2021

Critical Interviewing

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CRITICAL INTERVIEWING

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Abstract

Critical lawyering—also at times called rebellious, community, and movement lawyering—attempts to further social justice alongside impacted communities. While much has been written about the contours of this form of lawyering and case examples illustrating core principles, little has been written about the mechanics of teaching critical lawyering skills. This Article seeks to expand critical lawyering theory, and in doing so, provide an example of a pedagogical approach to teaching what we term "critical interviewing." Critical interviewing means using an intersectional lens to collaborate with clients, communities, interviewing partners, and interpreters in a legal interview. Critical interviewers identify and take into account historical and structural biases, privileges, and the role they play in the attorney-client relationship.

This Article urges law professors and legal professionals to operationalize critical legal theories into practice, and ultimately to develop experiential pedagogies to teach these critical lawyering skills. This call to developing new pedagogies is particularly urgent in the wake of nationwide uprisings in response to the killing of George Floyd and others, as well as corresponding law schools' commitments to identify and dismantle institutional racism. In this Article, we first set forth the contours of the canonical client interviewing pedagogy. Second, we outline the tenets of critical lawyering—a lawyering practice animated by critical legal theories. Next, we advance the pedagogy of critical interviewing, building upon client-centered lawyering texts. We describe one methodology of teaching critical interviewing: the Legal Interviewing and Language Access films. Ideally positioned to use with virtual, hybrid, or in person learning, these videos raise a multitude of issues, including

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addressing bias and collaborating with clinic partners, interpreters, and clients. Finally, the Article considers areas ripe for further exploration within critical interviewing, concluding with a call for engagement with new pedagogical tools to teach critical interviewing, along with other aspects of critical lawyering.

INTRODUCTION

Clinical and critical legal scholars have long sought "to illuminate the assumptions, biases, values, and norms embedded in [the] law's workings in order to heighten awareness of the political and moral choices made by lawyers and the legal system."[1] Experiential faculty have not, however, always weaved an understanding of these assumptions, biases, values, and norms into the pedagogy of lawyering. In this Article, we urge clinical scholars to do exactly this. As law schools are responding to calls to dismantle racism within legal education, experiential faculty have a special role to better teach students how to identify and disrupt racism and other systems of discrimination in the practice of law. We examine one pedagogical tool to promote conversations and deep discussion around what we term "critical interviewing." Critical interviewing means using an intersectional[2] lens to collaborate with clients, communities, interviewing partners, and interpreters, with an eye toward interrogating privilege differentials in these relationships and accounting for existing historical and structural biases.[3] Conversations around race, gender, ability, immigration status, and other identities people hold and the related bias they experience can be challenging. The Legal Interviewing and Language Access videos[4] we introduce provide an accessible opening to surface important dynamics that must be addressed.[5]

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[1] Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992).

[2] *See generally* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. OF CHI. L. F. 139 (1989) (introducing the concept of intersectionality, the interconnectedness of social categories such as race, gender, and sexual orientations and how individuals may face overlapping and intertwined systems of discrimination and oppression depending on their identity).

[3] In interrogating privilege differentials and addressing bias, critical interviewing strives to be anti-racist. Ibram X. Kendi defines an anti-racist as "[o]ne who is supporting an antiracist policy through their actions or expressing an antiracist idea" and "[o]ne who is expressing the idea that racial groups are equals and none needs developing, and is supporting policy that reduces racial inequity." IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 13, 24 (2019).

[4] The videos are hosted on YouTube. *See generally Learning Legal Interviewing Video Project*, YOUTUBE https://www.youtube.com/channel/UCFRiQyrhpHmdxgAE_DoMeRA/featured?view_as=subscriber [https://perma.cc/VA3W-AP7K] (last visited Nov. 4, 2020).

[5] *See, e.g.*, Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*,

In this Article, we add our voices to the body of literature from clinical scholars engaging in critical legal theory.[6] While conjoining theory and pedagogical methodology within one article may seem disjointed, the marriage of theory and the pedagogy of law practice is precisely our point. We seek to expand critical[7] lawyering theory,[8] and in doing so, provide an example of a pedagogical approach to teaching critical interviewing. Lawyering which attempts to further social justice alongside impacted communities has been alternatively and sometimes

45 STAN. L. REV. 1807, 1830 (1993) (acknowledging how challenging it can be to engage in these topics as student egos are challenged and feelings may be hurt).

[6] *See, e.g.*, Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 90 (2019) (citing Carrie Menkel-Medow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 569 (1980)) ("As both a working professional and a scholar or expert on the legal system, the clinician can view the aggregate impact of the individual lawyer on the legal system and, conversely, the legal system on the lawyer. Indeed, the clinician is ideally situated in time and place to develop a legal sociology or anthropology.").

[7] As Prof. Lolita Buckner Inniss writes, "critical" has been attached to numerous scholarly endevors, and signifies "querying mainstream, classical legal thought, especially of the variety that views law as a structured, coherent whole that is typically accessed via the application of long-established, logical, legal rules and norms." *See* Lolita Buckner Inniss, *"Other Spaces" in Legal Pedagogy*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 67, 68 (2012).

[8] Critical lawyering involves incorporating critical theory into practice, and does not have a universally accepted definition. Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415, 416 (1996) ("Critical lawyering aims to provide subordinated people with greater access to legal representation and to promote more social change."); Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 CLINICAL L. REV. 235, 238 (1997) (defining critical lawyering as a "methodology that attempts to empower clients traditionally subordinated by our legal system.").

interchangeably[9] been referred to as collaborative,[10] rebellious,[11] community,[12] progressive,[13] third-dimensional,[14] borderlands,[15] political,[16] poverty,[17] and movement lawyering.[18] No perfect consensus exists on the contours of these models

[9] Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 260 (2014) ("Whether framed as 'third-dimensional' lawyering or 'rebellious lawyering' or community lawyering, community or client empowerment is a critical means, and end, of these practices."); Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 404 (2019) (stating Community Lawyering may include "rebellious lawyering, cause lawyering, political lawyering, social change lawyering, third-dimensional lawyering, collaborative lawyering, revolutionary lawyering, and law and organizing"); Paul R. Tremblay, *Critical Legal Ethics Review of Lawyers Ethics and the Pursuit of Social Justice: A Critical Reader*, *Edited by Susan D. Carle, Foreword by Robert W. Gordon*, 20 GEO. J. LEGAL ETHICS 133, 134 n.6 (2007) [hereinafter Tremblay, *Critical Legal Ethics*] (book review) ("In this review I use the terms 'progressive' and 'critical' interchangeably, recognizing that in some other contexts the terms might acquire differing meanings.").

[10] Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 160 (1994) [hereinafter White, *Collaborative Lawyering*].

[11] Symposium, *Rebellious Lawyering at 25*, 23 CLINICAL L. REV. 1, 471–815 (2016–2017).

[12] Kashyap, *supra* note 9, at 403.

[13] Gowri J. Krishna, *Worker Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65, 65 (2013); Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS. L. REV. 441, 441 (2018) [hereinafter Cummings, *Law and Social Movements*].

[14] Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 760–66 (1988) [hereinafter White, *To Learn and Teach*].

[15] Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 394 (1996). Borderlands lawyering uses translation lessons from ethnography, language theory, feminist theory, and postmodernism to help represent clients with eye towards different cultural/lived experiences and perspectives. *Id.*

[16] Erik K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 833–34 (1997) (discussing the employment of political lawyering by new civil rights efforts to change governments and private institutions, but there remain gaps between political lawyering and progressive race theory); Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 401–02 (2019).

[17] Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L. J. 1049, 1049–50 (1970).

[18] Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1648 (2017) [hereinafter Cummings, *Movement Lawyering*]; *see also* Amna Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821 (2021).

of lawyering, and there are nuanced differences in priorities and strategies.[19] We choose to expansively use the term "critical lawyering" as a broad lawyering effort to redress social injustice by operationalizing critical legal theory principles within the practice of law.[20] A number of scholars have explored the gaps and intersections between critical theories and clinical legal education.[21] Some have suggested there is a mismatch between the critical theory and the poverty lawyering practice that it critiques.[22] Yet, there is a limited supply of literature on how to actually operationalize critical theory within experiential education.

We seek to encourage experiential faculty[23] to not only marry critical theories and lawyering theory, but ultimately to develop experiential pedagogies to teach the

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[19] *See generally* Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347 (2012) (discussing an argument against creating a hierarchy in approaches).

[20] Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 287 (1997).

[21] Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV. 203, 203–04 (2019); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 3–5 (2015); Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 164–67 (2005); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1600–02 (1990); Carol Bettinger-Lopez, Davida Finger, Meetali Jain, JoNel Newman, Sarah Paoletti & Deborah M. Weissman, *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 378 (2011); Goldfarb, *Beyond Cut Flowers*, *supra* note 1, at 722; Abbott, *supra* note 20; Ruth Buchanan & Louise G. Trubek, *Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687, 715 (1992); Kotkin, *supra* note 8, at 245; Hoffman & Vahlsing, *supra* note 9, at 256 (considering how transnational human rights lawyering can consider "critical models of lawyering").

[22] Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297, 299 (1992) ("High talk about language, meaning, sign, process, and law can mask racist and sexist ugliness if we never stop to ask: 'Exactly what are you talking about and what is the implication of what you are saying for my sister who is carrying buckets of water up five flights of stairs in a welfare hotel?'"); Bettinger-Lopez et al., *supra* note 21, at 361–62 ("[C]ritical theory and literature, including that regarding structural conditions that enable the persistence of poverty, has been divorced from the everyday practice of poverty law."). The movement to understand the interaction between theory and law practice has been termed "theoretics of practice." Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398, 1399 (1991–1992); *see also* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2111 (1991); Robert D. Dinerstein, *A Mediation on the Theoretics of Practice*, 43 HASTINGS L.J. 971, 988–89 (1992).

[23] Critical lawyering can be taught in a number of stages and settings, such as on the job training and continuing legal education sessions, and in any practice area. However, we

product of that marriage—critical lawyering.[24] Twenty-five years ago, Lucie E. White asked, "[w]hat kinds of clinical scholarship can help translate our inchoate visions of collaborative lawyering into a grounded knowledge that can inform poverty lawyering and clinical teaching in the varied settings where we work?"[25] Answering this invitation by integrating critical and lawyering theories into practice and then adapting experiential pedagogy to better promote critical theory-informed practice is an ambitious undertaking. Our Article offers one effort in this larger project of integrating critical theory[26] into experiential pedagogy,[27] in the context of client interviewing. We introduce one illustration of the pedagogy of critical interviewing, *The Legal Interviewing and Language Access Film Project (LILA)*.[28]

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are focused on teaching interviewing in law schools, so this Article is particularly intended for faculty teaching interviewing in clinics, simulation courses, and externship courses. This focus in no way undermines our strong belief that issues of racism, bias, misogyny, and other issues should absolutely be affirmatively raised and discussed in doctrinal law school courses and throughout the curriculum.

[24] While critical lawyering has long been discussed in the poverty law arena, we suggest that interrogating power differentials and considering how to address bias stemming from historical and structural oppression should be incorporated into all legal settings, as it is relevant to all legal relationships. While some private law firm cultures might not value or encourage an intersectional and collaborative approach to interviewing, lawyers, clients, and communities might benefit from such a lens. This approach might further attract and retain attorneys of color, women, LGBTQ+ individuals, and others and it may assist in better connecting to clients of various backgrounds, as well as encouraging more effective collaborations with interpreters, paralegals and others who are part of the legal interviewing team. We also recognize that some of our colleagues are already doing this. Carolyn Grose, for example, teaches a seminar titled "Critical Lawyering in these Times." E-Mail from Carolyn Grose, Dir. of Skills Integration, Mitchell Hamline Sch. of L., (Jan. 23, 2020) (on file with authors). Kimberly O'Leary and Mable Martin-Scott have developed a seminar called Multicultural Lawyering and developed a textbook to help "students explore many dimensions of culture, including race, gender, sexual orientation, disability, national identity and many other topics." E-Mail from Kimberly E. O'Leary, Professor of Law, W. Mich. U. Cooley Law (July 30, 2020).

[25] White, *Collaborative Lawyering*, *supra* note 10, at 160.

[26] By critical theories, we refer to what has been termed "outsider jurisprudence," including but not limited to Critical Race, Black-Crit, LatCrit, Feminist, DisCrit, Queer/OutCrit, and other related legal theories. For some compilations of Critical Race Theory, see DERRICK A. BELL, RACE, RACISM AND AMERICAN LAW 136–37 (4th ed. 2000); *see also* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995); *see also* RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY 3–4 (3d ed. 2017).

[27] *See* Ball, *supra* note 21, at 5 ("[T]he contributions of critical legal theory to clinical education are underexplored generally . . .").

[28] *See* Laila L. Hlass & Lindsay M. Harris, *Legal Interviewing and Language Access Film Project*, TULANE UNIV. L. SCH., https://law.tulane.edu/content/legal-interviewing-and-language-access-film-project [https://perma.cc/LN5C-4JXM] (last visited Nov. 4, 2020); *see*

The videos, easy to adapt for use in the remote teaching context, provide legal educators with an innovative tool to discuss challenges that arise within critical interviewing, including addressing bias and collaborating with law school clinic partners, interpreters, and clients. The films enliven and deepen the learning environment by modeling and reverse-modeling[29] critical interviewing techniques, as well as stimulating classroom discussion, reflection, and role play.

In this Article, we first set forth the contours of the canonical client-centered interviewing pedagogy and methodology. Second, we outline the tenets of critical lawyering—a lawyering practice animated by critical legal theories. Next, we advance the pedagogy of critical interviewing, building upon the rich client-centered lawyering texts. It also serves to unearth what has been under-emphasized in existing pedagogy—namely, a central inquiry into power dynamics and an expansive view of collaboration in various legal relationships implicated in an interview.[30] We describe one methodology of teaching critical interviewing, using the Legal Interviewing and Language Access films to surface a multitude of issues that arise in critical interviewing. We contemplate areas ripe for further exploration within critical interviewing pedagogy. Ultimately, the Article calls for new pedagogical tools to teach critical lawyering skills.

I. PEDAGOGY OF CANONICAL CLIENT INTERVIEWING

Before examining the contours of critical interviewing as an emerging pedagogy, we first explore existing pedagogies here. We begin with the acknowledgment that teaching legal interviewing is difficult.[31] This Part aims to acknowledge that difficulty and to provide a grounding in our goals in teaching interviewing skills. Even with some consensus on some "good interviewing" techniques, teaching those skills—using active listening and a client-centered

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also UDC Law Staff, *Law School Clinics Across the Country Adopt Prof. Harris' Client Interviewing Training Module*, UDC/DCSL (Feb. 28, 2019), https://www.law.udc.edu/news/440172/Law-School-Clinics-Across-the-Country-Adopt-Prof.-Harris-Client-Interviewing-Training-Module.htm [https://perma.cc/HP2A-5QAE].

