

2024

## Pacing Beside the Pool: Coaching Champion Writers to a Strong Finish in Clinic (Without Jumping in and Finishing for Them)

Hillary A. Wandler

*Alexander Blewett III School of Law, University of Montana*

Follow this and additional works at: <https://lawrepository.ualr.edu/lawteachingjournal>



Part of the [Legal Education Commons](#), and the [Scholarship of Teaching and Learning Commons](#)

---

### Recommended Citation

Hillary A. Wandler, *Pacing Beside the Pool: Coaching Champion Writers to a Strong Finish in Clinic (Without Jumping in and Finishing for Them)*, 1 J. Law Teaching & Learning 56 (2024).

Available at: <https://lawrepository.ualr.edu/lawteachingjournal/vol1/iss1/2>

This Article is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in The Journal of Law Teaching and Learning by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact [mmserfass@ualr.edu](mailto:mmserfass@ualr.edu).

# PACING BESIDE THE POOL: COACHING CHAMPION WRITERS TO A STRONG FINISH IN CLINIC (WITHOUT JUMPING IN AND FINISHING FOR THEM)

Hillary A. Wandler\*

*“The culture of growth helps the swimmers to accept even the most difficult feedback.”*

*Coach Teri McKeever<sup>1</sup>*

*“I used to place myself at different positions around the pool: the ends, the sides, on a high stepladder over the pool, and sometimes in the pool. I think all your swimmers should believe you are watching them during each training session. Many great coaches and swimmers share my view.”*

*Coach Dick Hannula<sup>2</sup>*

## I. Introduction

As supervising attorney and faculty member of an in-house clinic that provides direct legal services, I find it challenging to balance nondirective supervision with the need for excellent written advocacy for our clinic’s clients. Nondirective supervision has the potential to lead to deeply meaningful learning experiences in clinic.<sup>3</sup> But like all

---

\* Professor of Law, Director of Clinic Program, Director of Veterans Advocacy Clinic, Alexander Blewett III School of Law, University of Montana. This article was completed with support from research assistants Ellen Boland Monroe and Lauren Amongero; students in the Veterans Advocacy Clinic who were willing to test these ideas in real casework, particularly Shelby Danna, who collaborated on the case study in Appendix B of this article; and the administration and faculty at ABIII School of Law.

<sup>1</sup> Holly A. Schroth, *Coach McKeever: Unorthodox Leadership Lessons from the Pool*, CAL. MGMT. REV., Fall 2013, at 89, 97.

<sup>2</sup> DICK HANNULA, COACHING SWIMMING SUCCESSFULLY 11 (1995).

<sup>3</sup> See Serge A. Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching*, KAN. J.L. & PUB. POL’Y, Fall 2016, at 24, 26–27 (defining “nondirection” as “letting the student be responsible for making decisions about the case and performing lawyering tasks”). Professor Martinez explores the different situations in which directive supervision may lead to a more meaningful learning experience for students, but he also emphasizes nondirective supervision as “the foundation of clinical education” that, while controversial at times, has a “powerful hold over clinical education theory.” *Id.* at 25. For another useful exploration of directive versus nondirective supervision in clinic, and specifically as it relates to writing in clinic, see Angela J. Campbell, *Teaching Advanced Legal Writing In a Law School Clinic*, 24 SETON HALL L. REV. 653 (1993). While, as Professor Campbell

organizations providing direct legal services, my in-house clinic's reputation and effectiveness rise and fall with its clients' outcomes, which in turn depend in large part on excellent writing.<sup>4</sup> To prioritize a nondirective approach to supervising my students' written work, I need to supervise without intervening and writing the documents for them.<sup>5</sup> But I regularly feel the pull of our clients' needs, and in some instances my ethical obligations as the attorney of record on a case, and jump in to "rescue" a writing task if it is falling short of the standard required to achieve the client's desired outcome.<sup>6</sup>

In searching for guidance on supervising students' writing in clinic while also ensuring the clinic produced consistently high-quality written advocacy for our clients, I found helpful explorations of the topic by professors and clinicians like Angela Campbell, Tonya Kowalski, Cheri Wyron Levin, and, most recently, Tamar Ezer.<sup>7</sup> Their work

---

observes, clinicians do not agree on the ideal degree of directiveness in clinic supervision, I am writing from the perspective of a clinician who views nondirective supervision as a goal to prioritize and work toward in all contexts in my clinic, while still taking advantage of its "flexibility in the face of various sources of pressure." Martinez, *supra* note 3, at 25.

<sup>4</sup> See Jane Kent Gionfriddo, Daniel L. Barnett & E. Joan Blum, *A Methodology for Mentoring Writing in Law Practice: Using Textual Clues to Provide Effective and Efficient Feedback*, 27 QUINNIPIAC L. REV. 171, 173–74 (2009) (noting that clients expect quality documents that are produced efficiently, as inefficiency can impact the client financially, and low quality can impact the client's chances of success). Since my clinic, the Veterans Advocacy Clinic, advocates for veterans in complex administrative systems that offer few opportunities for oral advocacy, excellent written advocacy drives much of our success.

<sup>5</sup> See Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 CLINICAL L. REV. 1, 29 (1996) (describing nondirective supervision as clinicians "try[ing] to suppress their instincts to dictate or interfere or override when students are conducting a case differently than [the clinicians] might as long as the client's interests are not in jeopardy"); see also Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 305 (2010) ("In order to foster . . . professional independence, clinicians balance express instructions with a great deal of nondirective supervision.").

<sup>6</sup> Professor Cheri Wyron Levin, in her article *The Doctor Is In: Prescriptions for Teaching Writing in a Live-Client In-House Clinic*, 15 CLINICAL L. REV. 157, 182 (2008), also highlights the difficulties of remaining "nondirective" in writing supervision when time for filing is running short: "I prefer to be as nondirective as possible, but sometimes that is not a viable choice. For example, when deadlines are pressing, regardless of the ability of the student or the severity of the problems with the writing, directive comments may be necessary to insure that the deadline is met." Professor Campbell noted her clinician colleagues felt the same pull, commenting that "they tended to be more interventionist with student writing, and that writing was somehow different [from supervising other skills in clinic]." See Campbell, *supra* note 3, at 680.

<sup>7</sup> See Campbell, *supra* note 3, at 658 ("Because making . . . revisions [to students' written work in the in-house clinic] was impossibly time consuming

helped me name some of the issues I was experiencing as a clinician and identify my need for “a more conscious, planned approach to supervising student writing” within the time constraints presented by our clients’ matters.<sup>8</sup>

While I was attempting to develop better approaches to helping my students finish clinic writing projects independently, I also happened to be attending many competitive swim meets to watch my daughter race. I started paying closer attention to how her coach paced beside the pool while she was racing. He yelled encouragement to her at times, and he gathered information about her performance the entire time, noting split times for each length and observing how her performance was comparing with that of the competition and with her previous races. He also clearly cared about the outcome of her race, and he was engaged and even excited the entire time. But he never jumped into the pool and swam for her. Instead, he had to watch while she performed and trust that all of their work would pay off. They had both worked hard: They planned strategy before the race; debriefed how the strategy held up after the race; and discussed how she could reach the next level of performance in future races. I also reflected on the months leading up to her performance: The coach had asked her to repetitively practice swimming techniques, breaking down the parts of a race to focus on starts, turns, tempo (how fast she took each stroke during a length of the pool), overall pace, and her thought process during a race, among other skills. All of this work fueled their pre- and post-race discussions.

Over time, this analogy, while imperfect,<sup>9</sup> has offered me insights and opportunities to reflect on how clinicians might more effectively prepare clinical law students for writing in practice and simultaneously urge them to more effective advocacy for clinic clients.<sup>10</sup> For example,

---

for me, and because I felt the students likewise found the process frustrating, I set about to find out how I could teach the students to write better so that less revision would be necessary.”); Kowalski, *supra* note 5, at 288–89 (noting and beginning to address clinicians’ complaint of a general lack of guidance on writing instruction in clinics, leaving them searching for a “planned approach” to supervising significant clinical writing tasks); Levin, *supra* note 6; Tamar Ezer, *Teaching Written Advocacy in a Law Clinic Setting*, 27 CLINICAL L. REV. 167 (2021).

<sup>8</sup> Kowalski, *supra* note 5, at 288–89.

<sup>9</sup> I could see the analogy between coaching swimming and clinical supervision was imperfect at least in part because the stakes are different—my clinic students are not trying to win a race for themselves or their clinic team as much as they are trying to win for the clients who are trying to obtain needed benefits and rise out of poverty.

<sup>10</sup> The approaches I describe in this article go beyond encouragement and feedback; they are more similar to the coach stepping in to critique performance, but even still more engaged than that description. To the extent others have analogized writing instruction to coaching, the analogy has been more passive than what this article recommends. For example, Lisa Eichhorn defined a writing “coach” as “a person who sits on the sidelines, offering encouragement and feedback to another person who is in the process of

coaching a clinical law student to a strong finish on written work is not just about intervening less or holding off longer before taking over.<sup>11</sup> Instead, it is about the work that prepares the student for stronger performance; what it looks like to engage and guide the student during a particular writing task (i.e., pacing beside the pool rather than checking out during the race); how to encourage a student to a strong finish; and what to discuss in debriefing a writing task so the student will be focused and motivated to improve for the next task. The tension between my ethical duty as attorney of record and pedagogical goals as a clinician does not need to become an irreconcilable conflict.<sup>12</sup> Both duties will be important every time our clinic drafts a document for a client. But as I develop processes to enable students' reflection and intentionality in their writing for clients—processes that include feedback—that tension will ease. By more intentionally coaching students' writing in clinic, I can ensure their clinic experiences have a lasting impact on their careers from multiple angles—their professional identities as lifelong learners, their effectiveness for future clients, and

---

developing a particular talent,” and who “steps in at critical moments to critique his or her ‘player’s’ real-world performance.” Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 5 LEGAL WRITING 143, 149 (1999). Another article about teaching scholarly writing also briefly used a swimming analogy, describing students facing the upper-division writing requirement as “children thrown into the deep end of the pool to see if they can swim,” and their supervisors as “coaches.” Jessica Wherry Clark & Kristen E. Murray, *The Theoretical and Practical Underpinning of Teaching Scholarly Legal Writing*, 1 TEX. A&M L. REV. 523, 524 (2014).

<sup>11</sup> In some ways, effective nondirective supervision of students' writing in clinic requires a significant amount of preparation by both the clinician and the student; it can significantly differ from the classic standard of nondirective supervision, which is “letting go” and allowing a student to “take full responsibility” of representation. See Campbell, *supra* note 3, at 678. Ultimately, though, this more thorough preparation will lead to more effective—and nondirective—supervision of the students' writing for a client.

<sup>12</sup> Levin, *supra* note 6, at 180 (noting the clinicians' “ethical obligation to represent their clients competently,” and “[o]n the other hand, the role of clinicians . . . to help their students learn the skills needed to become competent lawyers,” concluding the ethical obligations often “conflict”). But see Campbell, *supra* note 3, at 666 (arguing a clinician's responsibility to the client does not need to diminish or eliminate the student's learning experience). Despite the conflict, the clinician's ethical duties and pedagogical goals are connected on a continuum, and their tension may be more successfully managed with deliberate planning, as this article recommends. For an excellent discussion of managing seemingly irreconcilable conflicts, or “polarities,” see JENNIFER GARVEY BERGER, *CHANGING ON THE JOB: DEVELOPING LEADERS FOR A COMPLEX WORLD* (2012) (exploring “transformational habits of mind” and managing polarities), Chapter 6.

their ability to help colleagues in practice by giving excellent feedback, among others.<sup>13</sup>

## II. Coaching Context: The In-House Law Clinic

*I want them to swim well; but through athletics and swimming, they should get to know who they are, their strengths and weaknesses, which will ultimately help them to become an even better version of themselves. It is a process that is continual growth. It is a great way to learn life skills because it is an environment where people have your back. If the swimmers' actions aren't leading toward their goals, I will sit down and talk to them about it. There is a safety net so if they do dumb things, I can make it a learning situation.<sup>14</sup>*

This article grew out of my own experiences supervising writing in an in-house clinic, an environment of continual growth within a safety net, similar to the one Coach McKeever describes in the above quotation. An in-house clinic requires both students and clinicians to “holistically integrate” skills and theory while providing legal services to real clients.<sup>15</sup> In an in-house clinic, the faculty member is the attorney of record for those real clients and either partnering with the student and sharing the work, or reviewing all student work before it is sent or filed.<sup>16</sup> In-house law clinics have dual goals: They simultaneously provide experiential learning to law students and legal services to the community.<sup>17</sup>

---

<sup>13</sup> Levin, *supra* note 6, at 174 (describing deliberately designing writing seminars for in-house clinic students to “teach the students about good writing, but also to get the students interested in, and perhaps excited about, good writing and writing issues”).

