, like most of my mistakes in interpersonal relations in and out of the classroom, I had been overwhelmed and stressed out and not checked myself.”

“That reminds me of the chapter we read in class from The Five Habits.19 The authors noted that problematic, ‘red flag’ moments with clients are more likely if we are rushed or stressed.”

“Great connection!” Elizabeth said, feeling proud of her student. “Implicit in that chapter is the political nature of self-care, not only because of great disparities in need and ability to engage in meaningful self-care due to structural inequality, but because of the ways in which folks higher up in the hierarchy need to take responsibility for their own self-care. Hooks talks about this too, the need for the teacher to find her own joy. As clinic professor and supervisor, I have not only a responsibility to structure the

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course and course policies with student mental and emotional health in mind (and as a crit, ideally in collaboration with students), but also to care for myself. Otherwise, I may (again) end up playing a role in perpetuating inequality and hierarchy.”

“I also think that professors modeling self-care as well as extending their awareness to students and class policies could have a positive impact, even if small, on legal culture,” Nina said, looking thoughtful. “The toxic climate of many classes and much of law practice is built around self-deprivation and the new generations in law school don’t and won’t accept it.”

Elizabeth nods grimly. “I agree we need to eliminate the toxicity from law practice, which is an inherited disease. If the negative aspects of my training in law come out under stress, for example, then I may pass it to you. That’s one mode of the replication of hierarchy that Duncan talks about. By the same token, as we build a more egalitarian structure, students need to consider other moves when reaching for hierarchy as well. When progressive students go up the administrative ladder to complain about a grade or policy before first trying to resolve it with a generally supportive professor, that seems disingenuous and destructive of counterhegemonic commitments. We hope to be open to learning from one another and that requires some trust in one another’s good intentions as well as good policies. For example, while I understand that students may have felt pessimistic about our ability to negotiate an alternative grading policy, as a result we did not have that opportunity to try for a successful intervention.”

20 Some scholars have suggestions for meeting the perspectives and motivators of these generations. See generally Laura P. Graham, Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation, 41 U. ARK. LITTLE ROCK L. REV. 29 (2018); Emily A. Benfer & Colleen F. Shanahan, Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School, 20 CLINICAL L. REV. 1 (2013). Some aspects of these articles resonated, but I believe based on the reflections recounted here that the goals and intentions of the course also make an even more significant difference in student (and teacher) expectations and responses.
“Perhaps,” Nina responded. “But I don’t think we have to trust you or other supportive professors unless there are concrete mechanisms to protect students from retaliation. That is what makes open dialogue and possible disagreement safe. But I get it—we all want to be trusted and seen for our good intentions.”

Elizabeth considers this. Why hadn’t she focused on making grading policies in clinic more transparent for the new class without student prompting? While her doctrinal classes had detailed rubrics for every assignment, her grading process in clinic had remained more of a gestalt. She had to admit that giving up the power this gave her, especially from the students’ perspective, had not been a high priority. “You are right,” Elizabeth replied, feeling sheepish, “I wanted the students to trust me but had not checked my privilege.”

Nina smiles. “Believe it or not, this reminds me of my main takeaway from bell hooks’ Teaching to Transgress, which you had asked me about when we last talked. One word: ecstasy. It really stuck with me how she uses terms like ecstasy and joy in relation to learning and teaching. I want that. And I think these uncomfortable conversations are necessary to get there.” Her expression turns more serious again as she continues, “We need to find and keep joy close as activist lawyers despite and because of the frustration, anger, and despair we so often see and feel, especially those of us who are people of color. And I think that joy motivates us past barriers to take more of these kinds of chances.”

Now, Elizabeth was quiet for a moment. “The importance of ecstasy. That is a deep insight, Nina. I think prioritizing finding ways to get more

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21 Additionally, in rejecting authority, my students reject mine too. As a wise colleague and friend wrote in an exchange with me on this topic, “I have resistance to [our students’] resistance [to our authority] but sometimes I ask[,] are they wrong to cast off our methods and our commitments and our requirements? Maybe not . . . Maybe they have learned from the youth movements before. Use authority when it suits you. Cast it off when not. You are accountable to the future and your comrades. Not to power.” Saru Matambanadzo, personal correspondence (Dec. 30, 2021) (on file with author).
joy could bring a lot of healing, especially for folks who feel like outsiders in law school and to the profession. To fan girl some more, another book by Adrienne Maree Brown, *Pleasure Activism*, offers a lot of wisdom on this issue. Brown curates a variety of texts to encourage and show us how to tap into the energies of pleasure to imagine what is possible and change worlds. As she’s written elsewhere, this is the real-life work of science fiction. It is created out of pure desire. I did a quick search on Westlaw before our meeting and didn’t find any citations to her work in the law reviews. It would be interesting to see if we find synergies and applications to our context and to creating a more humanistic law practice culture.”

“Sounds like a project!” Nina agrees.

“Indeed,” Elizabeth laughs.

CONCLUSION

I’m falling asleep each night this week listening to *Emergent Strategy*, sacred geometry blooming behind my closed eyelids. I am imagining lithe green vines sliding across my skin and through my veins as I divide and swarm into divergent neural pathways. Tonight, I am relistening to Chapter Seven, where Brown asks, to paraphrase, “when will we discover and adapt to the delicious possibilities of pleasure available?” And I think about how alien this feels to the stressful side of lawyering.

What if it wasn’t such a foreign thought? What if the pleasure of collaboration and solidarity, working together for social justice, and other sources of love and joy were more or even just as available as negative feelings? Imagine how much easier it would be to let go of lessons and expectations that don’t serve us and to more consistently align one’s needs and the needs of the group. It may be difficult to imagine at times, but

23 See Brown, supra note 1.
24 See Brown, supra note 18.
Brown says activists are living science fiction because we are imagining and working toward things that don’t exist in our current reality. I drift off feeling Earth’s gravity slip away, looking for new worlds.