[29] By reverse modeling, we refer to demonstrating false assumptions and unsuccessful performance of skills in order to help students identify common mistakes and to consider how to best plan for a more successful experience. For example, Priya Baskaran, Laila Hlass, Allison Korn & Sarah Sherman-Stokes, *Experiential Learning Through Popular Multimedia*, W. VA. UNIV. (Oct. 13, 2017), https://popularmedia.law.wvu.edu/ [https://perma.cc/FP6K-EL8X] (explaining how multimedia of lawyers performing skills can provide a shared experience where students can comfortably critique skills "because some of the 'worst' lawyering is on display"); THE MEDIA METHOD: TEACHING LAW WITH POPULAR CULTURE (Christine A. Corcos ed., 2019).

[30] Little has been written about the nuts and bolts of how to engage in collaborative lawyering. *See* Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 159 (2000).

[31] As Laurie Shanks has explained, "'[h]ow to hear' is what I teach. It isn't easy." *See* Laurie Shanks, *Whose Story Is It, Anyway? Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 509 (2008).

orientation—offers challenges in choosing the most fitting text(s), designing the seminar, and developing appropriate exercises and assessment tools. Essential, and often underdeveloped, in teaching interviewing is a framework for what we term, "critical interviewing." By this we mean an explicit focus on seeking to understand power and privilege disparities, and the larger context of the client's lived experience related to the intersectional identities of the advocates and the client. All of this must be considered in figuring out a collaborative approach to lawyering and social justice goals. In the interviewing context, this collaborative approach may entail working not only closely with a client, but also potentially with interviewing partner(s), supervisor(s), and interpreter(s).

A. Contours of Client Interviewing Pedagogy

First, we explore the contours of client-centered interviewing pedagogy, before describing various methodologies to impart interviewing skills. This rich framework provides the foundation on which critical lawyering is built. Teaching interviewing skills has long been a focus within clinical education.[32] Client-centered interviewing is a dominant model of lawyering.[33] Without this orientation, "lawyer-client interviews can be interpreted as non-neutral encounters that reinforce and reproduce the institutions and asymmetrical relationships in which they are embedded."[34] Client-centered lawyers must consider and reflect in practice their client's values, feelings, and preferences.[35] Client-centered lawyering aims to adapt the legal approach based on the client—their needs, desires, values, and goals.[36] This may

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[32] *See, e.g.*, DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY 124–25 (1978); ROBERT F. COCHRAN, JOHN M.A. DIPIPPA & MARTHA M. PETERS, THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING 4–6, 73 (3d ed. 2014); STEFAN H. KRIEGER & RICHARD K. NEUMANN, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS, (5th ed. 2015); THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (4th ed. 1997); STEPHEN ELLMAN, ROBERT DINERSTEIN, ISABELLE GUNNING, KATHERINE KRUSE & ANN SHALLECK, LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING 6 (2009).

[33] ELLMAN ET AL., *supra* note 32, at 6 ("To be *client centered* is to emphasize the client as the prime decision-maker in the lawyer-client relationship and the person who decides the objectives of the representation.") (emphasis in original); COCHRAN ET AL., *supra* note 32, at 4–6 (outlining the client-centered counseling model as a departure from traditional authoritarian interviewing, but proposing the collaborative decision-making model as the most desirable approach).

[34] Gay Gellhorn, Lynne Robins & Pat Roth, *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 CLINICAL L. REV. 245, 249 (1994) (citations omitted).

[35] DAVID A. BINDER, PAUL B. BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 5 (4th ed. 2019).

[36] *Id.* at 4.

include addressing non-legal concerns and ensuring the client is actively engaged in making decisions.[37]

Client interviewing pedagogy illuminates various purposes of interviews—from an initial client meeting or intake interview, to fact-finding and investigation, client counseling, witness preparation, and some combination of the above. This Article focuses on the pedagogy of teaching law students how to prepare for an initial client interview, involving a good deal of fact-finding and some counseling. We place special emphasis on the pedagogy of a first client interview, as it sets the tone, ground rules for the attorney-client relationship, client goal setting, and also includes some fact investigation. Often, in clinical settings and in lawyering, the "first interview" is not always the client's first interview or interaction with the clinic or law office. Rather, in this context, the first interview refers to the first time that a student or a team of students are interviewing the client(s) assigned to them.[38]

We suggest two broad teaching goals in an initial client interview: 1) to build and maintain an "effective working relationship with our clients"; and 2) to acquire "complete and accurate information about their situation and desires."[39] With these two goals, students will break down further related sub-goals for the interview, including building rapport and trust, explaining key legal concepts, and perhaps most importantly, actively listening to understand the client's problems and story. Topics within clinic seminar include how to explain roles, how to listen, how to elicit client goals, how to ask questions, how to respond to sensitive and emotionally difficult moments, and how to begin and end an interview.

Using the traditional clinical pedagogy of "plan, perform, and reflect,"[40] we examine client-centered interviewing considerations for a first interview in turn: 1)

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[37] *Id.*

[38] We should also note that students and lawyers often do have *some* information about the prospective client going into a first interview or meeting. There may be a referral from another agency or attorney, a phone intake or screening, or other documents that give the student or attorney some information about the client. As Alicia Alvarez and Paul Tremblay note, there is something about preparing for the unknown—an interview that has not yet occurred—that is both challenging and may seem counterintuitive. *See* ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 23 (1st ed. 2013).

[39] Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y. L. SCH. L. REV. 169, 171 (1990).

[40] SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 24 (2014) ("Clinical teachers call this activity 'planning, doing, and reflection,' an ongoing process of preparation, action and learning that will inform future action."); Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 332 (2015) (The "planning-doing-reflecting model . . . helps students 'learn how to learn from experience,' encouraging lifelong learning habits"). We prefer to use the term "perform" in place of "do" as it emphasizes in training students to be reflective lawyers that we don't just "do," but that every act as a lawyer should be, as far as possible, planned and

Planning: interview preparation; 2) Performing: the substance of the interview itself; and 3) Reflecting: interview conclusion and post-interview work.

Planning, or interview preparation, is the first stage. Before an interview even begins, advocates must give some level of thought to when, where, and how the interview will be conducted, including space and set up.[41] This preparation should keep in mind a trauma-informed approach to lawyering.[42] When, for example, students have an inclination that a client may suffer from or has been diagnosed with Post-Traumatic Stress Disorder and might be triggered by small spaces or a room without natural light, these considerations are particularly important.[43] Prior to the interview, students should give some thought to how they will organize the

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intentional, and potentially rehearsed in the same way that one might rehearse for the performance of a play.

[41] SHAFFER & ELKINS, *supra* note 32, at 233–37 ("The physical setting in which interviewing and counseling take place is usually of the lawyer's choosing. Traditionally, it has been an atmosphere of tacit intimidation."); COCHRAN ET AL., *supra* note 32, at 56 (explaining the importance of a comfortable physical setting and positioning of the lawyer and client); Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437, 506 (2008) ("Psychological research has shown that the physical environment can be important in setting the tone for an interview."); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 25 (considering where a meeting should take place and the set up of the room in the transactional lawyering context); DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 72 (2002) (discussing "proxemics," the impact of spatial relationships on communication).

[42] A whole host of considerations must be taken into account when working with traumatized populations. *See, e.g.*, Hannah C. Cartwright, Lindsay M. Harris, Liana M. Montecinos & Anam Rahman, *Vicarious Trauma and Ethical Obligations for Attorneys Representing Immigrant Clients: A Call to Build Resilience Among the Immigration Bar*, 2 AM. IMMIGR. LAW. ASS'N L.J. 23, 34 (2020); Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163, 177–80 (2007); Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 HASTINGS RACE & POVERTY L.J. 235, 241 (2007) ("This article addresses how PTSD alters an asylum applicant's detail and consistency of memory, thus affecting the applicant's credibility and chance of being granted asylum."); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 362 (2016) ("[T]his article will provide tools for teaching trauma-informed practice in all law school clinic settings."); *see generally* Julie Marzouk, *Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases*, 22 CLINICAL L. REV. 395 (2016) (presenting a case study of unaccompanied minors likely to arise in domestic violence-based asylum cases "to highlight systemic problems in the current legal paradigm with the intent of inscribing critical analysis into the teaching of these cases").

[43] For example, one asylum-seeker described how being interviewed in a small room triggered a prior interrogation by government officials. *See* DAVID NGARURI KENNEY & PHILIP G. SCHRAG, ASYLUM DENIED: A REFUGEE'S STRUGGLE FOR SAFETY IN AMERICA 90–118 (1st ed. 2008).

interview, in addition to roadmapping the interview and framing the issues and purpose of the interview for the client.[44] A common pitfall of client interviewing is failing to explain to the client the purpose or goals the lawyer has in collecting the client's information, including sensitive history and experiences.[45] Without this kind of framing clients are not treated "as equals in the construction of their own stories; they can only respond to what is asked of them."[46] During the pre-interview stage, students must also consider a variety of topics as they develop an interview plan. Topics may include how to begin, build rapport, listen, show empathy, formulate questions, close the interview, interview collaboratively and work with an interpreter, if needed.

[44] BINDER & PRICE, *supra* note 32, at 103–08 (explaining the benefits of a "preparatory explanation" at the conclusion of the "preliminary problem identification"); COCHRAN ET AL., *supra* note 32, at 93 (advocating for the use of a "framing statement" after the client has shared her story to restate important parts of that story and explain the next steps); Cara Cunningham Warren, *Client Interview Training: A Reflection on the "Quantum Shift" in Legal Education*, 96 MICH. B.J. 42, 43 (2017) (advising students to "empower the client to participate" through telling the client: 1) what to expect, 2) what information is needed, and 3) confirming confidentiality); Sternlight & Robbennolt, *supra* note 41, at 495 (urging attorneys to set expectations at the beginning of an interview, encouraging clients to share detailed responses, not to edit responses, and to provide complete answers); Robert Dinerstein, Stephen Ellman, Isabelle Gunning & Ann Shalleck, *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 763 (2004) ("Providing clients with explanations can alleviate that sense of disconnection from the questions of the lawyer and can build (or rebuild) sympathy and connection. Explanation is also a good way to convey your respect for the client's dignity and privacy."); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 23, 50 (discussing that part of roadmapping also includes repeating back to the client what you have understood as the lawyer, allowing the client to add anything you may have missed, and share that you are ending one topic and moving on).

[45] Shanks, *supra* note 31, at 513 ("Rarely does the lawyer explain to the bewildered or apprehensive client why the questions are important or how the answer will be used."); *see also* Gellhorn et al., *supra* note 34, at 249 ("Lawyers who are poor interviewers listen only selectively to their clients, do not provide an understandable framework for their questions, and often unintentionally prevent clients from relating pertinent information.").

[46] Gellhorn et al., *supra* note 34, at 249.

Client-centered lawyering texts generally recommend[47] considering "cross-cultural" considerations,[48] "multicultural lawyering"[49] or striving for "cross-cultural competency" as part of preparation.[50] This focus intends to address the impact of lawyers and law students' assumptions when relating to their client, in the context of both their and their clients' cultural identities and experiences.[51] Texts suggest cross-cultural lawyering involves appreciating perceived differences and similarities in cultures.[52] Examples of differences in culture include interpersonal space, body language, time considerations, individualism, collectivism, and formality.[53] In discussing cross-cultural considerations, one leading text suggests starting from self-

[47] Given the differences occurring across and within populations, some have cautioned against one model for interviewing. *See, e.g.*, Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 376 (2002) [hereinafter Tremblay, *Interviewing and Counseling*] ("If, though, the community in which you work is filled with a variety of interpersonal patterns, and a multiplicity of ways of understanding the world, then any 'model' faces a distinctly more onerous challenge."); Dinerstein et al., *supra* note 44, at 756 ("[N]o framework can be followed blindly."); Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS. L.J. 1039, 1059 (1992) (espousing the idea "that there is no one [right] way to practice law effectively").

[48] BINDER ET AL., *supra* note 35, at 5–10.

[49] KRIEGER & NEUMANN, *supra* note 32, at 65–76.

[50] CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS 49–62 (2017); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 207–31 (discussing multicultural lawyering and cultural competence).

[51] As Sternlight and Robbennolt explain, "[c]ulture may also be related to differences on a variety of other dimensions that have implications for client interviewing and counseling." Sternlight & Robbennolt, *supra* note 41, at 510–11 ("For example, cultures differ in terms of the meaning that is attributed to silence in an interaction, the degree of formality expected, the appropriateness of interruptions, understandings of the meaning of eye contact, the contours of personal space, conceptions of time, conventions about the display of emotion, the appropriateness of self-disclosure, how agency is viewed, and attitudes towards authority.") (citations omitted).

[52] *See* KRIEGER & NEUMANN, *supra* note 32, at 65–66 ("If you ignore the differences among cultures—or if you think of people in cultural stereotypes—you will alienate clients, witnesses, other lawyers, and judges and juries. You will also cut yourself off from a great deal of information . . . ").

[53] *Id.* at 66–68; BINDER ET AL., *supra* note 35, at 7–10 (proxemics, kinesics, eye contact & facial expressions, time and priority considerations, uncertainty avoidance, power distance, individualism/collectivism, long-term/short-term, high-context/low-context); *but see* ELLMAN ET AL., *supra* note 32, at 39 (discussing relationship building between an African American lawyer, who experienced being discriminated against in segregated Birmingham, with a White client, who garnered privilege from the Jim Crow social structure).

reflection on "sameness and difference" between the advocate and the client.[54] While understanding others' cultures, advocates must not resort to stereotypes.[55]

Self-reflection about one's own identity, as well as the information students may be able to glean even before a client meeting about a client's cultural identity, is a first, important step in the pre-interview stage, as well as throughout the interview.[56] However, this kind of individual comparison is just the starting point; critical interviewing principles deepen this reflection by considering historical and systemic biases.[57] Performing, or conducting the interview, is the second stage. Students must keep a great deal in mind as they conduct the actual interview itself. As they begin to interview, students should pay attention[58] to how they open the interview, recognizing that key information may be disclosed in the first few moments of the interaction.[59] Some key elements may involve introducing

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[54] BINDER ET AL., *supra* note 35, at 5; similarly, see GROSE & JOHNSON, *supra* note 50, at 50–51 ("Cross-cultural means that we are in a relationship or relating to someone across or among similar or different cultures."); in the influential *Five Habits of Cross-Cultural Lawyering*, Habit One includes mapping one's own identity and one's client's in terms of sameness and difference, or "separation" and "connection." *See* Sue Bryant & Jean Koh Peters, *Five Habits of Cross-Cultural Lawyering and More*, YALE UNIV., https://fivehabits andmore.law.yale.edu/jean-and-sues-materials/habits/habit-1/ [https://perma.cc/7BRU-8QHU] (last visited Nov. 9, 2020); *see* ELLMAN ET AL., *supra* note 32, at Chapter 2.