<sup>14</sup> Schroth, *supra* note 1, at 95 (quoting Coach Teri McKeever).

<sup>15</sup> BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 188 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antionette Sedillo Lopez eds., 2015) [hereinafter BUILDING ON BEST PRACTICES] (“In-house law clinics have long been recognized as a key form of experiential education. They offer an educational setting in which students holistically integrate all of the elements of legal education.”).

<sup>16</sup> *Id.* at 188 (“[In-house law clinics] provide an environment in which students explore the meaning and application of law, ethics, and professional identity in real life under close supervision of a faculty member who is simultaneously working on or overseeing the legal matter that provides the educational experience.”).

<sup>17</sup> *Id.* at 189 (noting that in-house law clinics are “[d]esigned to help students develop professionally while also serving legal needs of the communities in which they are situated”). Reviewing student writing as a legal writing professor involves reading as an expert in the assignment and reading as a law practitioner; the first perspective allows the professor to comment on analytical nuances, while the second allows the professor to comment on norms in

The real client context can be a powerful motivator for clinical law students to improve their writing skills.<sup>18</sup> If the clinical experience is a student's first encounter with a real client context, though, it may also stretch the student's current skill levels in challenging ways that complicate the student's efforts to improve writing skills.<sup>19</sup> Thus, the student's work in the in-house clinic is ideally accompanied by "consistent, intense, and structured supervision."<sup>20</sup> The supervisor's collaborative involvement in the clinic's legal work leads to a more "invested" posture toward the student's legal work and the outcome of the case.<sup>21</sup>

---

practice; both perspectives allow the professor to focus solely on the student's development. See Gionfriddo, Barnett & Blum, *supra* note 4, at 171. In contrast to reading student work as a legal writing professor, the supervising attorney's perspectives while reviewing clinical student writing include an obligation to the client. See *id.* at 173 (noting supervising attorneys in practice "play two different roles—representing the client and training less experienced lawyers in the office," and recognizing the "tension between these two roles" can color the supervising attorney's feedback); see also Campbell, *supra* note 3, at 663 (describing the "dual and sometimes conflicting roles of the clinical teacher" and the need to adapt classroom instruction methods for "the real world of the clinic").

<sup>18</sup> Levin, *supra* note 6, at 163 ("The responsibility of representing a real client, coupled with the student's concern for that client and the attendant fear of failure, provide powerful motivation for student writers.").

<sup>19</sup> Professor Martinez identified the practice of law—and so clinical legal education—as an "ill-structured domain" unlike mathematics or physics, which are fields of study that have right answers and clearly navigable paths to those answers. Martinez, *supra* note 3, at 43–44. In contrast to a more "well-structured domain," when an ill-structured domain is "artificially neatened," as inevitably happens when the practice of law is reduced to a casebook or a carefully crafted writing prompt, this "may seduce learners (and perhaps instructors) into thinking that the rules really function as rules when in a real-world setting they almost never do." *Id.* at 43. When a student transitions from an artificially neatened environment into the ill-structured, "indeterminate, inexact, noncodifiable, nonalgorithmic, nonroutinizable, imperfectly predictable" practice of law, the student may become overwhelmed with complexity. *Id.* Based on his exploration of ill-structured domains and cognitive load, Professor Martinez concludes that a clinical law student's early transition from classroom to real cases may warrant more directiveness. "There may be good reasons to deviate from nondirection that are not based in practicalities such as time or client pressures." *Id.* at 45.

<sup>20</sup> BUILDING ON BEST PRACTICES, *supra* note 15, at 190 ("Because in-house clinics are typically taught by educators whose primary professional focus is teaching and learning, students of in-house clinics receive consistent, intense, and structured supervision.").

<sup>21</sup> *Id.* at 174 ("[The integrated supervision] structure means that the supervisor guided the decisions leading up to the performance and may be invested in them. As a result, the supervisor may not be in a good position to provide a detached critique of those strategies.").

The supervisor's invested posture may also result in less independence and self-reliance in the legal work itself, and then less "detached critique" of the strategies and work done in the case.<sup>22</sup> The in-house clinician must therefore deliberately create space for a student to "extract the lessons learned from . . . experiences working in unpredictable and changing circumstances."<sup>23</sup> So, the in-house clinician's goal is to work together without taking over completely—to pace beside the "pool"—helping the student grow and improve in the process.<sup>24</sup>

However, just as in a busy law practice outside of the law school, in a high volume and fast-paced clinic providing direct legal services, the pieces of this process that could most easily fall to the side may actually be the most important: the planning phase, and additional drafts written by the student.<sup>25</sup> For example, a student may get the assignment and plan and write a first draft without much input from the clinician. When the student provides the first draft for review, the clinician may substitute line editing for feedback.<sup>26</sup> The student's "second draft" then becomes little more than accepting track changes and adjusting language based on the clinician's suggestions.<sup>27</sup> This

---

<sup>22</sup> *Id.* The authors of BUILDING ON BEST PRACTICES reach the conclusion that external field placements are better at fostering students' "self-reliance and independence" than in-house clinics. "Because direct supervision of legal work is provided by a field supervisor whose primary obligation is to the mission of the placement organization, not to the student's education, this model provides an opportunity to foster student self-reliance and independence." *Id.*

<sup>23</sup> *Id.* at 192.

<sup>24</sup> *Id.* at 193 ("By performing more tasks, reflecting upon their experiences, applying what they have learned, and assuming higher levels of responsibility, the student becomes more and more confident, skilled, and independent.").

<sup>25</sup> In *The Doctor Is In*, Professor Levin notes the "far-reaching consequences" for an in-house clinic's real clients, as well as clinicians and clinical law students in those clinics. Levin, *supra* note 6, at 163. She notes that writing quality is often directly connected to client outcomes. *Id.* at 163. While this can be a source of good motivation for all involved in the clinic, it can also be a powerful incentive for the clinician to take over the writing task before a student has received effective feedback and an opportunity to apply that feedback.

<sup>26</sup> See Gionfriddo, Barnett & Blum, *supra* note 4, at 173 (noting that supervising attorneys trying to accomplish the goal of efficiently producing high-quality documents "may give feedback [to junior attorneys] simply by copy-editing passages or, instead, may quickly finalize the document" themselves); see also Nan L. Haynes, *Legal Writing Handbook for Clinical Students*, Introduction (CALI 2023), <https://hayneslegalwriting.lawbooks.cali.org/> (noting the tension between a clinician's need to direct the student's writing process and a clinician's desire for the student to take the lead, do their own work, and apply lessons to practice).

<sup>27</sup> Professor Kowalski, *supra* note 5, at 346, surveyed clinicians about their modes of feedback on students' writing. She found that clinicians use redlining more often than do legal writing faculty, which she found unsurprising given



process undoubtedly results in some learning, but not as deep and lasting as when the student has been engaged in a collaborative planning process and kept responsible for the written product at least through a second draft.<sup>28</sup>

The need for multiple drafts of the same document is one of the reasons clinic is “the ideal environment for teaching writing.”<sup>29</sup> But without intentional planning around the drafting and feedback process, multiple drafts can become at best impractical in a time crunch, and at worst tedious and exhausting for both student and clinician. The preparatory work described below bridges the gap between the artificially neatened classroom and ill-structured live-client work,<sup>30</sup> helping clinicians coach students to a stronger position from which to start a significant writing task and stay involved in the students’ independent planning and reflection.

---

the different nature of their work. Perfecting the product becomes more important to the supervisor when the finished product will be filed or sent to some external audience. Some respondents to Professor Kowalski’s survey listed “pervasive line editing” as the first response to student writing. *See id.* at 346.

<sup>28</sup> One basic assumption in the literature analyzing writing feedback in law practice is that fixing problems is the polar opposite of helping the drafter improve analytical and technical writing skills. *See, e.g.*, Gionfriddo, Barnett & Blum, *supra* note 4, at 175 (“And, unlike the situation in which the supervisor fixes the problems in the document herself, this process [of using structural cues to provide feedback] will help the author develop the analytical and communication skills necessary to write more effectively in the future.”); *id.* at 199 n.121 (noting advice from legal writing scholars that revising for a student instead of asking questions “robs the student of the opportunity to engage in independent decision-making, and thus stunts the student’s growth as a writer”) (quoting Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to Think Like Lawyers: Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885, 902 (1991)). Instead of treating line editing as the opposite of teaching, we can train clinical law students to learn from feedback, *including line editing*; this will help them bridge efficiency with meaningful learning in practice. *See infra* Part V(B) (discussing after-action review as a tool to build students’ skills for future writing, especially when the supervisor’s line editing was necessary to finalize a document).

<sup>29</sup> Levin, *supra* note 6, at 164 (listing motivation from the real client context, variety of task, and the opportunity for multiple drafts with feedback as reasons clinic is a natural fit for teaching writing skills); *see also* Timothy Pinto, *Using Appellate Clinics to Focus on Legal Writing Skills*, MICH. BAR J., May 2018, at 48, 49 (noting his appellate clinic’s “effective teaching technique” includes “a writing schedule that allows for multiple rounds of both feedback and editing” with feedback in one-on-one conferences on each draft); Campbell, *supra* note 3, at 666 (noting the ideal approach to teaching legal writing in clinic is “breaking the project into stages and establishing deadlines that permit multiple drafts,” among other techniques).

<sup>30</sup> Martinez, *supra* note 3, at 43–44.

### III. PREPARING FOR PERFORMANCE

*The preparation of elite swimmers for competition is characterized by detailed annual training plans designed to improve all aspects of performance. Central to these preparations are processes of regular testing and measurement as a method to assess and monitor progression. The swimming coach plays the vital role in the training process, with responsibility for instigating a positive change in a swimmer's performance.<sup>31</sup>*

*Coaches who work with multiple skill, interest, and ability levels are adept at changing their style and approach to fit the situation, in some cases, hour by hour.<sup>32</sup>*

Assuming each student comes to the clinic with the same set and quality of writing skills would be like assuming each competitive swimmer entered the water with the same experience, strength, and technique. A coach may put all the swimmers on a particular squad through the same warmup and workout, but the coach must customize the more specific technique work and strength training to enhance each swimmer's individual results.<sup>33</sup>

Preparing for performance can be the difference between a student's having the skills to finish a significant writing task or not. Each student will have a different baseline, so a clinician will need to confirm that baseline and customize the coaching accordingly. After confirming where a student's writing and analytical skills are most in need of practice, the clinician can help the student practice and improve those areas—for example, through focused exercises or simulations—before assigning a significant writing task in which the clinician can empower the student through nondirective supervision.<sup>34</sup> Gathering information about a student's baseline skills will also help the clinician provide effective feedback during significant writing tasks.

---

<sup>31</sup> Robert Mooney et al., *Analysis of Swimming Performance: Perceptions and Practices of US-based Swimming Coaches*, 34 J. OF SPORTS SCI. 997, 997 (2016).

<sup>32</sup> THE SWIM COACHING BIBLE 36 (Dick Hannula & Nort Thornton eds., 2001) (quoting Coach John Leonard on tailoring approach to specific competition levels).

<sup>33</sup> *Id.* at 40.

<sup>34</sup> See Martinez, *supra* note 3, at 30 (noting the “clinical ‘mantra’” that directiveness thwarts student empowerment).

