

# FINDING YOUR BALANCE ON THE TIGHTROPE: REFLECTIONS FROM A CLINICAL LIFE

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## I. EMBRACING THE ROLE OF TEACHER

In April of this year, at the thirty year celebration of the Clinical Law program, Jane Aiken and Stephen Wizner addressed our dinner guests. They raised some questions that have become the fundamental conundrum for clinical instructors—what is the correct balance between “teaching *through* doing, and teaching *about* doing?”<sup>1</sup> There are many ways to think about this fundamental problem of finding the correct balance in the task of linking theory and practice. Clinical education is a pedagogical method that links theory and practice. It imposes, on those who attempt it, the responsibility of becoming both an excellent practitioner and an excellent teacher and academic in order to properly link the practice to the theory. This dual responsibility is not floating in space; rather, it is anchored to an institution.

If the institution is to survive and thrive, it also must be cared for. Hence, we have additional responsibilities to participate in the maintenance of the “place” that holds our tasks in space and time. Committee and administrative responsibilities are akin to taking out the trash and doing basic maintenance at home. If you don’t help get it done, eventually, the place won’t be a pleasant place to spend time. Wherever you go, wherever you work (even if it is at home), these are tasks to be done. Therefore, as a matter of inquiry, I remove them from the discussion.<sup>2</sup>

This task-oriented frame, however, does not begin to address the moral imperative of the justice issues that drive most of us into the practice of law and keep us in service to the clients and issues we care about. Just the articulation of the ways in which I think about what I am trying to accomplish in my life sometimes overwhelms me—

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1. Stephen Wizner, *Walking the Clinical Tightrope: Between Teaching and Doing*, 4 U. MD. L. J. OF RACE, RELIGION, GENDER & CLASS 259 (2004).

2. When this maintenance becomes administration or leadership of the institution, then, I think, it takes on another level of inquiry. But, for the basic discussion, I continue to believe it is not relevant, though it does take time and energy.

increase access to justice, influence how class, race and power are understood in the profession, open new opportunities for practice methods that increase access to justice, empower people in poor communities to create institutions that have the capacity to solve problems in ways that both empower and transform lives, provide opportunities for students who are some of the most privileged members of our society<sup>3</sup> to meet, know and serve motivated, complex, wise and intelligent leaders of institutions for the poor, provide a place where those same students can struggle with the complexity of knowledge that opens through meeting and interacting with these leaders and institutions who are less educated, have fewer resources and still struggle for positive change,<sup>4</sup> build an institution that is a wonderful place for colleagues and students to spend time, create and support networks locally and nationally of like minded individuals; try new models of responding to the crushing legal and social needs of the poor and working poor, run a top-notch law firm, etc.

Jane Aiken invited us to understand this challenge of doing more than skills training and service delivery as a measure of our success in the academy and a sign of maturity as professionals. She acknowledges that her goals have changed over thirty years, from providing more legal services to creating opportunities for law students to recognize injustices, and appreciate the role they can play in the legal system. Her goal has also changed to having an effect on justice and the delivery of justice, and inspiring students to do that, too. As she notes "To achieve that goal, we need to be effective teachers, not just effective doers."<sup>5</sup>

I would like to posit that both Steve Wizner and Jane Aiken, while eloquent about the tension and the tightrope that we walk, miss the essential ways in which this feeling of being on a tightrope can never be alleviated inside the current structure of the academy, because what we do in the academy is a challenge to the fundamental framing of what legal education is about in several ways. This is not about some internal balancing act; rather this is about a fundamental

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3. I firmly believe that anyone who attends law school is part of the most privileged group of world citizens. We are part of a small group who have the luxury and opportunity to study and understand the basic structure of our country and other countries in the world. While we don't know the answers to all questions, we are given the tools to work our way through almost every question presented.

4. After a student this summer got a tour of one of Baltimore's most distressed neighborhoods by a client group, he returned to my office, sat in my office and asked, "How did this happen?"

5. Jane H. Aiken, *Walking the Clinical Tightrope: Embracing the Role of Teacher*, 4 *U. MD. L. J. OF RACE, RELIGION, GENDER & CLASS* 267 (2004).

engagement with the way legal teaching is constructed in our society. There are three dynamics inherent in legal teaching: Socratic vs. Apprentice, action vs. reflection, and individual vs. collective/collaborative goals.

### *A. Socratic vs. Apprentice*

Linking theory and practice elevates the practice and delivery of legal services to an equal level with thinking about and understanding legal theory. This is a framework that is anathema to the basic structure and reward system of the academy. It challenges the framework established when Harvard adopted the Socratic method and moved legal education out of the apprenticeship model that preceded it.