[55] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 378 ("To ignore likely differences in culture is an invitation to malpractice in counseling; to presume you know what those differences will be once you know your client's race or sex or cultural background is an invitation to dehumanize or reify your client, and to assume generalizations that may not apply to him.").

[56] *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) [hereinafter Bryant, *The Five Habits*] (describing approach to cross-cultural lawyering developed with Jean Koh Peters); *see also* Kashyap, *supra* note 9, at 406–07 (setting out self-examination and self-awareness as the first foundational principle of community lawyering); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 66–71 (discussing self-examination of one's own cultural identity as an important step in addressing "cross-cultural issues").

[57] We note and appreciate Ibram X. Kendi's thinking on "systemic," "institutional," or "structural" racism. He notes that these are "vaguer terms than 'racist policy' . . . 'Racist policy' is more tangible and exacting and more likely to be understood by people, including its victims, who may not have the benefit of extensive fluency in racial terms. 'Racist policy' says exactly what the problem is and where the problem is. Institutional racism and 'structural racism' and 'systemic racism' are redundant. Racism itself is institutional, structural, and systemic." KENDI, *supra* note 3, at 18.

[58] Gellhorn et al., *supra* note 34, at 283.

[59] *Id.* at 325 (explaining that in the opening moments of an interview "[o]ften interviewers are focused on themselves or make the assumption that nothing substantive is happening in this phase."). In our own experience we have observed students who do not even press record in the opening moments of an interview (where recording is a clinic requirement) and, thus, we lose the opportunity to analyze those first few exchanges of words.

themselves, establishing roles, explaining confidentiality,[60] and determining what questions the client has. Clinic students will need to think through notetaking,[61] and students who must record an initial interview will need to seek permission for recording.

From the moment the interview begins, students should make efforts to establish rapport, recognizing that doing so may be accomplished in many different ways.[62] Rapport is "closely related to trust" and has three interrelated characteristics: "1) mutual attentiveness—where both participants attend to and are involved with each other; 2) 'positivity'—a reciprocal sense of consideration for each other; and 3) 'coordination'—a sense of responsiveness to each other or of being 'in sync.'"[63] Establishing rapport may also involve ascertaining the client's goals, without making assumptions about what those goals may be.[64] One question in rapport-building that students often confront is how much of their own lives, experiences, and feelings to share with clients.[65]

Next, advocates must encourage the client to describe her own situation.[66] One interviewing expert describes allowing the client to "give an uninterrupted narrative about her problem" as "[p]erhaps the single most important benefit of the client-centered format."[67] Krieger and Neumann advocate going beyond a simple narrative

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[60] *See, e.g.*, ALVAREZ & TREMBLAY, *supra* note 38, at 30–31 (advocating for students to explain confidentiality and fees in the transactional lawyering context).

[61] *See id.* at 68.

[62] Linda F. Smith, *Was It Good for You Too? Conversation Analysis of Two Interviews,* 96 KY. L.J. 579, 645–46 (2007) [Smith, *Was It Good for You Too?*] ("The question of how to best establish rapport is a more complicated one. It appears that people are different in conversations—some like narrative and control, others are happy to be responsive and have the professional control the conference. . . . [I]t is probably much more feasible for law students (and for attorneys) to learn about their own conversation styles and tendencies than to arbitrarily adopt unnatural styles."); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 29 (discussing building rapport through engaging in "ice breaking" with the goal of putting "the person at ease."); *see also* CHAVKIN, *supra* note 41, at 67 (discussing ice breaking and small talk).

[63] Sternlight & Robbennolt, *supra* note 41, at 502.

[64] KRIEGER & NEUMANN, *supra* note 32, at 105–07.

[65] Dinerstein et al., *supra* note 44, at 766 ("[P]ersonal disclosure is a matter of personal choice . . . . Your willingness to share can make the relationship feel less imbalanced as well as underscore your ability to empathize or sympathize with the client's situation.").

[66] Smith, *Was It Good for You Too?*, *supra* note 62, at 644 ("These two interviews both suggest that question form is not as important as is providing the client substantial opportunity to talk . . . Giving clients time to talk allows them to disclose even difficult facts about their situation.").

[67] Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 583 (1995) [hereinafter Smith, *Interviewing Clients*]; COCHRAN ET AL., *supra* note 32, at 70–73 (describing opening framing statements to facilitate client narrative); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 35, 39 (asking the client to identify the issues—"it is important that you give the client the opportunity to frame the questions in her own words . . ." and in allowing the client to frame the narrative she "has the floor").

approach and engaging in "cognitive interviewing," using four techniques to help an interviewee remember as accurately as possible.[68]

Active listening is important,[69] but not in a way that actually stifles client disclosure.[70] Indeed, a client-centered interview should be "conversational, with the power and control more evenly balanced than in the 'traditional' interview."[71] As Krieger and Neuman explain, "[l]istening includes *figuring out the person who is speaking.* What matters to her as a person? How does she see the world?"[72] At the same time, while active listening is important, clinical supervisors often observe a failure of law students to allow for silence within an interview.[73] Texts on active listening emphasize the importance of body language[74] and non-verbal behaviors,

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[68] KRIEGER & NEUMANN, *supra* note 32, at 90–92.

[69] BINDER ET AL., *supra* note 35, at 74; *see also* Peters & Peters, *supra* note 39, at 190–91 ("Active listening confirms, clarifies, and solicits objective information because these statements are often heard as requests to share more detail about the topics paraphrased."); KRIEGER & NEUMANN, *supra* note 32, at 54, 59 ("'[A]ctive listening': encouraging the other person to talk and occasionally asking the other person to clarify something that is confusing or to add details to something that would otherwise be sketchy."); ELLMAN ET AL., *supra* note 32, at 27, at 17–21 (highlighting active listening techniques including reflecting and validation); COCHRAN ET AL., *supra* note 32, at 38–44 (describing reflective statements); Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 156 (2012) ("One definition of active listening involves identifying a client's vaguely or inarticulately stated observations and feelings and reflecting them back to the client to show understanding or to allow the client to correct a misunderstanding.") (citations omitted); Dinerstein et al., *supra* note 44, at 758–62 (explaining the importance of active listening).

[70] Gellhorn et al., *supra* note 34, at 285–86 (noting the risk of some active-listening techniques cutting off the client's story in the opening moments of an interview); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 58–61 (discussing the importance of listening and being truly present, but also recognizing passive listening as a tool and technique).

[71] Smith, *Interviewing Clients*, *supra* note 67, at 583.

[72] KRIEGER & NEUMANN, *supra* note 32, at 53 (emphasis in original); *see also* COCHRAN ET AL., *supra* note 32, at 27–32 (on listening and active listening).

[73] Hamilton, *supra* note 69, at 159 (momentary silence can be "an effective tool, allowing the client to collect his or her thoughts and then provide information in a more comfortable fashion."); *see also* Stefan H. Krieger, *A Time to Keep Silent and a Time to Speak: The Functions of Silence in the Lawyering Process*, 80 OR. L. REV. 199 (2001) (discussing the role of silence during communications); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 47, 59 ("silence is fine" and can be an important passive listening technique).

[74] Sternlight & Robbennolt, *supra* note 41, at 493 ("[A]ttorneys need to be conscious of messages they may inadvertently convey to their clients that signal a lack of attention to clients' answers."); Tremblay, *Interviewing and Counseling*, *supra* note 47, at 392 (explaining kinesics as "the way in which bodily movements are used and interpreted").

including positioning,[75] eye contact, note-taking,[76] posture, and other nonverbal cues.[77]

Students should demonstrate empathy, critical for both rapport-building and active listening.[78] Empathy is particularly important when clients relay information about past trauma or other sensitive topics, as well as when clients become demonstrably upset or withdrawn.[79] Further, interviewers should try to avoid interruptions, although some experts distinguish between competitive and

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[75] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 389 (explaining the concept of proxemics as the "perception and use of personal and interpersonal space") (citations omitted).

[76] Shanks, *supra* note 31, at 513 ("Typically, the lawyer's eyes are focused on the legal pad as he or she writes down the responses, with darting glances toward the client's face only as the next question is being asked. The lawyer is oblivious to a client's rolling of the eyes, slouching in the chair, and stiffening of the jaw and arm muscles. Downcast eyes, tearing, and hand wringing are easily missed."); *id.* at 533 ("Then, explain to the client why it is necessary to take notes and what the notes will be used for . . . ").

[77] Hamilton, *supra* note 69, at 158 (highlighting the importance of body language including positioning, eye contact, note taking, nodding, facial expressions, and posture).

[78] Linda F. Smith, *Always Judged—Case Study of an Interview Using Conversation Analysis*, 16 CLINICAL L. REV. 423, 441 (2009) [hereinafter Smith, *Always Judged*] ("[L]awyers should develop rapport by expressing empathy through active listening, reflecting the facts and feelings the client has expressed."); KRIEGER & NEUMANN, *supra* note 32, at 54–55 ("Empathy is invaluable in interviewing, counseling, and negotiating."); ELLMAN ET AL., *supra* note 32, at 31 ("By empathy we mean to suggest less of an emotional or psychological alignment with the client than sympathy captures but still a sense of your ability as a lawyer to share some of the feelings that the client expresses."); Hamilton, *supra* note 69, at 151 (empathy is "commonly recognized as an ability to feel a response to a situation that is appropriate for the other person and to put aside personal biases."); Warren, *supra* note 44, at 43 (empathy can be conveyed through maintaining eye contact and acknowledging the client's feelings); Dinerstein et al., *supra* note 44, at 758 ("Empathy and its cousins, including sympathy, approval and support, are key ingredients in the kind of respectful and helping lawyer-client relationship that we envision."). *But see* Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 491 (1998) ("Whether to respond to clients with empathetic connection or detached neutrality is a lawyering choice, one among many, about which attorneys will legitimately differ and, if they are to find satisfaction in their profession, should be permitted to differ."); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 62 (on the importance of empathy); *but see* Paul Bloom, AGAINST EMPATHY: THE CASE FOR RATIONAL COMPASSION (2016) (arguing that empathy can lead to poor judgment, acting from prejudice, and can result in cruelty).

[79] Many experiential educators use the short video by Dr. Brené Brown explaining the difference between sympathy and empathy, see RSA, *Brené Brown on Empathy*, YOUTUBE (Dec. 10, 2013), https://www.youtube.com/watch?v=1Evwgu369Jw [https://perma.cc/NS 5K-BNFL].

collaborative interruptions.[80] In general, open-ended questioning should be used[81] to foster a "climate of openness and understanding" and give the client some control over the interview.[82] When a client has begun to disclose information, attorneys should then pose follow-up questions[83] or use the funnel method.[84]

Attorneys should avoid compound questions.[85] Some experts posit that interviewing need not be too driven by legal case theories.[86] Related to this, law students often unnecessarily use legalese, language that is often inaccessible to clients.[87] The final stage is reflecting, including concluding the interview and post-interview work. Properly concluding the interview is critical.[88] Students should include clarifying the next steps for both advocate(s) and client(s), and a timeline for

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[80] Smith, *Was It Good for You Too?*, *supra* note 62, at 592 ("[C]ooperative interruptions occurring when one speaker repeats what the other has said or begins to provide an answer before the question is completed, often occurring at the end or beginning of utterances. Competitive interruptions occur when one speaker attempts to change the subject or insists on a response different than the one the other speaker is providing, often occurring mid–utterance and indicating a struggle for control."); *see also* Smith, *Always Judged*, *supra* note 78, at 438 ("[S]imultaneous talk is not always a dysfunctional interruption indicating a fight for control of the conversation.").

[81] Smith, *Always Judged*, *supra* note 78, at 436 ("The use of open questions may be particularly important with disempowered clients who may need additional encouragement to voice their concerns and goals."); Sternlight & Robbennolt, *supra* note 41, at 540–41.

[82] BINDER ET AL., *supra* note 35, at 40–41.

[83] Gellhorn et al., *supra* note 34, at 249 ("[B]y not following up on information offered by clients, or by controlling the floor and topic, lawyers define the limits of the legal discourse and clients are silenced."); *see also* Smith, *Interviewing Clients*, *supra* note 67, at 584 ("[c]onfirming [q]uestions [s]hould [b]e [a]sked"); COCHRAN ET AL., *supra* note 32, at 44–50 (describing the utility of various types of questions).

[84] BINDER ET AL., *supra* note 35, at 93, 125; *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 47, 67 (describing the "T-Funnel" method and a combination of open and closed questions).

[85] Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 385 (2000); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 37.

[86] Smith, *Was It Good for You Too?*, *supra* note 62, at 644.

[87] Shanks, *supra* note 31, at 513 ("Complex legal terms, such as indictment, bail, information, discovery, and predicate offenses are used without explanation or an attempt to determine the client's level of understanding."); CHAVKIN, *supra* note 41, at 118 (highlighting the importance of making information accessible to clients through careful choice of language that clients will understand); McCaffrey, *supra* note 85, at 347, 355 ("[U]se of ordinary English rather than legalese is more likely to produce accurate understanding."); Nidia Pecol, *Reflections on Interpreting: Help for the Criminal Practitioner*, 32 FALL CRIM. JUST. 28, 33 (2017) (advising attorneys to "[r]efrain from using legalese, acronyms, and pronouns" when working with an interpreter).

[88] Smith, *Interviewing Clients*, *supra* note 67, at 550 (citing BINDER ET AL., *supra* note 35, at 225 ("Finally, the attorney should adjourn the interview, without necessarily assessing the client's legal position fully.")); COCHRAN ET AL., *supra* note 32, at 95 (outlining steps to take at the end of every interview).

completion.[89] If an interview has involved discussion of sensitive topics, students should think carefully through how to transition from an intense interview to the rest of the client's day.[90] Students should also ensure that their client has ample space to raise questions about the process, the law, or any other topics.