### A. Identifying the Baseline through Simulations and Writing Samples

Before beginning to supervise a student's legal work in an in-house clinic, the clinician can evaluate the student's baseline writing skills. Organizing information, composing clear and concise sentences and paragraphs, achieving the appropriate tone for the audience, and explaining known law accurately are all skills discoverable at the beginning of the student's clinical semester.<sup>35</sup>

First, while a clinician cannot possibly fully assess how a student will perform when faced with the complexities of a real legal matter,<sup>36</sup> by asking the student to submit writing samples from previous significant writing tasks, the clinician can learn something about the student's baseline writing skills.<sup>37</sup>

Second, the clinician can ask the student to perform a simulated writing task contextualized in the clinic's subject-matter area. This serves two purposes: It introduces the student to the clinic's work while also providing a current picture of the student's writing skills. The simulation could be to craft a letter or portion of a brief using provided law and facts; edit a letter or portion of a brief for grammar and

---

<sup>35</sup> In addition to identifying baseline writing skills, clinicians can support students' efforts to refresh those skills. A "legal writing refresher" in the clinic seminar sessions will help students recall basic writing concepts they learned in previous legal writing courses. *See* Kowalski, *supra* note 5, at 326. Professor Kowalski explains that the "legal writing refresher" will "help students to cue their previous training," including basic skills like organization of common practice documents. *Id.*

<sup>36</sup> For a variety of reasons, a clinician should keep an open mind when assessing a student's abilities upon entering the clinical setting. One important reason is that the student's performance on a simulation or even on a previous significant writing task had too many variables to clearly diagnose and intervene at one specific skill point. *See* Victor M. Goode, *There is a Method(ology) to this Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223, 229 (2000) (explaining that clinicians seek to "develop an intervention into a multilayered process of acquiring the knowledge and skill that students need to begin and carry forward the task of legal representation," looking not for a simple cause of student behavior, but rather which "variables are most accessible to intervention").

<sup>37</sup> Another way to uncover information about the student's baseline skills is asking the student to reflect on strengths and weaknesses. In the context of writing skills, this may not be as revealing as reading through examples of the student's work. However, it could be helpful in preparing students to reflect on their own writing, something students will be doing throughout their tenure in the clinic. Swimming coaches use this technique to both engage athletes in reflection and gauge their fit for a team. *See* Schroth, *supra* note 1, at 93 (describing the Cal Berkeley swim team recruiting practice of asking swimmers to answer questions about "what they will bring to the program, what they think their current coach would miss about them most when they leave for college, and their greatest strength and weakness").

punctuation; respond to exercises focused on different technical skills; or respond to questions about writing experiences and process. Any combination of these simulations will provide some idea of strengths and weaknesses, helping both the student and the clinician to identify areas for growth and watch for improvement in those areas over the semester.<sup>38</sup>

Third, while designing training exercises to improve specific skills, as described below, the clinician can use staged independence to gradually learn more about the student's skills and tailor writing tasks for targeted growth.<sup>39</sup> Even as the student moves beyond simulations and into live-client work, if it appears a student needs more practice, the clinician can assign more internal documents like internal fact investigation plans and internal office memos that analyze the legal issues. These documents are valuable legal work and common in a variety of practice settings, and they allow the student to perform and receive feedback internally at first.<sup>40</sup> As the student demonstrates competence in these early writing assignments, the clinician may begin

---

<sup>38</sup> One way to ensure the authenticity of simulations to practice and give students more meaningful insight into personal strengths and weaknesses is to engage practitioner volunteers in creating simulations and reviewing and critiquing the student's written work. For example, in the Veterans Advocacy Clinic, I have worked with a current service member to create authentic simulations for students to practice reviewing a military personnel file and draft military discharge upgrade documents.

<sup>39</sup> See Kowalski, *supra* note 5, at 304–09. Swim coaches use a similar concept to build a swimmer's ability and confidence to perform under stress. One specific approach is called the 3–2–1 competition strategy. See THE SWIM COACHING BIBLE, *supra* note 32, at 85–86. First, the coach has the swimmer enter three swim meets below the swimmer's skill level so the swimmer will be expected to win; at these meets, the coach instructs the swimmer to experiment with different racing strategies. Then the coach has the swimmer enter two meets matched well with their skill level; at these meets, the coach instructs the swimmer to try to achieve personal best times. Finally, the coach has the swimmer enter a meet above their standard, "in what is considered an 'unwinnable' situation," and still instructs the swimmer to achieve a personal best time. Elite swimming coach Bill Sweetenham described using this approach to help his athletes reach a "rough and ready" attitude and the ability to perform under the most stressful conditions. *Id.*

<sup>40</sup> A clinician's more "facilitative" (rather than directive) feedback on a student's early work in the clinic may help a student retain more autonomy over the student's writing, and thereby take more responsibility for improving instead of abdicating responsibility to the clinician, either consciously or subconsciously relying on the clinician's ultimate duty to the client. See Campbell, *supra* note 3, at 691 ("Facilitative comments are most helpful at the rewriting stage because they can assist the student in re-thinking his arguments and in imagining the effect his text is likely to have on the intended audience. Facilitative comments provide greater motivation for students to try something different in the next draft."). This comports with clinical educational theory and the goal of nondirective supervision. See Martinez, *supra* note 3, at 27 ("Asking, not telling, is the key to nondirection.").

to assign—or empower the student to identify and complete—external documents like advice letters to the client, demand letters to opponents or decision-makers, and persuasive briefs.

By prioritizing a student's growth and encouraging increasing confidence in both planning the writing process and planning to meet deadlines, the clinician and student can use the foundational "technique" work to inform the student's more independent planning later in the semester.<sup>41</sup> If the clinician evaluates the writing samples, simulations, and internal documents and provides feedback using the same rubric and tone as the clinician will use to review writing on the student's external documents, the connection between the student's baseline and ultimate growth will be clearer to both the student and the clinician.<sup>42</sup> The student's increasing skill and confidence will also be affirmed as the clinician provides less and less directive feedback over time.<sup>43</sup>

## B. Strengthening Specific Skills

The coach of competitive swimmers will not only coach for overall results but will also break down the swimmer's performance to isolate specific skills.<sup>44</sup> The coach may have a swimmer work on starts off the blocks, turns in different strokes, pacing, and stroke technique. Physical conditioning and strength training, the psychology of

---

<sup>41</sup> See Kowalski, *supra* note 5, at 341 ("Professors can scaffold students into [understanding the need for time management on writing tasks] by requiring modular drafts and deadlines at first, and then increasingly leaving it up to the more self-directed students to set their own drafting schedules as the semester goes on.").

<sup>42</sup> In providing feedback on the writing samples, the clinician can introduce the clinical student to the type of feedback the student can expect on live casework. The in-house clinician's relationship is not purely as practice mentor and not purely as law professor, so the clinician has a foot in both roles when critiquing the student's writing. See Gionfriddo, Barnett & Blum, *supra* note 4, at 196 & n. 107. The student may expect more "correction" from the clinician, thinking of that person as more of a professor, but clinic pedagogy will urge the clinician act as a practice mentor, which places the student in a more authentic lawyering role. Thus, introducing the clinical student to the type of feedback a practice mentor will provide in practice will better prepare the student for writing in live casework and in practice. *Id.* at 196 (noting "both clarity and collegiality are important" for a practice mentor trying to help an associate improve writing skills).

<sup>43</sup> See Martinez, *supra* note 3, at 31–32 (exploring the realities that push clinicians to use more directive supervision, including avoiding harm to a client, and noting clinicians' and scholars' recognition of "a dynamic continuum of student responsibility that is a function of the development of student skill").

<sup>44</sup> See Schroth, *supra* note 1, at 91 (describing Coach Teri McKeever's approach of focusing on swimmers' technique, "having them do exercises that would help them become attuned to the mechanics of their bodies, implementing unique drills in the pool").

competition, and nutrition may also be topics of instruction.<sup>45</sup> The arc of training will lead to overall improvement, but only if the coach is intentional about prioritizing the skills each swimmer needs to improve and designing training exercises to achieve that growth.<sup>46</sup>

Similarly, a clinician must take into account each student's baseline skills before assigning the student work on live cases, breaking down the student's writing performance to prioritize growth in specific skills: powerful and helpful introductions (starts); transitions, road maps, and point headings (turns); concise and readable prose produced in an efficient amount of time (pacing); or powerful and persuasive argument structure (stroke technique).<sup>47</sup> After identifying the student's baseline skills in specific areas, the clinician can design the student's clinical experience to include training exercises and live-client work that will achieve growth in those areas key to the student's overall performance.

### **1. *Exercise in Appreciating Excellence: The Agreed Rubric***

In this exercise, the clinician selects three practical sample documents relevant to the clinic's work.<sup>48</sup> The documents should all have one common feature of excellence—this can be the introductions, the transitions, the argument structure, the point headings and subheadings, or any other main feature the clinician has (1) identified as excellent and (2) has determined this student needs to improve. The student and clinician independently review the documents and write brief descriptions of the feature the clinician has identified (e.g., read the introductions in all three documents and describe why they are excellent). The student and clinician then compare notes and extract an

---

<sup>45</sup> See, e.g., THE SWIM COACHING BIBLE, *supra* note 32 (a manual on swim coaching encouraging coaches to engage in short-term and long-range planning for training of many skills, including physical techniques, health habits, and psychological mindset for competition).

<sup>46</sup> See, e.g., Schroth, *supra* note 1, at 91 (describing Coach Teri McKeever's personal experience as a swimmer that led to her belief that "the coach should treat the swimmers as individuals with different needs").

<sup>47</sup> See Campbell, *supra* note 3, at 667 ("Whether a project is too difficult for a student depends in part on the student's abilities. Thus, in selecting projects at the outset or in dividing up responsibilities, it is useful for the clinician to have a sense of the student's strengths and weaknesses."); Kowalski, *supra* note 5, at 347 (noting students are unable to "effectively process" feedback on too many skills at a time, and recommending clinicians "adopt selective feedback priorities" that acknowledge the stage in the writing process); Pinto, *supra* note 29, at 48–49 (noting students in the appellate clinic have more than one skill that needs improvement, and recommending clinicians "break up the training into as many discrete pieces as possible and work on them one at a time").

<sup>48</sup> These documents might be written by previous clinic students or by other practitioners. The key is that they not be written by the student who is completing the exercise.

agreed “rubric” for excellence in that part of a document. After completing this exercise, both the student and the clinician can refer back to the rubric when planning and reviewing the student’s written work in clinic cases.<sup>49</sup>

## **2. Exercise in Managing Time in the Writing Process: The Ideal, Real, and Adjusted Plan**

In this exercise, the student should be entering into a significant writing task on behalf of a client. Before beginning the process, the student writes out an “ideal plan” for managing time through the deadline.<sup>50</sup> During the task, the student tracks time carefully to describe what happens at each stage of the process. Immediately after completing the task, the student describes what really happened during the process. Finally, the student compares reality with the “ideal plan,” describing adjustments that can bring the ideal closer to reality while still resulting in improvement. This exercise should proceed for at least one more round so the student can implement the “adjusted plan” on another significant writing task, then adjust once more. This exercise will help the student form a plan tailored to the student’s work habits, and therefore truly “ideal” in its fit and potential to help the student improve time management on writing tasks.<sup>51</sup>

---

<sup>49</sup> The agreed rubric can help the clinician explain expectations for the student’s writing in live cases. This will set up the student for a more meaningful learning experience by helping the student “transfer” previous observations and skills into a new writing task. See Kowalski, *supra* note 5, at 323 (explaining that “explicitly discussing expectations for the writing project before and during the writing process” can help a student achieve “transfer”); Goode, *supra* note 36, at 261–63 (explaining that feedback viewed as “judgmental”—whether critical or positive—will be less effective, even counterproductive, when not connected to relevant context and goals).

<sup>50</sup> Experienced clinicians recommend that clinical law students be required to set a schedule for significant writing tasks, to both ensure completion within the time constraints and make the process less stressful for everyone involved. See, e.g., Campbell, *supra* note 3, at 669.