To move beyond the apprentice structure, it was necessary to find it lacking, to establish a culture that suggested it was insufficient. And for a century, that culture has developed and established itself within the institution. It values analytical thinking, but not problem solving.

Many professors have not practiced law, and in many institutions, years of practice are not considered a plus in the analysis for appointment to the faculty. As the academy has responded to both the student demand and pressure from the bar, clinical education has grown in stature within the academy. More institutions create some place within the institution for people with a practical background to teach, but it is often in a segregated structure within the institution.

### *B. Action and Reflection is Independent or Necessarily Linked*

In a “traditional” law school model, students can receive three years of instruction and have almost no practical experience. They are deeply engaged in the study of legal theories, but these theories are divorced from action. This is a pedagogical model that is not only accepted, but is the norm.

Those who teach by linking theory and practice introduce a “super-apprenticeship” model, combining the best qualities of both an apprenticeship and a deeply reflective theoretical study. Both teacher and student work on the problems presented to find the answer. In these instances, students learn doctrinal law, they learn skills and they learn analysis. During this process, the skills of the teacher, as practitioner and scholar, are always sharpening as well.

This time- and resource-intensive teaching method are very valuable to the students. Further, by engaging in problem solving in the real world, students learn about how the real world works. If their clients are the poor or those without access to justice, they also learn about the real structure of power in our country and legal system. These are lessons that are very difficult to insert into a classroom discussion, but they are the day-to-day realities of clients' lives.

Inside the academy, the idea that practical knowledge is linked to excellent reflection is challenged. People "understand" and teach theories that they themselves have not applied to problems that exist in the world. While I would not want to be so dogmatic as to suggest that one can never present ideas on topics outside of practice, I would posit that the kind of deep knowledge that is most useful to students is knowledge gained through theories that one has tested, or is testing, on problems in the world.

### *C. Individual vs. Collective/Collaborative Goals*

One of the most frustrating strands of this tightrope is the feeling that one must do everything all the time. The multitude of responsibilities for clinical educators can be crushing if one thinks of oneself as alone and responsible for everything. Yet academic institutions have few mechanisms for people to share common goals and visions, develop working long term plans, and coordinate activities, work allocations, responsibilities, and projects.

Because there is no unit of analysis that is not individualized, and all evaluations are individualized, it is difficult to develop a work plan that is sane. For example, it might well be possible to have several people working in one area who jointly come to some conclusions about what they would like to do to move forward both the scholarship and theories of an area, or take on some representation that they believe will have significant impact. Some years, one person might undertake most of the representation (because this is the place students learn the law, learn the lawyer/client relationship with all its challenges, and hone their problem solving skills) while another is released to write (because it is so important for all of us to share the lessons we are learning). Another might take up leadership around the policy issues that are emerging and develop some kind of reflective/policy component of the work (because we are part of the broader body politic, with special responsibilities for the development

and maintenance of our system of justice).<sup>6</sup> If one feels like part of a team of people who are working toward a goal, then one can think of these tasks in a longer term way, as well as create opportunities for the range of activities that the debate between Steve Wizner and Jane Aiken made us think were juxtaposed.

## II. CONCLUSION

The University of Maryland School of Law has created a continuum of opportunities in which people can link theory and practice. This is a great institutional start at recognizing the importance of the teaching method. Some who primarily teach in classes that are “stand-up” have taught core subject areas (torts, civil procedure, contracts, etc.) linked with practice components.<sup>7</sup> And those who teach through practice also teach classes that are “stand-up.” This crossover gives our entire faculty a common language and outlook that is often times stunning in conversations about strategic planning and curriculum.

I very much appreciate the discussion that has been sparked by the comments from Steve Wizner<sup>8</sup> and Jane Aiken.<sup>9</sup> The articulation of these two schools of thought has enabled our faculty to have some very interesting discussions about our beliefs. But, if we, as those who teach by linking theory and practice, are looking to find the answer to get off the tightrope, my assessment is that it will be a futile effort. Until the academy itself is changed to a more collaborative culture that values practice as fundamental to scholarship, we will feel the tightrope under our feet.

I would add, however, that even that transformation will not remove the pressure that comes from conscience. There will always be too much to accomplish. Whether you are one to believe that the poor are always with us or not, there will not be a time in our lifetimes when the system of justice will be available and fair for all who need it. And so the list that drives my life will continue to be very long.

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6. I think we all must work at committee and legal community responsibilities. These are like breathing, and link us to all of our colleagues. It is a fundamental component of being a good citizen—whether at work, at home or in your neighborhood.

7. Some of these were simulations, which, I would posit, let the students off the practice hook, but liven up the materials.

8. *See supra*, note 1.

9. *See supra*, note 5.

Perhaps coming to terms with that brings the personal peace that makes it possible to take a long walk on the tightrope.