Part of post-interview work includes reflecting on how the interview actually went and asking whether the goals were achieved. This entails a discussion with a supervisor reflecting on partner dynamics and collaboration, assumptions and stereotypes that may have arisen during the interview, as well as how students handled the unexpected. Post-interview work also includes capturing the work achieved during the interview in the form of interview notes, a client declaration, or other work product.[91] Finally, post-interview work includes debriefing, especially in working with survivors of torture or trauma, to encourage students to process their own emotional responses to the interviewing in a way that builds resilience and ensures the long-term sustainability of the students' work in the field.[92]

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[89] KRIEGER & NEUMANN, *supra* note 32, at 108–10; *see also* ELLMAN ET AL., *supra* note 32, at 20 (describing the need for a "graceful exit," including confirming contact information, detailing next steps, and setting up expectations and the next meeting or contact); *see also* ALVAREZ & TREMBLAY, *supra* note 38, at 58 (advising that in concluding a transactional client interview, students should communicate information about the attorney-client relationship, fees, next steps, and documents or other information needed); *see also* CHAVKIN, *supra* note 41, at 72 (outlining five tasks to be considered in concluding an interview).

[90] Ways we suggest students do this often include asking the client to focus on something forward looking—how will you get home? What are you going to do after this meeting? This weekend? Next time we meet, we will cover x, y, and z. As appropriate, students may try to ask questions about a client's family, social interactions, religious engagement—although recognizing that for some clients these topics will not be positive.

[91] *See, e.g.*, ALVAREZ & TREMBLAY, *supra* note 38, at 58 (encouraging a student to write a memo to the file while the meeting is still fresh in her mind).

[92] *See, e.g.*, Cartwright et al., *supra* note 42 (making clear the imperative and ethical obligation for immigration attorneys to engage in vicarious trauma stewardship); *see also* LAURA VAN DERNOOT LIPSKY & CONNIE BURK, TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS 116–29 (1st ed. 2009) (discussing ways to navigate trauma response, including creating a "culture of support" to build resilience and energy); Marjorie A. Silver, Sanford Portnoy & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion*, *in* 19 TOURO L. REV. 847, 858–59 (2004); *see, e.g.*, Hannah C. Cartwright, Megan E. Hope & Gregory L. Pleasants, *Self-Care in an Interprofessional Setting Providing Services to Detained Immigrants with Serious Mental Health Conditions*, 65 SOC. WORK 82 (2020) (reviewing the barriers to self-care for social workers and lawyers in high-stress immigration services contexts); *see also* Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. (forthcoming 2021) (revealing the results of the 2020 National Asylum Attorney Burnout and Secondary Trauma Survey of immigration attorneys working with asylum seekers and recommending measures to be taken to address high levels of burnout and secondary trauma, in law schools and the legal profession).

B. Methodology for Teaching Interviewing

Integral to client interviewing pedagogy is both the substance of interviewing theory as well as the methodology of how to impart this substance. Teaching interviewing requires experiential faculty to make pedagogical choices about how to present the material. These choices may vary depending on the size of the class,[93] the student profile,[94] the type of course, and, we find ourselves adding in 2020, the format of the class—remote, in-person, or hybrid.[95] Whether material may be considered sensitive with the potential to trigger trauma responses is an important consideration. As with best practices in experiential pedagogy more generally, backwards design is key: designing a teaching plan regarding good interviewing must start with articulating goals. [96]

The various modes of engaging students in learning about client interviewing include texts, simulation, observation, and learning by doing. Each is discussed briefly below. Instructors may solely engage in one form of learning, or use a combination of these methods.[97] First, most experiential educators assign some reading on interviewing. This may include one of the classic interviewing texts,[98] or a more recent edition.[99] This reading, in conjunction with activities and other engagement on the topic, may help to ground students.

Second, some educators ask students to engage in simulation exercises to practice interviewing. The disadvantages of simulation are obvious—a somewhat static and non-dynamic set of facts—and students may not be as engaged because

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[93] For instance, in a very large class, an instructor might opt to conduct a fishbowl exercise, where the class observes one pair or group of performers. Other students may be invited to take over one role or another, asked to offer critique, or both. Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909, 932 n.82 (2008).

[94] Students may have varying amounts of past training and experience in interviewing and often represent a variety of types of learners and will also likely present diversity in all other dimensions.

[95] Interviewing is taught at times in simulation courses, clinical courses, and externship courses, which all offer different opportunities for performance of the skill.

[96] Wallace J. Mlyniec, *Developing a Teacher Training Program for New Clinical Teachers*, 19 CLINICAL L. REV. 327, 334 n.23 (2012) (citing GRANT P. WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (2d ed. 2005) (explaining the concept of backwards design—designing a class or course with the end goals in mind)).

[97] At the time of writing we are in the midst of a global pandemic with COVID-19 challenging legal educators, along with all other educators, to develop ways to best impart information and build skills for students using remote platforms. While this necessarily changes the modes in which we engage in teaching interviewing—the basic models of using text, simulation, observation and learning by doing may still be accomplished.

[98] *See, e.g.*, BINDER & PRICE, *supra* note 32; GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); COCHRAN ET AL., *supra* note 32; KRIEGER & NEUMANN, *supra* note 32; SHAFFER & ELKINS, *supra* note 32; CHAVKIN, *supra* note 41.

[99] *See, e.g*, GROSE & JOHNSON, *supra* note 50.

they are aware this is "just practice." Also, it is resource-intensive to provide individual feedback to individually simulated interviews, but without that feedback learning will be more superficial. In addition to providing individualized feedback, another capacity issue is providing "clients." Several educators have engaged the use of professional actors or partnered with theatre programs within their wider universities.[100] Others have brought in attorneys to conduct interviews of the law students—flipping the interview and giving the students an opportunity to experience being the interviewee.[101] Other educators use various exercises to drive home critical interviewing skills and insights.[102]

Third, some experiential educators use observation or modeling as a tool to teach interviewing. This may mean observing other attorneys conducting client interviews[103] or observing video-taped simulated interviews.[104]

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[100] Smith, *Was It Good for You Too?*, *supra* note 62, at 581–82 (detailing the use of actors at the University of Utah); Melissa Shafer, *Shakespeare in Law: How the Theater Department Can Enhance Lawyering Skills Instruction*, 8 PERSP: TEACHING LEGAL RES. & WRITING 108 (Spring 2000) (discussing the use of theater students for interviewing and counseling simulations at the Southern Illinois University School of Law); C. K. Gunsalus & J. Steven Beckett, *Playing Doctor, Playing Lawyer: Interdisciplinary Simulations*, 14 CLINICAL L. REV. 439, 450–54 (2008) (detailing the use of theatre students as skills coaches for law students at the University of Illinois).

[101] Tenielle Fordyce-Ruff, *Teaching Active Listening: Flipping Roles in Client Interviewing Exercises*, 22 PERSP: TEACHING LEGAL RES. & WRITING 131, 132 (Spring 2014).

[102] For example, Professor Laurie Shanks developed a creative exercise, students share with another student a moment that changed their lives, and then she requires the partner to re-tell the story to the class. Finally, she guides the group through a discussion and reflection on the exercise. Shanks, *supra* note 31, at 522–24; *see also* Hamilton, *supra* note 69, at 162–79 (proposing a series of exercises to develop law student listening skills).

[103] Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 336–39 (2005); *see also* Serge A. Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching,* 26 KAN. J.L. & PUB. POL'Y 24 (2016) (questioning clinical legal education's traditional reliance on nondirective supervision and highlighting the value, based on cognitive science and learning theory, of other approaches, including modeling); *see also* Lindsay M. Harris, *Learning in "Baby Jail": Lessons from Law Student Engagement in Family Detention Centers*, 25 CLINICAL L. REV. 155, 205 (2018) (discussing modeling in the context of preparing students to engage in intensive crisis lawyering within an immigrant family detention center by observing their professor conducting a client interview by phone with a detained parent); O'Grady, *supra* note 78, at 525–26 ("[O]bserving an assertive lawyer in action might spark a professor-student discussion of their respective visions of themselves in the lawyering world and what they want to do as lawyers.").

[104] For example, the ABA has created interview simulations. The American Bar Association, Section of Litigation, Children's Rights Litigation, *Interviewing the Child Client: Approaches and Techniques for a Successful Interview*, YOUTUBE (May 26, 2010), https://www.youtube.com/watch?v=OYLWkVHvgOM&t=126s [https://perma.cc/8JGH-FMK3]. The clinical faculty at the Center for Applied Legal Studies at Georgetown

Finally, experiential courses usually involve some "learning by doing." Live client contact and actual interviewing is usually preceded by some of the above—text, simulation, and observation. Some educators remain in the room to observe student interviews and provide feedback at a later time. Often, students are asked to record, by audio or visual means, their initial client interviews and will receive feedback on this interview from their professors and from their peers. Students may also engage in self-reflection of that interview, interrogating what went well and what may be improved upon in the interview. Of course, most experiential educators use a combination of the approaches outlined above.[105]

II. CRITICAL LAWYERING

Before introducing the concept of critical interviewing pedagogy, we explore the contours of the larger practice of critical lawyering, a practice animated by critical legal theories. Critical theory can make a significant contribution towards achieving the pedagogical goals of clinical education,[106] particularly in the context of client interviewing. Critical theory considers how subordination of certain communities is institutionalized systemically in formal and informal means, and therefore serves to critique the law, legal institutions, and lawyering practices.[107] As Margaret Johnson writes, "[f]eminist legal theory, critical race theory, and poverty law theory serve as useful frameworks to enable students to deconstruct assumptions they, persons within institutions, and broader society make about the students' clients and their lives."[108]

First, we define foundational principles of critical lawyering, which inform the concept of critical interviewing. Over time, a variety of distinct critical theories have developed, intentionally balking at a unified theory.[109] Therefore, critical, or "outsider"[110] theories comprise, but are not limited to, a collection of theories

University Law Center have also created simulations. *Experiential Learning, Simulation*, GEORGETOWN LAW CENTER, https://www.law.georgetown.edu/experiential-learning/simulations/ [https://perma.cc/A75E-D6G7] (last visited on Nov. 9, 2020).

[105] Gellhorn et al., *supra* note 34, at 292 ("Teaching methods included use of texts on legal interviewing, participation in simulated interviews, peer critique, supervisor observation of real client interviews followed by a meeting with the student to discuss the interview, and review of videotapes of simulated client interviews.").

[106] Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U.J. GENDER SOC. POL'Y & L. 161, 162 (2005).

[107] Ball, *supra* note 21, at 24.

[108] Johnson, *supra* note 106, at 162.

[109] Ball, *supra* note 21, at 25.

[110] On the origin of the term, see Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 329 HARV. C.R.-C.L. L. REV. 323 (1987).

including critical race theory,[111] Black-Crit,[112] feminist legal theory,[113] LatCrit,[114] DisCrit,[115] and queer theory.[116] These theories developed within multiple and overlapping social movements focused on the ways in which law often perpetuates dominant perspectives with an aim toward transforming the legal system to further social justice and equality.[117]

Critical theories attempt "to mediate the power dynamics between poverty and civil rights lawyers and clients" and ground the work in "community alliances and grassroots networks."[118] By grounding law practice in critical theories, critical lawyering focuses on building power for clients—both individually and collectively—while contextualizing fundamental injustices built within legal systems.[119] It resists essentializing individuals and communities—describing identity as unchanging across social categories—but instead understanding identity as multiplicitous and intersectional.[120] Collaboration between lawyers and clients and/or communities is a central tenet of critical lawyering;[121] this collaboration may also include working with an interpreter, an organizer and/or a community group leader.[122] Some other benefits of imbuing critical theory within clinical pedagogy are to promote creativity, higher-order thinking, professional identity formation and to contextualize legal work in larger systems of (in)justice.[123]

Experiential educators should work towards operationalizing critical theory in the classroom to teach lawyering skills from interviewing to fact investigation and

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[111] *See, e.g.*, DELGADO & STEFANCIC, CRITICAL RACE THEORY, *supra* note 26.

[112] *See* Hope Lewis, *Reflections on "Blackcrit Theory": Human Rights*, 45 VILL. L. REV. 1075, 1076 (2000) ("Critical Race scholarship [labeled as] "BlackCrit" addresses the significance of racial attitudes toward Africans and peoples of African descent in the structure and operation of the international human rights system.").

[113] For a history of feminist legal theory, see Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 FORDHAM L. REV. 977 (2018). For a critique of gender essentialism in feminist legal theory, see Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

[114] For an introduction to LatCrit theory, see Margaret E. Montoya, *Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999).

[115] *See, e.g.*, Zanita E. Fenton, *Disability Does Not Discriminate: Toward a Theory of Multiple Identity Through Coalition* in DISCRIT—DISABILITY STUDIES AND CRITICAL RACE THEORY IN EDUCATION 203, 204–05 (2016) (discussing critical legal theories and the role disability law and theory exists among other versions of critical theory).

[116] For one description of queer legal theory, see Francisco Valdes, *Afterword & Prologue Queer Legal Theory*, 83 CALIF. L. REV. 344, 362–75 (1995).

[117] Bettinger-Lopez et al., *supra* note 21, at 349–50.

[118] *Id.* at 361.

[119] Abbott, *supra* note 20, at 287–88.

[120] *See* Harrison & Montoya, *supra* note 15, at 402.

[121] Johnson, *supra* note 106, at 180.

[122] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1082–85 (2007).

[123] Ball, *supra* note 21, at 23.

case theory generation.[124] Numerous scholars have theorized key principles and aspects of this type of lawyering practice:

> Critical thinkers have conceived alternative visions of lawyering practice, visions that embrace a greater respect for the power of community; deeper attention to the influences of race, gender, class and culture on the practice of law as well as on the relationship between the professional and her client . . . .[125]

We use "critical lawyering" to include a variety of lawyering models, such as community,[126] collaborative,[127] rebellious,[128] progressive,[129] third-dimensional,[130] borderlands,[131] political,[132] and movement lawyering.[133] In 1991, Louise Trubek defined critical lawyers as those who seek to "empower oppressed groups and individuals" focused on a path to achieving a "more just society."[134] In doing so, she argued that critical lawyers should prioritize collaboration and "apply feminist and anti-racist analyses."[135] While these modes of lawyering encompassed by critical lawyering may have distinct attributes, reflecting varying priorities and lawyering strategies, they have commonalities in their incorporation of critical theories, which

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[124] *See, e.g.*, Johnson, *supra* note 106, at 162 ("Thus, critical theory informs students of the presence and importance of alternative voices that challenge the dominant discourse. When student attorneys ignore or are unaware of such voices, other voices, including the students' own voices, invisibly influence the lawyer-client relationship and lawyering activities, such as interviewing, case theory generation, fact investigation, strategic planning, counseling, and problem-solving.").