<sup>51</sup> By completing this exercise, students will more deeply think about and develop their own writing processes, a skill each one will need in law practice. See Eichhorn, *supra* note 10, at 152; see also Campbell, *supra* note 3, at 663–64 (reviewing scholarship contrasting the traditional approach to legal writing instruction, which focused on product, with the “new rhetoric” approach, which focuses on helping students understand and refine the writing process). By supervising this exercise, clinicians will be interacting with the student on a form of goal setting, an interaction that has been shown to produce “the highest positive correlation between feedback and improved performance.” Goode, *supra* note 36, at 240, 260.

### 3. *Exercise in Building an Annotated “Case History” File: Collaborative Live Critique of a Set of Samples*

This exercise builds a “case history” file instead of a single sample.<sup>52</sup> The clinician can use this exercise to build team understanding of the clinic’s subject-matter area and the clinician’s expectations and standards for written products in clinic work.<sup>53</sup> The exercise will be most useful if the clinician is intending to use live critiquing<sup>54</sup> to review students’ written work during the semester; the clinician’s critique of samples in the collective team setting will prepare all the clinic’s students to participate in a live critique of their own written work on future assignments.<sup>55</sup>

In this exercise, the entire clinic team reviews a sample set of documents commonly drafted in the types of cases handled by the clinic; this can be referred to as “the case history file.” Each person on the team makes brief margin notes in the documents using a common rubric.<sup>56</sup> The team then meets to discuss the samples, with the clinician

---

<sup>52</sup> The idea of annotating a “case history” file instead of a single sample was sparked by Jerome Frank’s description of using case histories instead of isolated judicial opinions to teach law students the realities of practice. See Jerome Frank, *Why Not a Clinical Lawyer-School*, 81 U. PA. L. REV. & AM. L. REG. 907, 916 (1933) (“But the study of cases which will lead to some small measure of real understanding of how cases are won, lost and decided, should be based to a very marked extent on reading and analysis of *complete records of cases*—beginning with the filing of the first papers, through the trial in the trial court and to and through the upper courts.”).

<sup>53</sup> By completing this exercise, students will also be learning important skills about collaboration during the writing process, as well as absorbing and applying feedback. These skills are as important to success in law practice as excellent writing skills. See Campbell, *supra* note 3, at 661 (describing the different interpersonal skills clinic students engage in during case work and noting that learning “to respond to feedback in a constructive way, instead of defensively” and “working collaboratively on writing” are other important skills students learn in clinic). The clinician can make these outcomes clear either before or after the live critiquing session or during the midsemester or final evaluation process.

<sup>54</sup> See *infra* Section IV(A)(2), discussing live critiquing of student drafts.

<sup>55</sup> The reference points for writing performance created through this collaborative exercise will be useful in future feedback. As Professor Goode explains, providing feedback anchored on agreed reference points or goals will help students understand and internalize feedback in ways that will encourage growth rather than anxiety. See Goode, *supra* note 36, at 263–64.

<sup>56</sup> Feedback theory suggests that less may be more here, as too much feedback will lead to cognitive overload. See *id.* at 259–60 (“Offering too much feedback, as far as scope is concerned, may simply induce cognitive overload and diminish retention.”). This caution is more important when providing feedback on a current student’s work, in contrast to feedback on a sample document. Even so, discussing the theory of cognitive overload as a group will help prepare all members of the team, clinician and students, to provide high-quality feedback on future live-client writing tasks.



facilitating the discussion to highlight different features and encourage critical analysis and annotation.<sup>57</sup> The discussion can cover the points of the rubric, as well as information that would aid someone's deciding whether to use the document as a sample in future clinic work. The resulting rubric might include the client's goals and needs, the document's substantive context, the audience for the document, and any choices the author made that had viable alternatives. During the discussion, a designated "annotator" places comments in each document that capture these points. After the discussion, the clinician reviews the annotations for accuracy, and the annotated "case history" file can go in a repository of such files to be accessed in the future. Students will experience a live critiquing session and see the type of notes that can result from such a session.

Depending on the clinic's culture and an individual student's openness to collective feedback from peers, the clinician–student team could also collaboratively live-critique a fellow student's work on a live clinic case. The process would be similar and would result in similar benefits—demonstrating the value of live critique while creating an annotated sample for a sample bank. If a student requested a collaborative live critique and then followed up with an improved draft applying the team's feedback, this would reinforce the culture of growth in the clinic, an additional benefit.

#### ***4. Exercise in Preparing for a Hostile Audience: Simulating the Opponent***

One of the more difficult parts of law practice is writing for a "hostile" audience.<sup>58</sup> In a clinic setting, just as in any practice setting, a clinical law student may become so convinced of the client's argument—and the way the student is articulating that argument in writing—that imagining what the opponent will argue, or how a "hostile" decision-maker may receive the argument, is difficult, if not impossible.

---

<sup>57</sup> In the Veterans Advocacy Clinic, we at times conduct case rounds with volunteer practitioners who have signed nondisclosure agreements. Bringing one or more volunteer practitioners into this exercise would be a valuable way to gather even more authentic feedback in the annotated case history file for students to draw on in later live-client work. For all participants in the discussion, using more specific feedback will lead to a more valuable annotated case history file. *See id.* note 36, at 259–60, 262–64 (noting that specificity "strengthens the feedback message" and having several reference points for later feedback will make the feedback more effective in improving student performance).

<sup>58</sup> *See* Campbell, *supra* note 3, at 690–91 (exploring the difference between an "empathetic" reader and a "hostile" reader, and noting "one of the difficulties with legal writing is that the writer typically faces a hostile audience").

In this exercise, one or more of the students in the clinic take a deliberately hostile stance on a significant writing task.<sup>59</sup> The “hostile” student writes a response brief from the opponent’s perspective and a decision from the decision-maker’s perspective (particularly if the process would not typically involve a written response) or argues the opposing side in a simulated oral argument judged by the clinician and other students in the clinic.

Through the exercise, the student who is playing the “hostile” role will be learning along with the student who is representing the clinic’s client. The client will also benefit from the clinic’s deeper understanding of the “pinch points” in the argument where an opponent or a skeptical decision-maker is most likely to focus, which will lead to more sophisticated arguments.

## IV. Engaging and Guiding During Performance

### A. Building Awareness of and Intentionally Using Various Feedback Methods

A clinician’s feedback on student writing can fall on a continuum stretching toward more directive or more nondirective. The height of directive feedback on a student’s written work is using the “track changes” feature to rewrite text; the student still receives feedback by seeing what changes were made, but the feedback does not allow the student to retain ownership of the text or make choices about how the text is changed.<sup>60</sup> Providing written comments on a draft without changing text can also lean toward being directive or nondirective, either directing the student on how generally to change a portion of the draft or posing questions to encourage the student to evaluate whether

---

<sup>59</sup> See *id.* at 690 (describing this deliberately hostile stance from the perspective of a senior partner “ who will play the devil’s advocate in order to ensure [an argument’s] combat readiness ”) (quoting George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 355–56 (1987)). The clinician can also take on this role, though it would be important for the clinician to make “clear to the student that she is acting in role” to prevent the student from becoming confused or alienated in the process. *Id.* at 691 (noting a clinician taking on the role of a hostile audience risks “destroying the student’s motivation”).

<sup>60</sup> See Campbell, *supra* note 3, at 684 (describing the classic example of a clinician taking over a student’s writing by “rewriting” a brief after the student has submitted the document for feedback, as well as the disconnect this creates between the goals of clinic and the student’s real experience of the clinician’s intervention (citing Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 975–77 (1990)); *id.* at 687–88.

a particular passage communicated what the student intended.<sup>61</sup> The most nondirective form of feedback would be a conversation in which the reviewer expressed reactions to the document but did not direct the writer to respond to those reactions in any particular way or at all.<sup>62</sup>

A clinician may need to use more directive feedback when a student is confused or mistaken about the law and a client's outcome is threatened by a looming filing deadline.<sup>63</sup> The clinician's practice experience and substantive expertise also make the clinician's directive feedback valuable if the clinician and student are able to discuss the underlying reasons for changes made to a document.<sup>64</sup> However, generally defaulting to the more directive side of the continuum without recognizing how it may impact a student's growth as a legal writer will result in more work for the clinician and a less valuable clinic experience for the student.<sup>65</sup>

This section does not advise clinicians to avoid directiveness altogether in providing feedback on student writing; rather, it advises clinicians to be aware of the continuum of possibilities and offers exercises to encourage a more flexible and intentional use of directiveness to engage and guide students through the writing process.

---

<sup>61</sup> Levin, *supra* note 6, at 182 (describing "directive comments" that "basically instruct the writer what to write," and "nondirective comments" that are phrased as questions to "help the student writers explore their options without telling them what to write"); Campbell, *supra* note 3, at 687–88 (describing nondirective or "facilitative" comments by reviewers describing what they believe the passages intended, and asking students to evaluate whether to revise to better communicate the intended point).

<sup>62</sup> Professor Levin provides an example of a "nondirective" written comment: "Consider whether this paragraph needs to be reorganized." Levin, *supra* note 6, at 182. While this comment does not direct the student to revise, it still directs the student's attention to the paragraph and communicates that the reader believes the paragraph has some organizational flaw. The student is led to wonder why and how to reorganize, not whether reorganization is necessary.

<sup>63</sup> See Campbell, *supra* note 3, at 690 ("While the clinician can endeavor to create a situation in which the student correctly ascertains the client's goals, she cannot defer to the student's identification of the client's goals if she believes that the student is mistaken.").

<sup>64</sup> See *infra* Section V(B), discussing the importance of debriefing directive feedback to encourage student learning; see also Campbell, *supra* note 3, at 689–90 (discussing the value of a clinician's substantive expertise to show a student ideal ways to approach particular legal issues).

<sup>65</sup> See Goode, *supra* note 36, at 265 ("[A] controlling style that is overly directive can limit students' perception of their options and reduce their creativity. While a teacher's exertion of a greater degree of control may under certain circumstances be a valid goal, it may also sacrifice valuable student learning in exchange for the achievement of a specific and immediate goal.").

### **1. Exercise in Providing and Recognizing Directive and Nondirective Feedback: Feedback Demonstration**

In this exercise, the clinician will comment on a sample using deliberately directive feedback and deliberately nondirective feedback.<sup>66</sup> Clinic students will then review and label the feedback as more directive or more nondirective, reflecting on how they would have absorbed and applied the feedback as the author of the document. Finally, students will reflect on the following questions:

- What degree of control would you have retained in each section of the document, given the clinician's choice of directive or nondirective feedback?
- How would the clinician's feedback in different sections have impacted your motivation to improve the document?
- How could you learn from the more directive feedback, even though you would not have retained control over the final version of that section?
- How might you actively engage with even the most directive feedback?<sup>67</sup>

To bring the exercise full circle, the clinician will use the student reflections to facilitate a team discussion in which the students and clinician identify takeaways for maximizing feedback in practice.

### **2. Exercise in Nondirective Writing Supervision: Live Critique of Live-Client Work<sup>68</sup>**

In legal writing pedagogy, an in-person conversation with a student in which a professor reads portions of a document out loud and provides feedback on the writing is known as "live critiquing."<sup>69</sup> Live critiquing

---

<sup>66</sup> This exercise could also be expanded to raise students' awareness of other forms of feedback. Professor Goode identifies and explains several other forms of feedback with varying degrees of directiveness in his piece covering feedback in the clinical process. One example is known as "parallel feedback," in which the clinician deliberately engages the student in discussing a case that is *not* being applied in the student's immediate writing task, but rather is parallel to the student's immediate case. By shifting the focus of a feedback session, the clinician may help the student make new connections or spark a new insight on the immediate task. *Id.* at 266. Using a Socratic dialogue to help a student explore parallel concepts would be an example of more nondirective feedback.

<sup>67</sup> Campbell, *supra* note 3, at 691–92 (noting more experienced and sophisticated legal writers actively engage with even directive feedback, sometimes preferring directive feedback so they can see how a reader interpreted their statement and evaluate whether they need to revise to better achieve their intended meaning).