[125] Tremblay, *Critical Legal Ethics*, *supra* note 9, at 133–34.

[126] Kashyap, *supra* note 9, at 415.

[127] White, *Collaborative Lawyering*, *supra* note 10, at 158.

[128] *See generally* Symposium, *supra* note 11, at 1 (compiling the various works included as part of the rebellious lawyering symposium dedicated to the concept of progressive lawyering as a problem-solving tool for communities confronting systemic subordination).

[129] Krishna, *supra* note 13, at 65; Cummings, *Law and Social Movements*, *supra* note 13, at 441.

[130] White, *To Learn and Teach*, *supra* note 14, at 760–66.

[131] Harrison & Montoya, *supra* note 15, at 394. Borderlands lawyering uses translation lessons from ethnography, language theory, feminist theory, and postmodernism to help represent clients with an eye towards different cultural/lived experiences and perspectives. *Id.*

[132] Political lawyering is employed by new civil rights efforts to change governments and private institutions, but there remain gaps between political lawyering and progressive race theory. Erik K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 833–34 (1997); Archer, *supra* note 16, at 420.

[133] Cummings, *Movement Lawyering*, *supra* note 18, at 1648.

[134] Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49, 50 (1991).

[135] *Id.* at 50.

results in a commitment to furthering social justice[136] by building power with and for clients and communities,[137] and intentionally incorporating an intersectional, collaborative, and anti-racist approach within law practice.

Critical lawyering serves as "an analytic tool to unpack, shed light on, problematize, disrupt, and analyze how systems of oppression, marginalization, racism, inequity, hegemony, and discrimination are pervasively present and ingrained in the fabric of policies, practices, institutions, and systems . . . ."[138] This type of lawyering both challenges the traditional hierarchal view of lawyer-client relationships and suggests collaboration with clients to ultimately engage in a joint undertaking. Through an anti-racist, intersectional approach, critical lawyering identifies and addresses assumptions and biases, while honoring client and community dignity.[139] Critical lawyering seeks to avoid perpetuating client victimization while also addressing broad social and political factors implicated in clients' pursuit for justice.[140] This is why critical lawyers often support organizing techniques, collaborating with communities, lawyers and organizers to amplify client and community voices;[141] ultimately, critical lawyers understand the law as one tool at their disposal to further justice.

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[136] *See* Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1453 (1998); *see also* Kotkin, *supra* note 8, at 238 (defining critical lawyering as a "lawyering methodology that attempts to empower clients traditionally subordinated by our legal system").

[137] Working with communities is a key component of critical lawyering. Luz Herrera & Louise G. Trubek, *The Emerging Legal Architecture for Social Justice*, 44 N.Y.U. REV. L. & SOC. CHANGE 355, 360–61 (2020) ("Alliances with community and client groups are essential for social justice lawyering.").

[138] H. Richard Milner IV, *Analyzing Poverty, Learning, and Teaching Through a Critical Race Theory Lens*, 37 REV. RES. EDUC. 1, 1 (2013). *See also* Herrera & Trubek, *supra* note 137, at 357–58 ("[W]e resurrect the term 'critical lawyer' to describe lawyers who care about social justice and who are establishing law practices that are transforming public interest practice . . . . They regard law as just one tool for combating inequality and abuse of power. Today's critical lawyers are interested in advancing social justice by introducing new approaches to law practice. These practices represent a shift in generational thinking about how to be a progressive lawyer. We use the term 'critical lawyer' to distinguish the more traditional public interest law models and other social justice inspired models such as movement lawyering.").

[139] *See* Anthony V. Alfieri, *Race Trials*, 76 TEX. L. REV. 1293, 1294–95 (1997–1998) ("[A] Critical Race Theory-inspired ethic of good lawyering . . . seeks to develop a color-conscious, pluralist approach to advocacy that honors the integrity of diverse individual and collective racial identities without sacrificing effective representation."); Hoffman &Vahlsing, *supra* note 9, at 261 (suggesting applying a feminist and anti-racist analysis).

[140] Bettinger-Lopez et al., *supra* note 21, at 365.

[141] Herrera & Trubek, *supra* note 137, at 358 ("To democratize law practice, [critical lawyers] engage more directly with clients and communities, encourage diversity and inclusion, and utilize a broad spectrum of resources. . . . These law practices seek to build a more just society by amplifying the voices of the communities they represent.").

How might experiential educators and practitioners translate the theoretical principles of building power for historically oppressed clients and communities and having an intersectional and collaborative approach in lawyering into a lawyering practice? Monika Batra Kashyap distills a compelling framework to engage in community lawyering,[142] which we argue outlines foundational principles necessary to practice critical lawyering. First, as client-centered lawyering suggests, advocates must practice self-examination and self-awareness. This skill helps advocates understand their own privileges and biases as they more fully appreciate the impact and implications of race, gender, class, sexual orientation, gender identity, ability, age, and culture on their legal relationships.[143] Second, lawyers should engage in collaboration with clients—to reframe lawyer's work as "acting *with* rather than *for* clients and communities."[144] To accomplish this, lawyers do not just provide legal knowledge and expertise to clients, but they appreciate and build upon their clients' expertise—as clients are experts in their own lives. Clients often understand more deeply than most lawyers how systems of oppression impact their lives and communities, so they are often best suited to lead problem-solving and strategizing.[145] Third, critical lawyers must educate themselves to perceive how power and privilege are distributed, and how that might be implicated in legal relationships and representation.[146] Ultimately, critical lawyers are guided by a theory of social change, understanding both how lawyering can reinforce entrenched oppression and how real change can happen when those most affected are those leading.[147]

These principles are transferrable across the practice of critical lawyering. Critical lawyering may employ a number of strategies including litigation, (direct representation as well as impact litigation), collaborating with organizers,[148] legislative reform, education, direct action and more.[149] Therefore, this form of lawyering involves a number of discrete yet intertwined activities or "skills" such as

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[142] She refers to the practice as "community lawyering," but we will continue to use the term critical lawyering.

[143] Kashyap, *supra* note 9, at 406–07; *see also* Herrera & Trubek, *supra* note 137, at 376 ("The ability of critical lawyers to integrate their own identity in their work allows them to develop and pursue strategies, alongside clients, that are more organic and effective for the communities they represent.").

[144] Kashyap, *supra* note 9, at 407.

[145] *Id.* at 407–08.

[146] *Id.* at 408–09; *see also* Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 18 (1997) ("As educators, we can help our students promote justice through unmasking privilege.").

[147] Kashyap, *supra* note 9, at 409.

[148] However, "[p]ower can gravitate to lawyers. If both lawyers and organizers are not hyper-vigilant about managing and passing along that power, lawyers can be destructive for community organizations or organizers." Joseph Phelan, *Purvi & Chuck: Community Lawyering*, ORGANIZING UPGRADE (June 1, 2010), http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering [https://perma.cc/R2YV-WH2X].

[149] Archer, *supra* note 16, at 431.

selecting cases, interviewing, counseling, negotiating, case or project theory development, writing, presenting or oral advocacy, working with media, facilitating meetings, and developing or leading a know your rights session. Professor Kashyap's framework can be used with every activity or skill, asking critical lawyers to 1) engage in self-reflection; 2) reorient towards collaboration with clients and communities; 3) grapple with power dynamics by understanding the deeper context of problems; and 4) ultimately assess how their lawyering may be perpetuating entrenched discrimination.[150]

III. THE PEDAGOGY OF CRITICAL INTERVIEWING

While critical theory should be operationalized in all lawyering skills, we focus specifically on its application to interviewing pedagogy. Indeed, before we even begin to consider critical interviewing, we first note that even the term "interviewing" evokes certain power dynamics. Implicitly, the interviewer is the one conducting the interview, while the interviewed is defined by experiencing the interview.[151] Nonetheless, we will use and introduce here the term critical interviewing. This Part articulates the importance of moving towards a critical interviewing model, while acknowledging inherent challenges to teaching critical interviewing. Next, we articulate the contours of critical interviewing pedagogy, including how to integrate a critical orientation to transform the three stages of planning, performing, and reflecting. Finally, we discuss the methodology of teaching critical interviewing, providing illustrations through the LILA film project.

A. Moving Towards Critical Interviewing

Standard interviewing texts have evolved over the years—seeking to shift power to clients to better serve them. Client-centered lawyering texts provide important and rich lessons for students in the interviewing context, which should be building blocks of effective interviewing. However, larger critiques of legal education—its decontextualizing effect, its focus on individual rather than systemic justice, and its focus on individual rather than collaborative learning[152]—are relevant

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[150] Bettinger-Lopez et al., *supra* note 21, at 380 (Critical theory can be reflected in clinics through 1) case/project selection reflects prioritizing challenging issues that situated in social political historical contexts 2) designing and implementing ethical framework to evaluate challenges 3) "ongoing self-awareness about power differentials and how that informs our work with respect to race, class, culture, gender, ethnicity, disability, sexual orientation and sexual identity").

[151] In light of this implied and actual power differential, some immigrants rights groups term initial contact with community members they are working with "charlas" or "chats," which does not have the same inherent power dynamics. *See, e.g.*, Julie Sommers Neuman, *Dilley Day 1*, COALITION FOR OUR IMMIGRANT NEIGHBORS: DILLEY PRO BONO PROJECT-COIN (Feb. 24, 2019) https://www.coalitionforourimmigrantneighbors.org/dilley-pro-bono-project-2019.html [https://perma.cc/XL4A-S5YC].

[152] *See* Matsuda, *supra* note 22, at 298–99.

in critiquing and ultimately enriching the dominant interviewing literature. First, we describe the need to ground discussions of identities and biases in historical context and existing structural biases, with an intersectional lens that builds upon and then goes beyond what is understood as client-centered lawyering. Second, we discuss the need to teach collaborative interviewing, considering collaboration between representatives, interpreters, clients, and communities.

Early interviewing texts did not mention race or other cultural factors, essentially teaching colorblind lawyering.[153] However, cross-cultural lawyering, specifically taking into account one's own culture and a client's culture when engaging in lawyering, is now commonly included in texts.[154] Cultural competence is widely acknowledged as a lawyering skill, with the ABA suggesting it as a possible skill in which law schools should ensure students develop competency.[155] Still, existing canons often treat cross-cultural lawyering as a discrete, ancillary topic instead of one that is central to and integrated throughout lawyering practices.[156] Phyllis Goldfarb has argued that the "standard clinical vocabulary does not include explicitly political language to describe the interpersonal dynamics of law practice."[157] In this vein, "cross-cultural" and "multicultural" terms suffer from both a narrowness and perceived neutrality—these phrases do not draw out structural imbalances in privilege and power nor historical harms to certain communities. Further, emphasizing "sameness" and "difference," minimizes and even ignores the

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[153] Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 909–10 (1997) ("Colorblind lawyering acts as a barrier to any acknowledgment and response to the reality of the impact of race in our clients' lives.").

[154] *See generally* Bryant, *The Five Habits*, *supra* note 56, at 39 n.13 (discussing the role of cross-training books); Tremblay, *Interviewing and Counseling*, *supra* note 47, at 408 ("First, as a professional you need to explore and confront your own cultural influences and the extent of your unconscious (or conscious) biases, including your own racism, sexism, and homophobia."); *see also* Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race,* 3 FLA. COASTAL L.J. 219, 230 (2002) ("[A]cquiring multicultural competence requires facing discomforting truths about ourselves and our society, especially for those of us who enjoy the privileges of the dominant culture."); McCaffrey, *supra* note 85, at 356–60 (discussing the importance of culture in communication and the potential for miscommunication and disrespect if culture is not taken into account).

[155] AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 302-1 (2019–2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf [https://perma.cc/9JDJ-KTEN] (listing "cultural competence" as an example of an "other" professional skill required to teach in law school).

[156] Harrison & Montoya, *supra* note 15, at 398–99 (explaining that "[t]he full implications of being constantly aware of difference is that we treat diversity as central, not incidental."); *see also* L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201, 220–30 (2020) (calling for law schools and law faculty to center "culturally responsive" lawyering, instead of considering it an optional skill for students to learn.).

[157] Goldfarb, *supra* note 21, at 1670.

social inequalities that emerge from discrimination based on cultural differences.[158] Cross-cultural analysis may serve to deprioritize the central role of race, whitewashing significant structural and historical bias.[159] The result is discounting and obscuring client identities and community experiences. Said another way, this individualized comparison between lawyer and client obfuscates core considerations, such as the historic and institutionalized systems of bias that certain communities face. As Anthony V. Alfieri writes, the existing interviewing canon does not richly describe "the systematic, impoverishing effects of race, inequality, and disenfranchisement. That vision narrowly personalizes the trauma of poverty and decontextualizes the cultural, socioeconomic, and political determinants of collective fear, anger, humiliation, and sadness."[160]

This critique parallels the criticism of legal education's heavy reliance on the traditional appellate case method, which tends to disguise larger societal inequalities with a focus on limited facts. The traditional focus on individual legal rights and redress, rather than considering community problems or larger systems, leaves students ill-equipped to problem-solve within the context of legal problems created and complicated by deeply entrenched poverty, racism, and injustice.[161] Scholar Mari Matsuda argues the goal for lawyers' analysis is "not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed."[162] Moving towards critical interviewing means contextualizing community struggles against unjust systems, acknowledging the multiple layers of oppression many communities confront, and explicitly centering racism and understanding anti-Blackness in particular.[163]

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[158] In criticizing cross-cultural literature in health sciences context, Margaret Montoya writes "what is really being talked about—the identities that are socially constructed based on physical differences and the social inequalities that emerge from discrimination based on those differences—is rarely named or analyzed." Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1317 (2006).

[159] *Id.* at 1317 (2006) (cross-cultural "analysis is done almost exclusively in terms of culture, and culture becomes coded to mean something different and more comfortable than 'race'").

[160] *See generally* Anthony V. Alfieri, *The Poverty of the Clinical Canonic Texts*, 26 CLINICAL L. REV. 53, 64–65 (2019); *see also* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U.L. REV. 345, 346 (1997) ("[A] major weakness of both [predominant client-centered lawyering text books] models is that they fail to address, in any significant way, the effects of race, class and, to a lesser extent, gender on the interaction between lawyer and client.").