<sup>68</sup> In Appendix B, you will find a Case Study of Live Critique in the Veterans Advocacy Clinic, which includes both my reflections as a clinician and my student's reflection as the lead student on the writing task.

<sup>69</sup> See Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1, 1

is a well-known formative assessment technique in legal writing programs, but it also holds promise for clinicians who are trying to provide more nondirective writing supervision throughout a student's writing process, and do so without losing contact with the student during delayed written feedback.<sup>70</sup>

In this exercise, along with turning in a final draft of a significant writing task, the student makes an appointment to discuss the draft with the clinician. To maximize the benefits of live critiquing, the appointment should be as soon as possible, at least within the next couple of days. Before the appointment, instead of writing out comments, the clinician makes brief notes on points to cover during the live critiquing meeting.<sup>71</sup> Whereas in a traditional process the clinician may take an hour or more writing out comments in the document,<sup>72</sup> the clinician and student will instead use that time to meet, read portions of the document out loud, and have a conversation about the writing, even collaborating to improve portions of the draft.<sup>73</sup>

Live critiquing in lieu of substantial written comments on a draft has several benefits. One of the main objectives of live critiquing is to

---

(2019); Patricia Grande Montana, *Live and Learn: Live Critiquing and Student Learning*, 27 *PERSP.* 22 (2019) (“Live critiquing is essentially the process of giving students feedback on their work ‘live’ or in-person, rather than in writing.”). You can find a helpful webinar on this process recorded by Stetson Law, *The Pedagogical Method of Live Commenting and Grading*, at <http://www.stetson.edu/law/academics/lrw/webinars.php>.

<sup>70</sup> See *The Pedagogical Method of Live Commenting and Grading* at <http://www.stetson.edu/law/academics/lrw/webinars.php>, at time marker 13:55 to approximately 13:60 (discussing the “dead time” students experience when waiting for a reviewer’s written feedback on a significant draft).

<sup>71</sup> This is not a “pure” live critiquing approach, since the clinician will be reviewing the document and sources before meeting with the student—in a “pure” live critiquing approach, the clinician would review the document with the student present, reacting to the document for the first time in that meeting. See Grande Montana, *supra* note 70, at 26. This type of reader-reaction feedback can also be valuable, and it tends to happen organically in a clinic setting when timing and circumstances require.

<sup>72</sup> *Id.* at 24 (“[I]t is faster to live critique than provide written feedback, especially when reading and commenting on a single submission sometimes can take upward of an hour to complete.”).

<sup>73</sup> See *The Pedagogical Method of Live Commenting and Grading* at <http://www.stetson.edu/law/academics/lrw/webinars.php>, at time markers 27:35 to approximately 27:45, and 39:35 to approximately 39:45 (discussing techniques for collaborating with students to improve specific sentences in a draft). Note also *supra* Section III(B), discussing ways to create agreed rubrics and annotated case history files. Both the clinician and student can draw on those materials to guide a live critiquing conversation. Professor Sholtis describes having a common rubric as an essential tool for a successful live critique conversation in legal writing classes: “Often, the rubrics I use during live-critique conferences highlight questions I will ask the student during the conferences, so the students can think about their answers in advance.” Sholtis, *supra* note 70, at 17.

provide more immediate feedback than would be possible to provide through written comments.<sup>74</sup> If the timing is routinely and thoughtfully handled, live critiquing may lead to efficiencies for both the student and the clinician, with the student receiving clearer direction more quickly, and the clinician moving the case forward without having to block time for both commenting on a draft and conducting a supervision meeting. The immediacy of the feedback also encourages student engagement; in the clinic setting, this could be a key factor in keeping a student engaged but still independently responsible through the finish of a significant writing task.<sup>75</sup>

Even more important than the immediacy of feedback is the way live critiquing sessions encourage effective nondirective supervision of students' writing. The clinician's questioning during a live critiquing conversation can open up the student's thought process about key writing outcomes and lead to a deeper learning experience than is provided through more directive feedback.<sup>76</sup> Live critiquing is thus a natural, nondirective way to encourage more meaningful reflection during a student's writing process.<sup>77</sup> Conversations during live critiquing sessions will allow both the clinician and the student to explore topics related to client-centered advocacy and the client's matter placed in the larger social justice context, the writing process, gaps in research, or techniques to employ while revising and editing.<sup>78</sup>

---

<sup>74</sup> See Grande Montana, *supra* note 70, at 22 ("The goal is to provide meaningful feedback quickly so that students can apply that feedback to their next assignment."). Professor Grande Montana also notes that live critiquing can lead to more helpful comments about changes a student needs to make in a document, where written comments may be too brief or cryptic to achieve the same. *Id.* A clinician must keep in mind that delayed feedback can also be valuable in certain circumstances and thoughtfully deploy live critique as one of several feedback methods. See Goode, *supra* note 36, at 259 ("While timely feedback is an important aspect of effective supervision, it can be varied to reflect the learning goals associated with a particular task and not be mechanically seen as essential in all situations.").

<sup>75</sup> See Grande Montana, *supra* note 70, at 25 ("Importantly, because these discussions happen without any 'dead time,' the student continues to be engaged with the assignment and thus more inclined to make revisions.").

<sup>76</sup> Professor Grande Montana argues that live critiquing will lead to "improved communication between the professor and student, and overall enhanced student learning." *Id.* at 23.

<sup>77</sup> Sholtis, *supra* note 70, at 7 ("Students do not simply learn whether they 'got it right' during a live critique, but learn *why* something is or is not right and how to improve in the future."); Grande Montana, *supra* note 70, at 24 ("[I]t is simpler to discuss the student's writing in greater depth and with more examples when the student is available to clarify her writing decisions and answer questions about them.").

<sup>78</sup> Professors Anna Hemingway and Amanda Smith at Widener note using live critiquing rather than "writing comments on papers in isolation" allows them to "share . . . practical, professional, and personal skills" with students in their legal writing classes. Anna Hemingway & Amanda Smith, *Best Practices in*

Nondirective supervision prioritizes student choice and reflection on that choice.<sup>79</sup> Live critiquing will support that process more than written feedback, because the student can describe and reflect while discussing the clinician's reactions to and questions about those choices.<sup>80</sup> The resulting engagement, communication, and reflection will benefit both the student and the clinician.

## **B. Encouraging Independent Preparation While Staying Connected Throughout the Process**

Students' independent planning and preparation are key practical experiences in a clinic, especially if the student is writing a significant document.<sup>81</sup> Allowing for and encouraging independent work leading to the final draft of a significant document is a win-win for clinician and student: The student will take on the role of a lawyer and have a richer learning experience, and the clinician will have more capacity for supervision and review. Nevertheless, to facilitate the richest learning experiences in clinic, clinicians will stay connected with the student throughout their planning, preparation, and performance, in essence "pacing" beside the student instead of disconnecting entirely.

The exercises described below are certainly more time-consuming for both the clinician and the student than the more straightforward process of assigning a writing task, producing a draft, and redlining to perfect the draft. But because they encourage both student independence and clinician engagement, they result in more meaningful learning experiences full of potential takeaways for practice.

### **1. Exercise in Planning for Filing: The Situation Briefing**

In this exercise, inspired by Professor Angela Campbell's work with students to provide rhetorical context for a document, the student turns

---

*Legal Education: How Live Critiquing and Cooperative Work Lead to Happy Students and Happy Professors*, SECOND DRAFT, Fall 2016, at 8. Their experience with legal writing students supports the use of live critiquing in clinic, where practical, professional, and personal skills take center stage.

<sup>79</sup> See *supra* Section II, discussing nondirective supervision in in-house clinic setting.

<sup>80</sup> See Grande Montana, *supra* note 70, at 24 (arguing that live critiquing better allows for conversations about how to prioritize revisions, the student's writing process, and the student's choices than results from most written feedback).

<sup>81</sup> See Kowalski, *supra* note 5, at 335 ("Tools that are well-suited to the busy, unpredictable clinical environment are those that put most emphasis on well-planned independent preparation by the student.").

in a situation briefing with a substantial or final draft.<sup>82</sup> The briefing explains when, how, and where the student plans to file the document. For example, if the document must be filed on a particular date, the student will explain the deadline, including a detailed explanation of how the student calculated that deadline with reference to the applicable procedural rules.<sup>83</sup> The situation briefing can also include how many days the student has planned for the clinician's review of the draft, as well as how long the student will take to apply the clinician's feedback.<sup>84</sup> Finally, the student will explain in detail the method of filing (e.g., e-filing, mail, or in person) and approximately how much time the student and clinician should block to accomplish that process.

In addition to the timing and filing constraints, the student will describe the purpose of the project and its audience.<sup>85</sup> The student's description of purpose can include information like the client's desired outcome; the clinic's goals for the filing, if they add anything to the client's desired outcome; whether the filing is designed to educate or persuade the audience, or both; and any specific purposes for the type of document that aren't otherwise explained.<sup>86</sup> The student's description of the audience can include information about the tone the student tried to achieve for the audience and why the student identified that as the appropriate tone.<sup>87</sup>

---

<sup>82</sup> This exercise is inspired by Professor Angela Campbell's discussion of training students to "pay attention to the rhetorical situation from the beginning." See Campbell, *supra* note 3, at 672–73. Professor Campbell describes having her clinic students "write a short statement identifying the purpose of the writing, the intended audience and any applicable constraints, such as due date and page limitations." *Id.* at 672.

<sup>83</sup> See *id.* at 664–65 (explaining that modern legal writing instruction urges students to consider the "constraints" of a writing project, including the timing, as well as the document's purpose and audience, all as a way of planning and measuring the success of the final draft). Requiring the student to use time computation and court rules to identify the filing deadline often results in a significant learning experience, because the rules can be more complex than students expect.

<sup>84</sup> The clinician and student can have a conversation about the different steps on the path to filing, including the review process; the student's ability to consciously plan for that part of the process will be an invaluable skill in practice. See *id.* at 668 (noting the clinician should also keep in mind the time required for review and the student's application of feedback when giving the student the assignment).

<sup>85</sup> *Id.* at 672–73. Professor Campbell also lists due dates, page or word count limitations, and other formatting considerations as relevant "constraints" a student might consider when planning and completing a significant writing task in clinic; all of these could be included in a situation briefing. *Id.* at 677.

<sup>86</sup> See *id.* at 672–73 (describing the different potential purposes for legal writing, including "investigative questioning, objective reporting, analyzing, and persuading," as well as specific purposes for each type of document).

<sup>87</sup> See *id.* at 674–75 (describing the questions a student can ask about audience to help select the appropriate tone and content for a document).



## 2. Exercise in Revealing Structure: The “After-The-Fact Outline”<sup>88</sup>

In this exercise, the student outlines the document after the draft is completed. The outline will be similar to an expanded table of contents that includes the thesis sentence of each paragraph under a heading or subheading; it should include as much information as needed to convey the structure of the document and the logical flow of points within that structure. A student can limit this to just a page or two and finalize it after finalizing the document itself.

This exercise will add an automatic layer of feedback for the student; if completing the outline reveals that the main document needs to be reorganized in some way, the student can reorganize both the main document and the outline accordingly.<sup>89</sup> Because of this feedback, the process of creating an after-the-fact outline can be one of the most significant “aha!” moments in the student’s writing process.<sup>90</sup>

---

<sup>88</sup> “After-the-Fact Outline” and “Reverse Outline” are essentially the same exercise discussed in many legal writing textbooks and articles as a useful tool for students in all writing contexts. One notable example for me is the legal writing textbook I use in my 1L LRW classes, LAUREL CURRIE OATES, ANNE M. ENQUIST, & JEREMY FRANCIS, *THE LEGAL WRITING HANDBOOK* (8th ed. 2021). You will find a brief and helpful discussion of the “After-the-Fact Outline” at page 593, Section 46.4.2.

<sup>89</sup> The authors of *THE LEGAL WRITING HANDBOOK* use a hiking analogy to explain the type of automatic feedback an after-the-fact outline can provide the student: “Use after-the-fact outlines the way you would an aerial photograph of ground you just covered on a hike. From this perspective, is the way you traveled through the material the most efficient one? Do you have any needless backtracking? Repetition? Did you miss anything along the way? If so, where can you easily add it? Is this the way you want your reader to move through the material?” *Id.* at 593.

<sup>90</sup> During a faculty colloquium discussing a draft of this article, Professor Michelle Bryan commented that each tool used in clinic writing should “allow the student to have their own ‘aha!’ moment,” if possible. The after-the-fact outline exercise does exactly that, as the process can help a student look at the draft in a new way and lead the student to see organizational or analytical issues without being directed to them. Professor Angela Campbell advocates for teaching clinical law students that outlining is a precursor to actually writing a document. *See* Campbell, *supra* note 3, at 670 (noting that an outline “makes [a student’s] thought process visible,” which leads to valuable conversations about gaps in the student’s logic, but also arguing that discussion is more valuable if a student has outlined before writing). However, while some students rely on outlining before writing to set up their writing process, other students need to write before they can discover the document’s outline. The after-the-fact outline exercise also does not need to replace a student’s pre-writing outline; for a student who outlined before writing, the exercise will provide an important check on whether the student achieved their intended structure.

### **3. *Exercise in Educating the Supervisor: The Source Book***

A clinician's ability to provide feedback on a student's analysis is made more difficult and less efficient if the clinician is unfamiliar with the underlying authorities.<sup>91</sup> Thus, this exercise requires a student to submit a source book with the final draft. Along with the substantial or final draft, the student will pull and provide each source cited or used in the draft, in the order cited or used.<sup>92</sup>

The student's simple act of providing copies of the authorities in order of citation makes the clinician's in-review reference to those authorities more efficient.<sup>93</sup> A clinician can get a preliminary sense of the student's research by flipping through the authorities with an eye toward how those authorities are related (whether they are primary or secondary sources, or whether they are mandatory or permissive authorities, for example).

Pulling the sources is also an important checkpoint for a student; the resulting compilation can reveal gaps in research, weaknesses in certain authorities, and overall strength or weakness in the amount of authority a student has relied on. In addition to the automatic feedback this exercise provides to a student, the source book itself is helpful as a point of reference during supervision meetings.

## **V. Coaching to a Strong Finish, and for Growth Beyond**

*“The [personal swim] journal helps build the swimmer's confidence and make connections with their training and success,” explains McKeever. ‘It helps them to understand the foundation of what we are doing and why we are doing it.’”<sup>94</sup>*

---

<sup>91</sup> See Gionfriddo, Barnett & Blum, *supra* note 4, at 178 (noting that mentors must “focus their initial evaluation and feedback on the analytical foundation of the piece of writing,” but that the analytical issues may be more challenging to diagnose, particularly when the mentor has not analyzed the underlying legal authority).

<sup>92</sup> If the student is submitting in hard copy, and a source is extensive, the student can excerpt it with a brief note on top that labels and explains the excerpt. Alternatively, the student could submit the draft and sources electronically.

<sup>93</sup> See Gionfriddo, Barnett & Blum, *supra* note 4, at 180–81 (describing a methodology of reviewing junior lawyers' work that would require some familiarity with the authorities).

<sup>94</sup> Schroth, *supra* note 1, at 95.

### A. Using Clinical Education's Learning Objectives to Encourage Student Reflection about Writing

One of the primary goals in clinic is moving students from specific to general, helping them identify lessons from specific case work that will transfer into practice more generally. Reflecting on the writing process should take a lead role in achieving this goal with respect to the student's writing skills. When a student is encouraged to reflect on the process of producing written product for clients, the student will begin to identify the go-to processes that will work in practice, processes that help the student start an assignment, identify and use templates, make progress in the middle, and finish independently and strong.

At the beginning of a student's clinical experience, both the student and the clinician should reflect on the learning objectives for the clinical experience, both those set by the clinician and those expressed as goals by the student.<sup>95</sup> Having students reflect generally on the learning objectives for the clinical experience will help them make those goals their own; raising the learning objectives during the writing process will then keep them a priority for both the clinician and the student.

The list of clinical goals published in *Building on Best Practices* offers both the student and the clinician opportunities to reflect on the writing process for particular tasks.<sup>96</sup>

For example, on the first main clinical goal to "develop a professional identity and practice with a purpose,"<sup>97</sup> the clinician can ask students to reflect on the following set of questions:

- Did your work on this document meet your vision for your professional identity? If so, describe how.<sup>98</sup>
- Would you do anything differently (e.g., change part of your writing process; plan more extensively; use a research checklist) to better live up to your ideal professional identity? If so, describe the changes you would make.

---

<sup>95</sup> BUILDING ON BEST PRACTICES, *supra* note 15, at 204 ("As with all courses, in designing a clinical course, it is a best practice to establish the learning objectives.").

<sup>96</sup> *Id.* at 205 (synthesizing historical lists of clinical goals "to aid clinical educators in formulating or revising goals that work for their students"). Each writing task for the clinic will present a variety of drafting choices and questions about the writing process, all of which a student can draw out in comments through the reflection process. See Levin, *supra* note 6, at 167 (describing the choices raised by using different letters and memoranda with students).

<sup>97</sup> BUILDING ON BEST PRACTICES, *supra* note 15, at 205.

<sup>98</sup> This question can help deepen a student's thought process around how even the mundane considerations in a writing task, like formatting choices or technical details like grammar and punctuation, can connect to the student's professional reputation, and thus the student's professional identity.

The overarching goal regarding a student's professional identity and purpose also includes the goal to "connect with and serve clients while respecting dual loyalty to the profession."<sup>99</sup> A related goal is for the student to "develop a personal commitment to achieving justice and providing access."<sup>100</sup> To encourage students to reflect on these goals, the clinician could ask them to reflect on the following questions:

- Did any part of this document make you feel the tension between your duty of candor to the tribunal (or duty to the profession as set out in the model professional rules) and your duty to serve your client's interests? If so, describe the choices you made in that part of the document.
- How does this document help you further your own commitment to achieve justice and provide access?

By calling out through reflection the ways in which the system helps or thwarts the student's attempts to tell a client's story, the writing process also becomes part of the overarching clinical learning process that leads the student to a deeper understanding of their professional identity and purpose in the practice of law.<sup>101</sup>

The second main clinical goal is for the student to "increase understanding of how law, the legal system, and other institutions function in the lives of people, particularly the most marginalized."<sup>102</sup> Within this goal, the student works toward "understand[ing] the importance of the malleability of facts" and "develop[ing] new modes of thinking like a lawyer," like "role-based legal analysis."<sup>103</sup> To encourage students to reflect on these goals, the clinician could ask them to reflect on the following questions:

- In this document, what choices did you make about how to describe and present the facts?
- What is the best example in this document of the malleability of facts?
- How do you think an opponent of this client or document would portray the facts differently than you have?

Another overarching clinical goal anticipates the student will "build lifelong commitment and skills to learn in professional settings."<sup>104</sup> One subgoal particularly important to a student's developing writing skills is "us[ing] models critically."<sup>105</sup> The following questions will help a student reflect on progress toward this goal and subgoal:

- Did you use a model while you were drafting this document?

---

<sup>99</sup> BUILDING ON BEST PRACTICES, *supra* note 15, at 205.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 208 (describing "critical conversations" urged by clinical pedagogy that "explore fairness, accessibility, and justness of . . . systems, and how students might respond to the problems they perceive and experience").

<sup>102</sup> *Id.* at 205.

<sup>103</sup> *Id.* at 205–06.

<sup>104</sup> *Id.* at 206.

<sup>105</sup> *Id.*

- If so, in what ways did you find that model helpful?
- In what ways did you find it hindered your work?
- What was the main way in which you departed from the model, and why?

This type of reflection will help the student explore parts of the writing process that may otherwise be “invisible” in practice, not observable by just emulating another lawyer’s finished product.<sup>106</sup> In stepping back and critiquing the writing process itself, the student can find a more effective and efficient process that will carry them through a variety of contexts in practice.<sup>107</sup> Students may believe a legal document’s organization, phrasing, and even wording are inevitable, rather than choices the author must make. By asking the student to reflect on the writing process and the choices underlying each part of the document, the clinician helps the student find autonomy and voice as an author.<sup>108</sup>

Looking deeper into the writing process with a clinical student will allow the student to take the gathered insights into new writing tasks in clinic and in practice, refining the process as the student grows professionally.<sup>109</sup>

### **B. Using After-Action Review to Build to Exceptional Results, Even When the Clinician Jumped in to Finalize a Document**

When timing or complexity makes it necessary for a clinician to “step in and intervene,” the student’s learning experience depends on a meaningful review of the circumstances that led to intervention and the work the clinician needed to perform to finish the document.<sup>110</sup> This after-action review will help both the clinician and the student realize

---

<sup>106</sup> *Id.* at 208 (“As academic lawyers, clinical educators strive to expose students to those parts of the lawyering process that are likely to be invisible to them or at least difficult to observe in practice.”).

<sup>107</sup> *Id.*

<sup>108</sup> Levin, *supra* note 6, at 175 (“The goal in providing them with a glimpse of those choices [in writing tasks] is to help them understand that for many of the choices, there is not one correct answer, and that, in time and with practice and effort, they will find their own voices as legal writers.”).

<sup>109</sup> *Id.* at 178–79 (“In contrast [to a product approach to legal writing instruction], the process approach concentrates on the process of writing by helping students ‘develop an understanding of how and why the product came into being.’ . . . This approach considers writing to be a recursive (rather than linear) process whose basic stages are pre-writing, writing, and revision.” (quoting Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719, 722 (1997)).

<sup>110</sup> Kowalski, *supra* note 5, at 350 (noting that “there will be times when clinical supervisors simply must step in and intervene to protect the client” and recommending “guided self-reflection” to help a student understand why the intervention was necessary).

and retain lessons from the student's performance on a significant writing task. "In this way, the [clinician] and student can turn an imperfect situation into a growth experience."<sup>111</sup> A debriefing session in which the clinician and student discuss the student's reflections on the document and the process, as well as the deeper "why" behind the clinician's feedback, will allow for deeper learning.<sup>112</sup> This conversation can also provide a firmer foundation for growth on future writing tasks and beyond the clinical experience.<sup>113</sup>

Additionally, using the after-action review to create annotated models for future reference will simultaneously aid a student's growth during the student's time in the clinic and improve the clinic's overall efficiency. Students' use of examples and models can help a clinic run more efficiently, just as those tools can help a lawyer more efficiently create written work for clients in practice.<sup>114</sup> However, without instruction on using models ethically and effectively, students may "parrot[ing]" rather than "adopting and improving" the models.<sup>115</sup> During an after-action review, the clinician and student can annotate<sup>116</sup> the student's final draft, as well as the final filed or mailed document, placing those in a bank of models<sup>117</sup> to be used in future clinic work.

---

<sup>111</sup> *Id.* at 351 .

<sup>112</sup> The after-action review is not only helpful but necessary if a looming deadline forced the clinical educator to direct more changes at the end of a process. *See Levin, supra* note 6, at 183 (describing a "line-by-line discussion with the student" as a way to cure a process that became, because of time constraints, more directive than intended at the end).

<sup>113</sup> Kowalski, *supra* note 5, at 290 (noting that the "methodical approach to coaching writing" will prevent students from losing skills and "remain[ing] in confusion even by the end of the clinical semester," and instead result in a student "emerg[ing] from initial confusion into proficiency").

<sup>114</sup> *Id.* at 328–29 ("[B]ecause students must be able to work independently, a good bank of sample memos, motions, briefs, and other pleadings or contracts are key to avoiding wasting a great deal of client, student, and professor time on needless beginner's confusion."). Professor Kowalski recommends providing "a poor sample, a good sample, and an explanation of the difference between the two." *Id.*

<sup>115</sup> *Id.* at 328 (acknowledging "concerns about using forms and checklists" due to students' common lack of "judgment to use forms effectively").

<sup>116</sup> Note that using the after-action review to collaborate on an annotated sample will extend the clinician's and student's conversation that began during live critique. *See supra*, Section IV(A)(2) (discussing use of live critique during the writing process), and Appendix B (describing the process being used in the Veterans Advocacy Clinic). This approach can result in the student's more accurately understanding the clinician's expectations for written work, as well as best practices for writing the same or similar documents in future clinic work and beyond.