[161] Barbara Bezdek, *Digging into Democracy Reflections on CED and Social Change Lawyering After #OWS*, 77 MD. L. REV. ENDNOTES 16, 31 (2018) ("The formal law school canon neither illuminates nor prepares law students to see or to address entrenched systems that create the cumulative disadvantages" that clients are facing.).

[162] Matsuda, *supra* note 22, at 299.

[163] *See* kihana miraya ross, *Call It What It Is: Anti-Blackness,* N.Y. TIMES (June 4, 2020), https://www.nytimes.com/2020/06/04/opinion/george-floyd-anti-blackness.html [https://perma.cc/WB9S-SVPN] (noting "'racism' fails to fully capture what black people in this country are facing").

While cross-cultural lawyering was a crucial shift from race-blind texts, interviewing pedagogy must continue to advance by integrating critical lawyering principles through operationalizing critical theory. Critical theory can serve to redress the lack of an explicit focus on these issues by contextualizing cultural identities and historic and lingering social inequities and by disrupting hierarchy through collaboration with clients and impacted communities. Critical theory also teaches nonessentialism, to resist the urge to make assumptions and conceive of identity as unchanging across race, class, sexual orientation, gender identity, and other social categories.[164] Although some scholars have suggested incorporating critical theories into the clinical classroom,[165] these ideas have not universally migrated into leading textbooks.[166]

A second, yet interrelated, topic that the major texts do not fully grapple with is collaboration within interviews, including law students or attorneys working together, as well as how attorneys collaborate with clients,[167] communities, interpreters, or organizers.[168] Scholars generally agree that collaboration is critical

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[164] *See, e.g.*, Harrison & Montoya, *supra* note 15, at 400, 412 (suggesting borderlands as a way to resist essentialism).

[165] *See, e.g.*, Kashyap, *supra* note 9, at 419–20 (suggesting ways to incorporate discussion of critical theories into the clinic classroom).

[166] *But see* GROSE & JOHNSON, *supra* note 50 (focusing on the necessary skill of critical reflection: "More than just telling a wrong or incomplete narrative about the client, the lawyer's attempts to portray the marginalized client's voice without critical reflection further marginalizes the client by keeping his voice outside the dominant legal discourse."). Grose and Johnson also explore collaboration, although not specifically in the context of interviewing. *See id.* at Chapter Four; Alicia Alvarez & Paul Tremblay also broach these topics more directly in their INTRODUCTION TO TRANSACTIONAL LAWYERING text. They explain, for example, in their chapter on multicultural lawyering and cultural competence that "[w]hile we define culture broadly, (including socioeconomic status, sexual orientation, and gender identity, and ability/disability), we acknowledge that race, prejudice, racial discrimination, and systemic racial oppression play an important role in U.S. history and society." ALVAREZ & TREMBLAY, *supra* note 38, at 212. They include a specific discussion of bias and implicit bias (*Id.* at 216–21) and a section on the "societal aspects of prejudice—understanding power and oppression" and discusses racism as a "system of power." *Id.* at 222.

[167] As one scholar has argued, "principled negotiation of all the terms of the lawyer-client relationship, including the ultimate goals of the relationship, is the best way to create a relationship of equality and effective collaboration." Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71, 76 (1996).

[168] Previous articles have explored interdisciplinary collaboration—between lawyers and doctors, for example. *See* Gunsalus & Beckett, *supra* note 100, at 439 (exploring collaboration between lawyers and other differently-trained professionals); Sabrineh Ardalan, *Constructive or Counterproductive? Benefits and Challenges of Integrating Mental Health Professionals into Asylum Representation*, 30 GEO. IMMIGR. L.J. 1 (2015); Jacqueline St. Joan, *Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality*, 7 CLINICAL L. REV. 403 (2001).

to good lawyering,[169] in legal writing specifically,[170] within doctrinal classrooms[171] and legal education more broadly.[172] But, interviewing literature specifically focuses almost exclusively on individualized learning.[173] Collaboration is a key technique to

[169] A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 902–07 (2016) (providing a summary of the shift from an individualistic culture of learning within law schools to a more collaborative learning environment); *see also* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 485 (1993) [hereinafter Bryant, *Collaboration in Law Practice*] ("If the goal of law school is to teach students to be lawyers, then collaborative skills belong in the law school curriculum."); Ball, *supra* note 21, at 17 ("[I]n a business law clinic, the classroom is a space of collaborative problem-solving and sharing, where both the clinician and students are working together.").

[170] *See* Elizabeth L. Inglehart, Kathleen Dillon Narko & Clifford S. Zimmerman, *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, 187–98 (2003) (summarizing the academic theory supporting collaborative learning, pedagogical benefits, and describing implemental of collaborative writing with Northwestern's Legal Writing program); Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 136 (2009) (examining the theory behind and benefits of collaborative learning and suggesting how to incorporate collaborative and cooperative learning exercises and techniques into legal writing classrooms).

[171] *See, e.g.*, Elizabeth A. Reilly, *Deposing the "Tyranny of Extroverts": Collaborative Learning in the Traditional Classroom Format*, 50 J. LEGAL EDUC. 593, 601–04 (2000) (discussing student collaboration in a constitutional law course); Jay Gary Finkelstein, *Practice in the Academy: Creating "Practice Aware" Law Graduates*, 64 J. LEGAL EDUC. 622, 624 (2015) (explaining the concepts of vertical and horizontal collaboration to enhance learning in doctrinal courses); Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153 (2012) (discussing how team-based learning improves student learning and addresses some of the longstanding criticisms with legal education).

[172] Jason G. Dykstra, *Beyond the "Practice Ready" Buzz: Sifting Through the Disruption of the Legal Industry to Divine the Skills Needed by New Attorneys*, 11 DREXEL L. REV. 149, 207 n.317 (2018) ("Law school often seems to be a solitary journey of individual achievement. But practicing attorneys must work collaboratively both within firms and externally with clients, insurance adjusters, experts, other attorneys, and judges.").

[173] *See* KRIEGER & NEUMANN, *supra* note 32 (no mention of collaboration between two interviewers); *but see* DEBORAH EPSTEIN, JANE AIKEN & WALLACE MLYNIEC, THE CLINIC SEMINAR 263–86 (1st ed. 2014); GROSE & JOHNSON, *supra* note 50, at 62–67; in the externship context, see LEAH WORTHAM, ALEXANDER SCHERR, NANCY MAURER & SUSAN L. BROOKS, LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 425–47 (3d ed. 2016). Alicia Alvarez and Paul Tremblay's TRANSACTIONAL LAWYERING PRACTICE includes a short section on considerations in interviewing with a partner (raising issues to consider including who takes notes, how to communicate within interview, determining who will take the lead in a certain line of questions, and how to pose those questions in a partnership, move on from a topic, etc.) and a further general chapter on working in a group. *See* ALVAREZ & TREMBLAY, *supra* note 38, at 26, 255.

shift power back to clients and impacted communities.[174] When addressed in existing texts, collaboration is treated as a more general skill in law practice,[175] and not specifically integrated into interviewing texts.[176] And, as Professor Susan Bryant says, "[s]uccessful collaboration . . . does not come easily."[177] Furthermore, collaborating with an interpreter is not deeply considered.[178] Proper interpretation is,

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[174] Akbar et al., *supra* note 17, at 869 ("Solidarity is born of collaboration, relationship, and accountability.").

[175] Bryant, *Collaboration in Law Practice*, *supra* note 169, at 460 (defining collaboration); O'Grady, *supra* note 78, at 487 ("[C]ollaboration in law school clinics typically does not go far enough to teach students how to be true to themselves as independent professionals in the face of the power differentials and pressures to conform that exist in practice . . . . [C]linical educators [should] introduce students to the concept of working within hierarchical collaborations and to encourage them to maintain their autonomy within such collaborations."); Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 1015–20 (1999) (lauding the benefits of teaching law students collaboration and providing an example in the first year legal writing and analysis curriculum); Camp, *supra* note 169, at 901 (suggesting that in embracing collaboration into the law school curriculum, educators should be mindful to include students who have more introverted tendencies and outlining a number of exercises to do so); Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 11 (2013) (Millennial law students "expect a collaborative learning environment. Millennial students are accustomed to a model of education that is a 'co-partnership' with supervisors and teachers."); David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199, 201–02 (1994) (discussing whether and how to set up student collaborations in clinic case work); Janet Weinstein, Linda Morton, Howard Taras & Vivian Reznik, *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 38 (2013) (emphasizing the importance of training law students to work in interdisciplinary teams and sharing the results of one such effort).

[176] However, some lawyering texts do include a focus on teaching collaboration more generally. *See* EPSTEIN ET AL., *supra* note 173, at 409–34, GROSE & JOHNSON, *supra* note 50, at 62–67; in the externship context, *see* WORTHAM ET AL., *supra* note 173. Alicia Alvarez and Paul Tremblay's TRANSACTIONAL LAWYERING PRACTICE does include a small section on considerations in interviewing with a partner, (raising issues to consider including who takes notes, how to communicate within interview, determining who will take the lead in a certain line of questions, and how to pose those questions in a partnership, move on from a topic, etc.) and a further general chapter on working in a group. *See* ALVAREZ & TREMBLAY, *supra* note 38, at 26, 255.

[177] Bryant, *Collaboration in Law Practice*, *supra* note 169, at 461; *see also* Donna Erez Navot, *Tools for the Clinical Professor: Applying Group Development Theory to Collaborative Learning in Law School Mediation Clinics*, 69 DISP. RESOL. J. 65 (2014) (examining the theory of group development and collaborative learning in the context of a law school mediation clinic and sharing guidance for clinical professors in navigating group dynamics and development).

[178] In fact, one scholar has suggested client-centered interviewing is an inadequate model to address language difference. *See* Ahmad, *supra* note 122, at 1002 ("And yet, the

of course, vital to ensuring that a client's voice is heard and that the client maintains her dignity.[179] Yet, literature on collaborating with an interpreter in an interview, and teaching this collaboration, is sparse.[180] Textbooks generally do not cover how to prepare to collaborate with an interpreter,[181] and Muneer Ahmed's *Interpreting Communities: Lawyering Across Language Difference* is one of the only resources on language access in the context of interviewing.[182] Furthermore, most major interviewing texts do not discuss collaboration with organizers and community groups.[183]

B. Contours of Critical Interviewing Pedagogy

Having a race-conscious and intersectional approach is the starting point for critical interviewing. This approach is used in representing clients and communities, and in understanding legal relationships between partners—as well as with legal supervisors. Without this intentional approach, differences in gender, race, sexual identity and orientation, class, and more can lead to exclusion or the development of an unwelcome hierarchy within a student and student/supervisor team.[184] The intersectional identities of lawyers and clients, including their race, gender, class, sexual orientation, and knowledge, particularly of the law and legal systems impact relationship-building—at times making it easier to connect but also serving as the basis for disparities in rapport-building and understanding.[185]

Critical interviewing, just as other skills within critical lawyering, requires advocates to 1) engage in self-reflection, 2) reorient towards collaboration with clients and communities, 3) grapple with power dynamics, understand the deep context of problems, 4) understand the deep context of problems, and 5) ultimately

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principal model for poverty lawyering—client-centeredness—is inadequate to the challenges of language difference.").

[179] *See* Ahmad, *supra* note 122, at 1024 (discussing how a lack of proper interpretation can result in a client losing their dignity or voice).

[180] *Id.* at 1010 ("[R]esources, methodologies, and theories for lawyering across language difference outside the courtroom remain scarce and underdeveloped.").

[181] *But see* ALVAREZ & TREMBLAY, *supra* note 38, at 71 (urging students to consider whether or not to use an interpreter, to explore the role of the interpreter with both the client and the interpreter and the communication and preparation in advance of a client interview using an interpreter that should take place).

[182] *See also* McCaffrey, *supra* note 85; *see also* Beatriz Valera-Schutz & Margarita Gonzalez, *Cultural Fluency*, *in* SKILLS FOR BILINGUAL LEGAL PERSONNEL 2 (Marilyn R. Frankenthaler ed., 2007).

[183] *But see* ALVAREZ & TREMBLAY, *supra* note 38, at Chapter 9.

[184] O'Grady, *supra* note 78, at 522 (citing Bryant, *Collaboration in Law Practice*, *supra* note 169, at 487–88).

[185] ELLMAN ET AL., *supra* note 32, at 6–7 ("[W]e view the negotiation of difference and connection within the lawyer-client relationship as fundamental to all lawyer client interactions.").

assess how their lawyering may be perpetuating entrenched discrimination.[186] These principles should animate each stage of the "planning, doing, [and] reflecting" cycle.[187]

First, during the preparation and planning stage of interviewing, experiential educators should strive to ensure students have a foundation to begin to understand communities they are working with, particularly "the multifaceted dynamics of accumulated disadvantage[]" clients may encounter related to their immigration status, age, race, and other factors.[188] This relates to a key principle of critical lawyering—education to better perceive how power and privilege are distributed.

One goal of the clinic seminar, as well as supervision meetings, should be to help students more deeply understand systemic bias and historical inequities, which continue to bear down on clients and communities. In advance of the first interview and throughout the semester, we suggest introducing readings, podcasts, and videos from the outset to engage students on these issues so they understand and can name structural biases. It is essential for students to develop and understand a shared vocabulary, as well as methods for recognizing and responding to when cultural factors, particularly ones where systemic bias is implicated, arise in building effective relationships with clients and other stakeholders.[189] We must "encourage conscious, material engagement with overt and covert (coded or covered) identity issues in collaboration with clients and their communities."[190] Students will not all be operating from the same perspective. Some will not share many traits with their clients, although, many students may identify with communities they are serving and possibly be more attuned to appreciating the clients' perspective and untangling unsaid messages.[191] In other instances, some students may over-identify with clients and make assumptions based on their own perspective instead of closely listening to their client's voice.

We integrate and normalize conversations about race, gender, class, sexual orientation, and other significant aspects of people's identity and experience early and often in our seminars. In our first class, we assign *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*,[192] which asks the question

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[186] *See infra* Section III(A).

[187] *See* BRYANT ET AL., *supra* note 40, at 24 ("Clinical teachers call this activity 'planning, doing, and reflection,' an ongoing process of preparation, action and learning that will inform future action."). The "planning-doing-reflecting model . . . helps students 'learn how to learn from experience,' encouraging lifelong learning habits." McDougall, *supra* note 40, at 332.

[188] *See* Alfieri, *supra* note 160, at 74–75.