<sup>117</sup> Kowalski, *supra* note 5, at 329 (recommending that clinics create a sample bank that includes not only final documents, but previous drafts, supervisor comments, and even "reflective comments composed by the student attorney at the completion of the writing project").

While identifying key annotations about the document's format, organization, and subject-matter-specific choices, the clinician and student can discuss key points that would be material to anyone using the model in the future; these points might include the client's goals and needs, the subject-matter context, the audience, and any legitimate alternatives to the document's structure.<sup>118</sup> Collaborating to create these annotations will help the student recognize the reasons for the clinician's revisions; at the same time, it will help the student more thoughtfully select and use models in future writing tasks.<sup>119</sup>

## VI. Conclusion

*"All programs are limited only by the imagination of the coach, the level of talent on the team, and the squad's motivation and confidence. There are other things that sometimes make success easier: adequate funds, good facilities, strong support, and so forth. None of these, in my mind, will have much effect without a dedicated, confident, motivated, and visionary coach."*  
*Coach Don Gambriel.*<sup>120</sup>

Each clinician's approach to coaching students in writing tasks will—and should—vary. You may not be in the market for this type of in-depth supervision of your students' writing. Fortunately, the ideas in this article are adaptable to different clinic cultures, paces, and types of writing tasks. These ideas can be expanded or narrowed as needed, or they can be used as a flexible menu of options for each new semester or cohort of students.

Hopefully, the ideas in this article will be part of the body of work that inspires more ideas about how to coach students to ever stronger writing skills in clinic—and inspires the Coach McKeever's of the clinician world to write about their own successful approaches.<sup>121</sup> Clinicians could write about any of the following:

---

<sup>118</sup> See *supra*, Section III(B)(3) (discussing how a clinician can use these same points during a collaborative live critiquing session that will also result in an annotated sample for the sample bank).

<sup>119</sup> If a clinician will be utilizing live critiquing in the clinic, and if students are willing to engage in after-action review in the larger clinic team, this collaboration may be broader than just a one-on-one conversation. The entire clinician-student team in the clinic could meet to discuss the matter and the filed document, annotating that document for the sample bank during the discussion.

<sup>120</sup> THE SWIM COACHING BIBLE, *supra* note 32, at 346.

<sup>121</sup> I do not claim to be a Coach McKeever of the clinician world, but I have tried to model a write-up of my approach to live critiquing in the Veterans Advocacy Clinic. You will find this case study in Appendix B.

- the “cues” they use to improve transfer of legal writing skills;<sup>122</sup>
- the ways they are collaborating with 1L writing and research faculty to use texts, checklists, and terminology from those classes in clinic, and how successful those collaborations are at encouraging transfer;
- their exercises for strengthening specific skills, like structure, time management, legal research, style, tone, and polishing;
- ways they have helped students break through barriers like weak technical skills;
- or their use of external reviewers to provide the student with multiple perspectives on drafts.

We can build a body of coaching literature around these and other techniques important to building our students’ skills, motivation, and confidence while writing in practice. Our deliberate efforts to coach our students to more effective written advocacy in clinic will elevate our students and programs, and, in turn, the entire legal profession.

---

<sup>122</sup> Kowalski, *supra* note 5, at 293 (describing cues that help students transfer into their clinic work previously learned skills like structured writing supervision and self-teaching tools).



• **APPENDIX A: STUDENT DRAFT BINDER  
DESCRIPTION IN VETERANS ADVOCACY CLINIC MANUAL**

**Student Draft Binders**

Each significant writing task will ideally go through at least two draft reviews, one for a “fileable draft” and one for a “final draft.” You will pass the draft binder to the supervising attorney when a draft is ready for review. (You can do this either in hard copy or electronically.) Major writing tasks like briefs to the Board of Veterans Appeals or U.S. Court of Appeals for Veterans Claims may need more layers of review, which could include an annotated outline and a rough/first draft. Here are short descriptions of what the binder should contain for each type of draft.

**Fileable Draft (required)**

The fileable draft is a document on which you have not yet received feedback. The term “fileable” means you believe the draft is ready to be filed if the supervising attorney deems it ready. Thus, this is more than a rough/first draft.

To aid the supervising attorney in reviewing the fileable draft, the binder must contain the following:

**1. Situation Briefing:** On the top page, explain when, how, and where you plan to file the document. For example, if the document must be filed on a particular date, explain the deadline and how many days you have planned for review of the fileable draft in the timeline leading up to the deadline. Also explain whether the document will be fax-filed, e-filed, or mailed, and the number/addresses you will use. Describe other constraints as well, such as page or word count limitations.

Add to your filing and deadline information a description of both the purpose of the document and the document’s audience. When describing the purpose, think about information like the client’s desired outcome; the clinic’s goals for the filing, if they add anything to the client’s desired outcome; whether the filing is designed to educate or persuade the audience, or both; and any specific purposes for the type of document that aren’t otherwise explained. Your description of the audience can include information about the tone you tried to achieve for the audience, and why you identified that as the appropriate tone.

**2. “After-The-Fact Outline”:** The next page should be an outline of the document. This outline should include as much information as needed to convey the structure of the document and the logical flow of points within that structure. For example, in a brief, you would list all major headings or points and include under each any subheadings and the thesis sentences at the beginning of each paragraph within the subsection. Limit this to a single page, and finalize it after finalizing the document itself. *Note: In completing this outline, you may find the main document needs to be reorganized in some way; if so, reorganize the document and your outline so you are comfortable with the organization before you turn it in for review.*

**3. Main Document:** The document itself should be in final, fileable format. The one exception is that, at this stage, you should include comment bubbles that indicate any remaining questions or concerns about any section or that draw the supervising attorney's attention to something you were trying to accomplish in the draft. The comment bubbles can explain where you made a choice about something to include or omit and the reasoning behind that choice. Finally, they can provide authority for points if the main document does not cite to that authority for some reason (e.g., in a letter to the client).

**4. Sources:** Finally, include a copy of each source cited or used in the document, in the order in which you cited or used them. If a source is extensive, excerpt it and include a brief note that labels and explains the excerpt.

### **Final Draft (required)**

The final draft has fully incorporated the supervising attorney's feedback on the fileable draft and is ready to be submitted the day the binder is passed to the supervising attorney. If the final draft needs further adjustments or edits, the supervising attorney may ask you to make those changes. If not, the supervising attorney may simply direct you to proceed with filing/submitting.

To aid the supervising attorney in reviewing the final draft, and to aid you in reflecting on the process, the binder must contain the following.

**1. Situation Briefing:** First, again explain your plan for filing/submitting the document and any looming deadline the supervising attorney needs to meet, the document's purpose, and the document's audience. If these things have not changed since you submitted your fileable draft binder, you can carry all of that information over to this binder.

**2. Reflection:** The next pages (up to two pages) should contain your reflection on the process of drafting and finalizing the document. You may reflect on any or all of these questions:

- In what ways did your work on this document meet your own standard of professionalism?
- What parts of your process would you change to better live up to your own standard of professionalism?
- Did any part of this document highlight the tension between your duty of candor to the tribunal or duty to the profession as set out in the rules of professional conduct, and your duty to serve your client's interests? If so, describe the choices you made in that part of the document.
- How does this document help you further your own commitment to achieve justice and provide access?
- In this document, what choices did you make about the way the facts are presented? Describe why you made each choice.

- What is the best example in this document of the malleability of facts? How do you think an opponent of this client or document would portray those facts?
- Did you use a model while you were drafting this document? If so, in what ways did you find that model helpful? In what ways did you find it hindered your work? What was the main way in which you varied from the model, and why?

If you have any remaining questions or concerns about the document, you may include those in this reflection rather than in the document itself.

**3. Main Document:** The document itself should be in final form and have no redlines or comment bubbles. It should be ready for a final printing, and it should be polished to the highest level of professionalism (i.e., no grammatical or punctuation errors, ready for signature, containing the correct addresses and other required sections).

**4. Sources:** Once again, include each source cited or used in the document. You should reorganize and reduce/increase the sources as appropriate after feedback on the fileable draft, but if you are using hard copy, you do not need to reprint sources you continue to use in this draft.

## • APPENDIX B: CASE STUDY OF LIVE CRITIQUE IN VETERANS ADVOCACY CLINIC

### **Context of Clinic and Type of Work**

In the Veterans Advocacy Clinic (VAC) at the ABIII School of Law, University of Montana, third-year students work with a full-time faculty member who is the attorney of record providing direct legal services to veterans. The VAC primarily represents veterans in Montana. Most of the VAC's work takes place in a complex administrative system. Students are supervised while they develop original claims before the Department of Veterans Affairs, appeal VA denials to the Board of Veterans' Appeals, and appeal Board of Veterans' Appeals denials to the U.S. Court of Appeals for Veterans Claims. They also represent veterans before the Department of Defense in applications for upgraded military discharge. VAC students spend time verifying facts through records requests and review, gathering and developing new evidence through affidavits and letters of support, researching the applicable laws and regulations, and counseling the client about options. VAC students are also frequently writing—they document their activities in notes to the file and emails to their supervisor, and they write many persuasive letters and briefs over their time in the VAC.

### **Context of Case and Type of Task**

I worked with third-year student Shelby Danna to test several exercises from the *Pacing Beside the Pool* article. Her caseload included both VA claims and appeals and applications for upgraded military discharge. We used the exercises to wrap up two projects related to VA benefits and make significant progress on one larger application for upgraded military discharge. With Shelby's permission, this case study focuses on the exercises we tested in wrapping up the two projects related to VA benefits.

### **Timing Factors and Complexity Factors**

For the VA appeal, the timing was more pressing, though not necessarily urgent. The client had recently received a decision from the VA Regional Office regarding his service-connected disability compensation, and we believed the VA had focused on the wrong issue. In the VA system, one appeal option available at the time we wrote this case study was to file a Higher-Level Review; this option allows the advocate to argue the issue to a VA staff member who has more extensive training than the original decision-maker, and the VAC was

at the time usually arguing the case in writing rather than requesting a hearing.<sup>123</sup>

The issue Shelby was addressing in this Higher-Level Review was made more complex by the VA Regional Office's confusion over the issue we had presented. We had requested an increased disability rating for the veteran's service-connected PTSD. But instead of focusing on the severity of the veteran's symptoms, the VA Regional Office had focused on the effective date of the veteran's service-connected disability compensation, an issue we had previously appealed and resolved. Shelby's task on the Higher-Level Review was thus to highlight the VA Regional Office's confusion and bring the attention back to the request for increased disability rating. The most complex part of this task was concisely explaining the VA Regional Office's mistaken focus and precisely articulating both the correct issue and what we were asking the reviewer to do.

For the VA claim, the timing was important to the veteran, because the earlier the claim is filed, the earlier the veteran locks in the effective date of the claim. Even if the VA denied the veteran's claim, if we were eventually successful in appealing that denial, any resulting benefits would be retroactive to the claim's effective date. The VAC planned to file this as a Fully Developed Claim. The Fully Developed Claim was, at the time of this case study, an option if the veteran could submit all necessary evidence at the time of filing the claim, and the VA Regional Office need no further evidence like VA examinations or additional records. The VAC was not at the time typically filing Fully Developed Claims, because we were often working with more complex claims that required further development; this veteran's service records had already been obtained by the VA for previous claims, and the diagnosis had been thoroughly documented and developed by VA physicians in the course of the veteran's VA medical care. Thus, relative to other VAC tasks, this task was straightforward, but it was made more complex for Shelby because she had never filed a Fully Developed Claim. We focused most on demonstrating that the claim's required elements were established in the existing record.

---

<sup>123</sup> The Higher-Level Review process offers the option of requesting an "informal hearing," but the VAC has not had much success with this approach. The reviewer is supposed to conduct the hearing over the phone, but the scheduling process at the time of this case study allowed only vague references to timing (e.g., blocks of time in the "morning" or "afternoon," with no option to schedule a specific date or time for the call).

### **Known Best Practices for the Task, Supervision, and Feedback**

- The following sources provided best practices for using live critique with student written work:
  - Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1 (2019).
  - Patricia Grande Montana, *Live and Learn: Live Critiquing and Student Learning*, 27 PERSP. 22 (2019) (“Live critiquing is essentially the process of giving students feedback on their work ‘live’ or in-person, rather than in writing.”).
  - Stetson Law recorded a helpful webinar on this process, *The Pedagogical Method of Live Commenting and Grading*, at <http://www.stetson.edu/law/academics/lrw/webinars.php>.
  - Anna Hemingway & Amanda Smith, *Best Practices in Legal Education: How Live Critiquing and Cooperative Work Lead to Happy Students and Happy Professors*, SECOND DRAFT, Fall 2016, at 7.
- When a reviewer provides real-time critique of a student’s draft, the reviewer is engaging in what is known in legal writing pedagogy as “live critiquing.”
- Although not much has been written about live critiquing a student’s legal work in clinic, the approach could encourage more nondirective writing supervision and student independence while also achieving more immediate feedback and efficient legal services to the client.
- In live critiquing, the clinician reduces the time spent reviewing and commenting on a student’s draft without the student present. Instead of line editing or writing comments, the clinician briefly reviews a draft before meeting with the student and spends the most time providing live feedback to the student during the live critiquing session.
- Because the clinician requires little to no preparation time before each live critiquing session, the process can also reduce delay in reaching a finished product.
- Ideally, a student should come away from the live critiquing session with all necessary information to move forward with the document. Thus, when possible, the clinician and student should strive to eliminate any further follow-up from the clinician, and the student should be able to apply the feedback without delay and bring a new draft to the next live critiquing session.
- During the live critiquing session, the student should take detailed notes about the clinician’s feedback. This may involve

revising during the meeting or inserting comments for future revision or research.

- During the live critiquing session, the clinician should ask questions that encourage the student to reflect on the student's performance and the larger context of the student's advocacy. For example, the clinician can ask questions about the student's writing and research process, the concept of client-centered advocacy, the student's thoughts about the client's matter in the larger social justice context, or techniques for persuasion in written argument. Each session will present different opportunities for these questions, but a clinician could develop a list of potential questions to reference in any live critiquing session.

- Before ending the live critiquing session, the clinician and student should put the next session on the calendar. This will give the student a clear deadline for applying the feedback, and it will ensure the project is moving forward as efficiently as possible.

## **Process**

### ***Process Leading Up to Filing***

For the VA filings, Shelby and I first discussed our strategy during our weekly supervision meetings, and we discussed options with the client. Once the client settled on the type of appeal and claim to file, I emailed Shelby more information about where to start for each task. We met after Shelby had pulled the required VA forms and done some preliminary research; the first meeting was a conversation about the goals for each filing, and Shelby and I also brainstormed questions for further research. We ended this meeting by scheduling our next meeting, which we agreed would involve live critiquing Shelby's full first draft of the persuasive cover letter for the VA appeal.

The day before the first live critiquing meeting, Shelby sent me her full first draft. I reviewed this draft and made a few quick notes to myself about things I wanted to raise during our meeting. I deliberately spent less than thirty minutes reviewing the draft and making notes; I wanted to see if our live critiquing session would be more efficient than our previous approach of line editing and writing comments, so I tried to avoid duplicating that process on top of the live critiquing session. Shelby did not send me drafts before our subsequent live critiquing sessions—I just provided feedback as I reviewed the draft during our meeting.

We met by Zoom, and Shelby shared the Word document on the screen. We began by discussing the organization of the document, and then we moved through each paragraph. As I provided feedback, Shelby either immediately revised or created a comment bubble in the

document with her notes about my feedback. If she decided she needed to do further research, she included a note about that research in the comment bubble. Each revision or comment bubble was the result of a conversation, and we discussed more than what showed up on the page.

We blocked off one hour for each meeting, and we typically used most of that time. The earlier meetings to brainstorm research questions and discuss the nature of the task were shorter than the live critiquing meetings.

Before ending the meeting, we looked at our calendars and scheduled our next meeting. We tried to schedule the next meeting within a few days so we could keep moving efficiently toward filing and so we did not lose the thread of our conversations about the argument. We also agreed on what Shelby would bring to the next meeting; for example, we agreed on whether Shelby would bring a second draft after doing additional research or a final “fileable” draft that we would anticipate sending to the client during or after our meeting.

### ***Process of Finalizing the Task***

I did not take control of the Word documents at any point in the process. Shelby kept the documents until she sent them to the client for review and approval. After she applied the client’s feedback, she finalized the documents, converted them to PDF packets with attached evidence, and notified me when they were ready for my signature. Because I am the only one with access to the VA electronic filing system, I filed the documents after they were finalized.

### ***Collaborative Process***

Between our live critiquing sessions, Shelby worked independently to apply my feedback, complete additional research, and improve the argument and document. However, our live critiquing sessions made the entire process seem more collaborative than our previous processes. The conversations we were able to have about the law and the client’s facts had a give-and-take feel, and we both felt we understood the argument and evidence more thoroughly as a result.

### ***Student’s Reflections***

Shelby wrote a reflection about our process, which she consented to being shared for purposes of this case study. Here are excerpts from her reflection:

The second exercise that Professor Wandler and I focused more heavily on was the *Live Critique of Live Client Work*. This was absolutely the most valuable exercise I did throughout my clinic experience and allowed for significant professional development.



...

The first client matter was a Higher-Level Review, where I began by going over the form, filling it out using the records on file, and making note of the next steps in the process. Professor Wandler and I met shortly after that, where we went over the form and got on the same page about what exactly was needed in the document and the persuasive cover letter, because I had never drafted a persuasive cover letter for a Higher-Level Review before. I then drafted the persuasive cover letter and continued making small changes to it before Professor Wandler and I met again. Next time we met, she critiqued the document in detail, while I made changes and notes in the margins of what editing was needed and areas to explore further in my research. We went through this one more time, at which point it was ready to send to the client.

...

In addition, at the end of each live critique session, Professor Wandler and I would set a time to meet again so that we could both put it on our calendars as soon as possible.

...

The live critique, as stated above, was very helpful to me in completing my tasks and with my professional development. The immediate feedback encouraged my engagement and helped solidify a plan moving forward. The conversations between me and Professor Wandler flowed very naturally and helped develop our professional relationship on a deeper level than just being a passive student in clinic. In addition, these exercises kept me on track. While I'm not sure if this would be possible to use on every student in clinic because it requires more frequent and longer meetings, it was a very valuable experience, and I would encourage clinicians in in-house clinics to consider using this technique with their students in the future, especially those students with a big client task.

### **Clinician's Reflections**

I wrote the following reflection after our process:

The live critiquing process with Shelby had several advantages over our previous approach, and I can see myself employing this regularly with students in the future.

First, I felt I gained more insight into Shelby's thought process. I noticed that by having a conversation about what Shelby had been trying to accomplish in a particular sentence or section, I was able to better explain why I thought different wording or organization may be a better approach. At times, I had made incorrect assumptions about what Shelby was trying to convey. If I had been just drafting written comments on her document, I believe my misunderstanding would have resulted

in comments that confused Shelby rather than helping her refine her argument.

Our live critiquing sessions also seemed to encourage more and more meaningful conversation around the issues, which led both me and Shelby to more accurately and thoroughly grasp the meaning of the law in the context of the client's evidence. Both of us seemed to develop a deeper understanding of the law as we explored nuances we might have missed by just writing comments back and forth.

Logistically, the live critiquing process kept the task at the forefront of my calendar and moved us toward filing more efficiently. When Shelby and I had worked on documents earlier in the year, our work often became delayed because of our busy schedules. Shelby would complete a draft and send it to me for written comments, and the press of business on my end would delay my comments by several days. When I sent my written comments back to Shelby, she would take time to apply them and send me another draft. At times, we went back and forth on one section of the document three or more times before we reached a final version. With the live critiquing process, each new meeting resulted in significant progress because we were able to clarify and finalize those sections that before had taken us three or more rounds of delay to finalize. Also, after our meeting, Shelby did not need to wait on me to apply the feedback; she had all the information she needed to move forward with another draft, and we set a meeting on the calendar in the near future, a meeting at which we knew we would either finalize the document or come very close to finalizing. We likely cut days, maybe a week or more, of delay out of our process.

Perhaps most importantly, the end product felt like it was more Shelby's work than mine. Throughout most of the process, Shelby had kept the product in her control rather than sending it to me for comments and line editing—she was truly the lead through filing, which was one of our goals in testing this process. We still had some moments where I gave her particular wording, but those moments were the exception rather than the rule.

As Shelby noted, one concern may be that this approach would be difficult to accomplish in a clinic with a higher clinician-to-student ratio. However, when I reflect on the time it would have taken me to review and comment on drafts without the live critique, the total time burden seems roughly equivalent for each process. The table below estimates potential clinician time in each type of process.

<b>Activity<sup>124</sup></b>	<b>Written Commenting Process</b>	<b>Live Critiquing Process</b>
<b>Preliminary Brainstorming Meeting</b>	0.3h–0.5h	0.3h–0.5h
<b>Assignment Email</b>	0.2h	0.2h
<b>Review and Write Comments on Drafts</b>	First Draft—1.0h Second Draft—0.8h Final Draft—0.5h	First Draft—0.2h
<b>Live Critiquing Sessions</b>	n/a	First Draft—1.0h Final Draft—1.0h
<b>Finalize and File</b>	0.5h	0.5h
<b>Total</b>	3.3h–3.5h	3.3h–3.5h

As noted above, the live critiquing process also cut out delay before filing, which benefits our client and may tip the balance toward using the live critiquing process more often.

Shelby and I had been working together for almost seven months before we tested the live critiquing exercise. We had developed a rapport through weekly supervision meetings and our VAC team meetings. Our rapport may have been a key factor in the success of the live critiquing process. It would be interesting to read a clinician's and student's reflections on the live critiquing process earlier in a student's clinic experience to see if it helps build rapport or if a successful live critique depends on some established rapport between the clinician and student.

I had read cautions about live critiquing that warned a student may more easily misunderstand live feedback and become more confused about how to move forward with a document than if the student had a written comment to ponder more carefully. However, I found I was not concerned about whether Shelby understood my feedback or would be able to apply it to improve the argument or document. One reason I was confident in Shelby's understanding is that she was revising wording and entering comments on a shared screen. If she changed the wording in a way that showed she had not

---

<sup>124</sup> Note that in either process, a clinician may need to do independent research to verify a student's research and prepare to provide accurate and effective supervision, all of which will add time burden.

understood my feedback, I could immediately address the misunderstanding. When she entered a comment, I could see her notes to herself and ask follow-up questions if I thought she may be headed in the wrong direction. We had helpful conversations about both revisions and written comments, and we ended each meeting on the same page about how to move forward.

### **Conclusions/Takeaways**

We found the live critiquing process moved our clinician–student team toward a finished product more efficiently, eliminating some of the delay that occurs when a clinician is reviewing and writing comments on a draft. Here are several takeaways we identified through the process and our reflections:

- The live critiquing process encourages conversation between the clinician and student, deepening in both of them their understanding of the argument or analysis the student is writing. The conversations can more effectively clear up the student’s substantive misunderstandings and misinterpretations of the clinician’s feedback.
- If thoughtfully structured, the conversations during a live critiquing session will give the clinician more insight into the student’s thought process and writing process, which can support more individualized writing supervision.
- The live critiquing process can support a student’s independence and allows the student to retain more control over the finished product. The clinician does not line edit or write comments into the document, which can encourage more nondirective writing supervision and result in a finished product that is more the student’s work than the clinician’s work.
- The clinician should set up the live critiquing session so the document is shared. This will allow the clinician to see the student’s revisions and written comments, which will allow the clinician to explore potential misunderstandings and redirect when necessary. The clinician could have the student share the document on a screen in Zoom or on a shared document space in an in-person meeting in which both the clinician and the student have a computer (e.g., a Google Doc or a Word document shared on a muted Zoom screen).