[189] Montoya, *supra* note 158, at 1318–19.

[190] *See* Alfieri, *supra* note 160, at 62.

[191] Harrison & Montoya, *supra* note 15, at 433–34 ("Many students, especially the Outsiders—students of color, gays, lesbians, dis/abled, the different, and the alienated—are attuned to the encoding of messages.").

[192] We adopted this reading after participating in the following webinar: Annie Lai & Sameer Ashar, *Teaching Justice in the Context of Immigrants' Rights*, CLINICAL LEGAL

(among many), "What does a consciousness of the experience of life under patriarchy and racial hierarchy bring to jurisprudence?"[193] We have also used Chimamanda Adichie's Ted Talk *The Danger of a Single Story* to provide an accessible example of essentialism and open up a conversation about what it means to understand intersectionality,[194] as part of a class that focuses specifically on critical lawyering skills. In this class, students read about bias in the legal field,[195] strategies to disrupt bias and racism, take an implicit bias test,[196] and write a reflection paper in advance of class considering how bias has been implicated in their legal relationship and clients' life thus far, as well as strategies they hope to employ to practice critical lawyering and disrupt bias.

We also provide a reading that attempts to provide some context to historical and structural bias—such as excerpts from the 1619 Project,[197] or from a personal narrative, such as Ta-Nehesi Coates' *Between the World and Me.*[198] Given the increasing national awakening around issues of racism and racial justice, the resources on these topics are more accessible and carefully curated than ever. The Law Deans Antiracist Clearinghouse has a key list of resources from books to music and art,[199] and the National Museum of African American History and Culture's portal, *Talking About Race,* provides helpful framing for thinking through racism and how it affects our everyday reality.[200] Other helpful resources include podcasts

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EDUCATION ASS'N TEACHING JUSTICE WEBINAR SERIES, CLEA (Dec. 6, 2018), https://www.cleaweb.org/Teaching-Justice-Webinar-Series [https://perma.cc/N7TC-5UK8].

[193] Matsuda, *supra* note 22, at 298.

[194] Chimamanda Ngozi Adichie, *The Danger of a Single Story*, TED (July 2009), https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en [https://perma.cc/3JZX-QNKW].

[195] Some readings we have used include excerpts from Pamela M. Casey, Roger K. Warren, Fred L. Cheesman & Jennifer K. Elek, *Addressing Implicit Bias in the Courts*, 49 CT. REV. 64 (2012) http://aja.ncsc.dni.us/publications/courtrv/cr49-1/CR49-1Casey.pdf [https://perma.cc/X79B-NX3B].

[196] *See, e.g.*, PROJECT IMPLICIT, implicit.harvard.edu [https://perma.cc/YNF4-4ZPJ] (last visited Nov. 4, 2020).

[197] *See, e.g.*, *The 1619 Project*, N.Y. TIMES, https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html [https://perma.cc/ABA5-EYZC] (last visited Nov. 4, 2020).

[198] TA-NEHISI COATES, BETWEEN THE WORLD AND ME (2015).

[199] Danielle M. Conway, Danielle Holley-Walker, Kimberly Mutcherson, Angela Onwuachi-Willig & Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. L. SCHS, https://www.aals.org/antiracist-clearinghouse/ [https://perma.cc/VY72-AZBZ] (last visited Nov. 4, 2020).

[200] *Talking About Race*, NAT. MUSEUM OF AFR. AM. HIST. & CULTURE, SMITHSONIAN, https://nmaahc.si.edu/learn/talking-about-race [https://perma.cc/744A-AU9W] (last visited Nov. 4, 2020).

like Seeing White[201] or NPR's Code Switch.[202] Derek Moore Jr. has developed the 21-day Racial Equity Habit Building Challenge, offering resources to understand racism and privilege which provide a wealth of material for all educators for ourselves and our students.[203] Finally, in the context of teaching storytelling and narrative we have drawn on Margaret Johnson and Carolyn Grose's book[204] and an exercise using a four-minute podcast introduction to a series exploring the murder of Philando Castile.[205] Through normalizing discussions about race, gender, power and related topics, students can learn to be receptive to the idea that effective interviewing—as well as other tasks—will be improved by recognizing how cultural differences are intertwined into team members' expectations, norms, and assumptions.[206]

After ensuring all students have a starting point for understanding structural bias, the next step in interview preparation is to ready students to identify potentially related issues that may arise during collaborations with a partner, client, and interpreter in the interview. As students learn more about their client and understand systems of bias their client exists within, students must also have self-awareness about their own cultural identity, and be open to owning their own biases. Teachers should have students reflect on how their cultural background has influenced their perspective, how they have experienced privilege, and how that might surface in legal relationships they build.[207] Identifying cultural identities includes identifying whiteness as a social category and understanding the impact of white supremacy and

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[201] *Transformation (Seeing White, Part 14)*, SCENE ON RADIO, https://www.sceneonradio.org/seeing-white/ [https://perma.cc/9VQR-FDTE] (last visited Nov. 4, 2020).

[202] *Code Switch*, NPR, https://www.npr.org/sections/codeswitch/ [https://perma.cc/4MVD-DGN2] (last visited Nov. 4, 2020).

[203] *21-Day Racial Equity Habit Building Challenge*, AM. & MOORE, https://www.eddiemoorejr.com/21daychallenge [https://perma.cc/Q257-4FJN] (last visited Nov. 4, 2020).

[204] GROSE & JOHNSON, *supra* note 50.

[205] *See, e.g.*, 74 Seconds, *Coming Soon*, MINN. PUB. RADIO (May 16, 2017, 11:41 PM), https://www.mprnews.org/story/2017/05/19/74-seconds-podcast-castile-yanez-coming-soon [https://perma.cc/MWW9-EJH6]. Professors Grose and Johnson led an exercise using this four-minute clip at the AALS Clinical Conference in Denver in 2017. In this exercise, we require students to listen for and articulate the six narrative elements of storytelling that Grose and Johnson use (characters, events, causation, normalization, masterplot, and closure). Using that clip, a number of the elements can surface issues and encourage discussion of race, racial profiling, privilege, assumption, bias, and more.

[206] *See* Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2093–95 (2005).

[207] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 410–11; *see also* Aiken, *supra* note 146, at 22 (discussing the imperative that teachers have to help unmask privilege so that "[o]nce the blinders are off, they will necessarily assume responsibility for the perpetuation of privilege because they will no longer be able to exercise it unknowingly").

privilege.[208] This race-conscious, intersectional perceptiveness raising teaches students, particularly for those with the most privilege, that they cannot pretend to operate from a "bleached position"; in fact, there is no neutral or default position—we all act from our own perspective with implications in how we will interact when working in collaboration (or in opposition, for opposing counsel).[209]

One of the first assignments we provide students is a self-assessment that will help them understand their own learning and collaboration styles. It also asks them to reflect on times when they have experienced or perpetuated a stereotype in the context of a professional relationship. First, we ask them about their own learning goals, outlying the specific skills they want to develop, as well as any other goals—from developing their own sense of professional identity, or feeling more confident speaking in class. When asking about students' preferred supervisory relationship, we set the expectation that students will lead supervision meetings, as well as lead class and casework, while we also ask them to reflect on aspects of past supervisory relationships that have worked well and that have been less successful. Similarly, we ask them if they feel they learn best from reading, observation, performing, some combination, and their work style around deadlines. We ask them to talk about successful and stressful learning experiences, as well as successful partnerships, and with each description, they should draw out lessons learned. We ask them to reflect on difficulties in past collaboration and how they have attempted to resolve conflict. Last, we preview that class discussion will involve talking about racism and other forms of bias and privilege; we then ask what reservations they have about having these conversations, and encourage them to share takeaways from fruitful conversations about critical topics. We also ask them to consider a professional experience where they have felt disrespected or offended, as well as when they may have given offense, and ask what lessons they can bring from those experiences to their relationship building in clinic. We encourage students in the first supervision meeting to raise topics related to collaboration drawing from their self-assessments to normalize conversations about these topics and improve collaboration.

Within the first few weeks of the course, students engage in another crucial interviewing assignment: drafting a formal interview plan for their initial client interview. In our clinics, students represent individual clients, yet it is important to note that critical lawyering often may involve representing or working to support community groups; therefore, the interview may be with a community leader, organizer or other stakeholder. In Tulane's practicum, clients have been community

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[208] John O. Calmore, *Close Encounters of the Racial Kind: Pedagogical Reflections and Seminar Conversations*, 31 U.S.F. L. REV. 903, 919 (1997). Popular texts to consider whiteness include ROBIN DIANGELO, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM (2018); LAYLA F. SAAD, ME AND WHITE SUPREMACY: COMBAT RACISM, CHANGE THE WORLD, AND BECOME A GOOD ANCESTOR (2020).

[209] It is important to avoid teaching students colorblind lawyering as they cannot "operate from a bleached position independent or outside of identity even when executing racial maneuvers at trial or in a transaction." Alfieri, *supra* note 160, at 62. Jane Aiken explains that "[s]triving to promote justice, fairness, and morality may require us to face the discomfort of not remaining silent." Aiken, *supra* note 146, at 21.

leaders and members of either the New Orleans Congress of Day Laborers or the Seafood Worker's Alliance. While students are not representing these community groups, students understand how supporting their client's claims helps to further a larger justice goal, and students also do collaborate with organizers at various points in the client representation.[210]

Although we assign a more formal interview plan for the initial client interview, the client plan framework can be used for follow-up interviews as well as interviews with organizers and other community members. In the plan, students must identify their 1) goals for the interview 2) logistical issues and special concerns 3) pre-interview preparation and outline of existing documents and information and 4) collaboration. Under the second part, logistical issues and special concerns, we ask students to address how they will prepare to collaborate with an interpreter. We also ask them to "consider special concerns raised by your client's particular experiences, circumstances or identity, and address how you will approach being attuned to the client's perspective and how the client may perceive you."[211] As mentioned previously, clinics often have some information, or in some instances, a great deal of information, about a client before students first engage with the client, providing ample opportunity for students to think through special concerns in the lawyer-client relationship. Specifically, we want to encourage students to think through the specific aspects of their own identities and of the differences between them as partners that may affect how they interact with their clients and the assumptions and biases both the students and their client may bring to the new relationship. Under the collaboration portion of the interview plan, we ask students to "identify how you and your partner will divide responsibilities during the interview, how you plan to approach working with the interpreter, and what you might do to ensure your client is a collaborator in the interview."[212] These questions are meant to prompt a discussion where students will start to identify issues that might arise and their approach to being aware and adaptable to address those issues.[213]

The next stage is "performing" the interview. One of the key lessons in interviewing pedagogy is how to employ the skill of active listening. Active listening must involve "close and careful listening, coupled with scrutinized and repeated

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[210] Similarly, UC Irvine Law's Immigrant Rights Clinic uses "individual cases in traditional channels of legal advocacy to build toward larger challenges to systematic subordination. For example, representing individual workers in their wage and hour cases in coordination with community organizations built their trust in those groups and motivated individuals to participate in political campaigns." Sameer M. Ashar & Annie Lai, *Access to Power*, J. AM. ACAD. ART & SCI., 148 DAEDALUS 82, 85 (2019).

[211] Laila Hlass & Mary Yanik, Tulane Law School Immigrants' Rights Practicum Syllabus (on file with author).

[212] *Id.*

[213] In these supervision conversations, we draw out how clients are experts in their lives and stories and they understand the harm, or "legal problem," much better than students. Meanwhile, students have skills that allow them to conduct legal investigation to answer legal questions and sometimes a better understanding of the adjudicator or other decision-maker's world view.

readings of the client's story, [to] assist one in better understanding the nuances of another's experience."[214] We encourage students to employ slow-motion listening, including an awareness of tone, body language and other cues. The students may not pick up most or much of these signals, but because we have students record their first interview, we will later re-watch in slower motion for further encoding.[215] As critical interviewers, students' listening should be animated by an intersectional perspective.[216] This includes being open to understanding the personal identities and power implications of various players in the case. Students should try to avoid making assumptions,[217] be aware of how their own cultural baggage might impact how they hear, what they hear and who they believe.[218] Assumptions can lead to working against client goals, undermining client-attorney rapport and trust, reifying existing power structures, further entrenching structural oppression.[219] In addition to being aware of how students approach listening in the interview, they should consider power implications as they form questions, explain legal concepts, and make space for their clients to ask questions. Students should also try to identify where they can help build power for clients in the interviewing, uplifting client strengths, and not necessarily starting with topics that might undermine client dignity.[220] Furthermore, they should consider during the interview when there are points where they can uplift their client's perspective using empathy, as well as how to make sure defining roles and setting expectations that the client is a partner and collaborator in the legal case.

Last in the lawyering process is reflection,[221] which should lead to deeper learning.[222] We require students to video-record their first interview—and

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[214] Harrison & Montoya, *supra* note 15, at 417.

[215] *See id.* at 433–34.

[216] *See id.* at 412.

[217] Hing, *supra* note 5, at 1809–10.

[218] Harrison & Montoya, *supra* note 15, at 426 (citing Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L. J. 2475 (1993)).

[219] Beth Caldwell, *Addressing Intersectionality in the Lives of Women in Poverty: Incorporating Core Components of a Social Work Program into Legal Education*, 20 AM. U. J. GENDER SOC. POL'Y & L. 823, 829 (2012).

[220] Topics such as criminal history might be very significant for the case, but with power differentials in mind, it is often better to hold these topics for later in the interview or a different interview altogether. Giving clients power and control over when certain topics are addressed is also central to trauma-informed interviewing and working with survivors of domestic violence, torture, and other trauma.

[221] *See* Laurie A. Morin & Susan L. Waysdorf, *Teaching the Reflective Approach Within the Service-Learning Model*, 62 J. LEGAL EDUC. 600, 611 (2013) (defining reflection as the "deliberate contemplation and self-examination of one's actions, goals and personal transformation").

[222] The ABA has not provided a definition of "self-evaluation," but the Association of American Law Schools (AALS) Section on Clinical Legal Education suggests that it includes "two inter-related aspects," [1] "the capacity to assess a specific lawyering performance and make appropriate changes"; and [2] the capacity to reflect on experience more generally so

sometimes audio or video record a second interview—to help better aid reflection on all aspects of interviewing. We devote a class to rounds where students present on their first interview and focus on a particularly difficult challenge. This reflection again must involve students situating themselves within context—recognizing their own privilege. This type of reflection "helps . . . surface . . . default goggles . . . [and] make[s] room for other intentional choices about perspectives and other worldviews."[223] In reflection, we encourage students to have great humility about assuming their perception of events is right—instead, they should try to listen and reorient to better understand the client's perspective.[224] In rounds, students will show a video clip to the class of where there was a challenge to receive feedback, to diagnose the problem and consider a variety of options for moving forward.[225] We also spend at least one supervision meeting devoted to students reflecting on their performance and providing our own evaluation of the students' initial interview. In conducting these feedback sessions, we work to ask questions and surface some of the conversations that are most difficult for students and for us to engage in. This may include pointedly asking questions of the students, including, "how do you think your client reacted to having a male representative, like you?" or, "how does your own gender identity play a role in your relationship with your client?"

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as to improve insight, broaden understanding, and develop decision- making ability." AALS, SECTION ON CLINICAL LEGAL EDUCATION: GLOSSARY FOR EXPERIENTIAL EDUCATION 5, https://www.aals.org/wp-content/uploads/2017/05/AALS-policy-Vocabulary-list-FINAL .pdf [https://perma.cc/7MTZ-42HB]; s*ee also* Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 375, 379 (1973) (emphasizing the importance of reflection in the clinical classroom); Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV 203, 217 (2019) ("Critical reflection and narrative theory work together to guide us to ask questions and broaden our perspectives in gathering information and constructing cases and projects.").

[223] Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV 203, 209–10 (2019).

[224] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 412.

[225] *See, e.g.*, Susan Bryant & Eliot S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

C. Methodology for Teaching Critical Interviewing

We proceed from the understanding that race-neutral[226] and race-lite[227] client counseling texts, lacking an antiracist and intersectional lens, do not provide a clear framework to empower clients to tell their stories because they do not value clients' lived experiences; in fact, they may serve to further silence clients' voices, as well as the experiences of law students and attorneys of color[228] and other marginalized communities.[229] At the same time, we acknowledge that some law students, professors, and lawyers may feel uncomfortable or threatened to talk directly about race, gender, class, and power.[230] Indeed, the terms white fragility,[231] or white

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[226] Legal education has been critiqued broadly for attempting a color-blind approach that privileges White students. *See* Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51, 55 (1994) ("[D]espite their claims to be color-blind, law schools provide inherent preferences for students who can act, think, and write white.").

[227] "Lite is an informal variance of light . . . meaning 'containing less of an ingredient,' or 'being less complex.'" *Lite vs. Light—What's the Difference?*, GRAMMARLY BLOG, https://www.grammarly.com/blog/light-lite/ [https://perma.cc/WW8L-GXEM] (last visited Nov. 4, 2020).

[228] We use the imperfect terms "attorneys of color" and also "people of color" and "students of color," in the spirit of inclusiveness to draw out common experiences communities of color may face. As Ibram X. Kendi writes, "I see myself historically and politically as a person of color, as a member of the global south, as a close ally of Latinx, East Asian, Middle Eastern, and Native peoples and all the world's degraded peoples, from the Roma and Jews of Europe to the aboriginals of Australia to the White people battered for their religion, class, gender, transgender identity, ethnicity, sexuality, body size, age, and disability." KENDI, *supra* note 3, at 37. At the same time, we acknowledge how "people of color" may be used as a blanket term which serves to erase identities or wrongly be substituted in the context of specific harm the Black community has experienced. *See* Nadra Widatalla, *The Term 'People of Color' Erases Black People. Let's Retire It*, L.A. TIMES (Apr. 28, 2019, 3:15 AM), https://www.latimes.com/opinion/op-ed/la-oe-widatalla-poc-intersectionality-race-20190428-story.html [https://perma.cc/FY88-4QYF]. We also note that the erasure of Black people within the legal profession more broadly is problematic and that Black attorneys face unique challenges. *See, e.g.*, David B. Wilkins, *Identity and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1506 n.20 (1998) (discussing the identity and ethical obligations of Black lawyers and specifically recognizing that there are "important differences" between Black attorneys and other minority attorneys).

[229] Jacobs, *supra* note 160, at 346–47.

[230] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 408; *see also* Silver, *supra* note 154, at 235 ("Most of us avoid discussions about race because such discussions are uncomfortable, feelings get hurt, and people get angry.").

[231] Robin DiAngelo, *White Fragility*, 3 INT'L J. CRITICAL PEDAGOGY 54, 57 (2011) (defining White fragility as "a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves[,] . . . includ[ing] the outward display of emotions such as anger, fear, and guilt and behaviors such as argumentation, silence, and leaving the stress-inducing situation").

transparency,[232] have gained increasing currency over the years to name the discomfort that many within white communities feel when engaging in conversations about race. Students of color and students who have faced systemic and interlocking systems of bias often find conversations about these topics painful and exhausting. As recent law graduate, Hannah Taylor writes, "Black students like me are tired of taking on the emotional labor to educate White peers."[233] For some students, the conversation may trigger longstanding racial or other trauma they have experienced over their lifetimes that they attempt to suppress in professional situations. At the same time, they may feel pressured or forced to speak up or speak on behalf of others in their community.[234] These dynamics may particularly be pronounced in environments that are predominantly white.[235]

When teaching critical interviewing, it is important to recognize students are coming from diverse backgrounds and experiences, have different stakes, and may be impacted by bias in different ways.[236] Indeed, increasingly students from traditionally underrepresented backgrounds are increasingly enrolling in law school.[237] Ultimately, though, all students should understand some of the deep impacts of "racism, ethnocentrism, sexism, . . . homophobia" and other structural biases on individuals and communities.[238] Recognizing and addressing privilege and

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[232] Trina Jones & Kimberly Jane Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2052 (2017) (defining White transparency as the "tendency of Whites to be unaware of their whiteness") (citing Barbara J. Flagg, *"Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969–73 (1993)).

[233] Hannah Taylor, *The Empty Promise of the Supreme Court's Landmark Affirmative Action Case*, SLATE (June 12, 2020, 1:50 PM), https://slate.com/news-and-politics/2020/06/grutter-v-bollinger-michigan-law-diversity-racism.html [https://perma.cc/94SE-P8HV] (also noting, "[a]s one of the only 'diverse' voices, I had to do the unpaid work of *educating* classmates, professors, and administrators countless times over").

[234] *See, e.g.*, Harrison & Montoya, *supra* note 15, at 438 ("Multicultural experiences are often accompanied by feelings of discomfort, of being at risk.").

[235] Notably, White faculty hold almost 8 out of 10 clinical faculty positions in recent years. CLEA Committee for Faculty Equity and Inclusion, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLINICAL L. REV. 127, 131 (2019). This is why many have called for real efforts to recruit, support and retain diverse faculty, particularly underrepresented experiential faculty of color. Allison Korn & Laila Hlass, *Assessing the Experiential (R)evolution*, 65 VILL. L. REV. 713, 755 (2020); *see also* G.S. Hans, *Clinical Fellowships, Faculty Hiring, and Community Values*, 27 CLINICAL L. REV. 253 (2021) (urging for additional study of the effect of clinical teaching fellowships on the makeup of the clinical legal community).

[236] Harrison & Montoya, *supra* note 15, at 391.

[237] *See* ENJURIS, LAW SCHOOL ENROLLMENT BY RACE & ETHNICITY (2018), https://www.enjuris.com/students/law-school-race-2018.html [https://perma.cc/8GXY-XRYP]; *Law Schools Honored for Commitment to Increasing Diversity in Law*, LAW SCH. ADMISSIONS COUNCIL (July 12, 2019), https://www.lsac.org/blog/law-schools-honored-commitment-increasing-diversity-law [https://perma.cc/UF9X-5FDQ].

[238] Tremblay, *Interviewing and Counseling*, *supra* note 47, at 413.

bias and building relationships across privilege differentials is a skill that must be honed.[239] As Margaret Montoya insists, we must ask:

> How law has created and sustained white supremacy/How law creates and maintains race-based power imbalances/How law intersects with the collective racial histories of the respective racialized groups in the U.S./Why social burdens or benefits accrue because of race?[240]

Critical interviewing necessitates that students engage in the rigorous self-examination and analysis of how structures of oppression and power dynamics can influence the lawyer-client relationship and the potential to achieve justice or other desired outcomes. Having conversations about race, gender, class and power can be particularly uncomfortable in group settings where people have different assumptions and perspectives. Teaching methodology is particularly important when considering teaching critical interviewing. Using videos and modeling coupled with reverse-modeling, where students make mistakes, can help open up these conversations. [241] This is particularly true when the video methodology is situated within relevant readings, seminar discussions, and other exercises.

While law professors may be eager to embrace pedagogical tools employing critical theory in experiential education to teach critical lawyering skills, few examples are widely available. Before describing the LILA films, we draw out three notable efforts related to the project of developing critical lawyering pedagogical tools.

First, the Guerilla Guides are a series of web pages describing how law teachers can center their teaching around a fundamental understanding of how the law privileges and punishes different communities, as well as creative and collaborative solutions to structural injustice. The guides are informed by critical lawyering principles of collaboration and building solidarity, as well as deep reflection and discourse about power disparities.[242] The Guerilla Guides for Clinical Education outline key principles in infusing critical theory in case/project selection, as well as seminar design, case rounds, and simulation.[243] The Guerrilla Guide to Clinical Law

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[239] Hing, *supra* note 5, at 1810; *see also* MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUDING, EXCLUSION AND AMERICAN LAW 68 (1990) ("It may be impossible to take the perspective of another completely, but the effort to do so can help us recognize that our own perspective is partial."); *see also* Aiken, *supra* note 146, at 23–30.

[240] Montoya, *supra* note 158, at 1317.

[241] Baskaran et al., *supra* note 29.

[242] *Guerrilla Guides to Law Teaching*, GUERILLA GUIDES, https://guerrillaguides.wordpress.com/about/ [https://perma.cc/YV9X-W7CQ] (last visited Nov. 4, 2020) ("We describe our vision in Guide No. 1, in which we detail our four principles: building solidarities, advancing resistance, broadening & deepening discourse, and pursuing radical interventions.").

[243] *No. 3: Clinical Law*, GUERILLA GUIDES, https://guerrillaguides.wordpress.com/2016/08/29/clinlaw/ [https://perma.cc/2VDB-MY8S] (last visited Nov. 4, 2020) (offering various suggestions for teaching within clinic and clinic seminar).

serves as a broad and rich starting place for those seeking to imbue critical lawyering in their experiential course; as such, it does not provide concrete lesson plans and exercises for the seminar.[244]

A second effort is the "Teaching Justice" webinar series, as part of the Clinical Legal Education Association's Best Practices in Pedagogy committee.[245] The series "highlights new experiential approaches to teaching justice in the classroom, drawing on the wisdom of the current resistance movement and examining its intersections within a number of areas of law," such as immigration, family defense and the foster system, environmental justice, criminal justice, and racial justice. These webinars often explicitly invoke critical theory and provide examples of readings and exercises that experiential faculty can adapt for their own classrooms.[246] Finally, since about 2008, there has been a critical theory working group within the AALS clinical section, where clinical faculty have engaged in discussions around the critical theory in pedagogy.[247]

In 2018, we designed, screen-wrote, filmed,[248] produced[249] and released *The Legal Interviewing and Language Access Film Project (LILA)*.[250] The project

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[244] Following Monika Batra Kashyap's lead, we have incorporated into our clinics a reflection exercise followed by a classroom discussion, inviting students to comment on the Guerilla Guides' characteristics of community lawyers and think through which characteristics students aspire to themselves as attorneys. *See* Kashyap, *supra* note 9, at 416–17.

[245] *Teaching Justice Webinar Series*, CLEA, https://www.cleaweb.org/Teaching-Justice-Webinar-Series [https://perma.cc/2X8X-BN8A] (last visited Nov. 4, 2020). This effort is led by one of the authors, Laila L. Hlass, along with Dean Allison Korn from the University of California Los Angeles School of Law.

[246] *Id.*

[247] The group, although often not formally recognized as part of AALS, has met at the AALS Clinical conference and also sporadically at the NYU Clinical Writers' Workshop. Members have included Claudia Angelos, Annie Camet, Phyllis Goldfarb, Carolyn Grose, Margaret Johnson, Margaret Montoya, Jean Koh Peters, and Ann Shalleck. Email from Margaret E. Johnson (Feb. 17, 2020) (on file with authors).

[248] Filming took place over the course of just one day at Tulane University and, in general, the scenes required multiple takes.

[249] The videos use subtitles when Spanish language is used and are divided into accessible chapters. In reflecting on the videos, we failed to ensure that the videos were accessible to deaf and hard of hearing communities. We should have included closed captioning throughout the entire course of the video and not only when one of the actors was speaking Spanish.

[250] This was with financial support from a Carol Lavin Bernick faculty development grant from Tulane University. We secured the services of a film company, which assisted in the recruiting and hiring of actors, and we paid a stipend for their time. Before drafting the interview scripts, we solicited feedback from experiential and non-experiential immigration professors regarding what issues we would want to raise in these videos. The input we received was varied and rich and we took that into account in crafting the scripts to raise as many of the issues as we could within the videos. The series of email responses to our call for input are on file with the authors.

includes a set of two films focused on law students interviewing clients, inspired by videos made some time ago by Georgetown's Center for Applied Legal Studies.[251]

We prepared a teacher's guide to help instructors use the videos in a classroom setting. We also suggest exercises to "flip the classroom," meaning that the students engage in watching the videos at home and then come to class prepared to engage in exercises or discussions based on the material viewed outside of class. While the videos are easily accessible to the public via YouTube online,[252] we have also made the teacher's guide available for free to anyone upon request.

Since the videos were launched, law school clinics and experiential learning programs globally have contacted us to request the teacher's guide to consider integrating the videos into their courses. At the time of writing, close to 150 educators over 100 law schools have requested the use of the teacher's guide for these videos. The videos were made in the context of immigration clinics, which are particularly well-situated to engage critical theory.[253] Therefore, of the educators,

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[251] One, made in 1995, depicts a simulated initial client interview of a Serbian asylum seeker conducted by a clinic student in English. The student makes a comedy of cringe-worthy errors at every turn with her client, often shocking students into laughter and provoking deep conversation about all aspects of interview planning, from what to wear to the form of a question and how to approach sensitive topics, including sexual orientation. The second video, made in 2011, demonstrates an interview conducted in the Spanish language by an informal interpreter, who similarly makes all the mistakes we see regularly in practice, with almost no intervention by the law student. There is also a third video based on a real removal hearing that teaches students about strategic thinking on their feet in a courtroom setting. E-mail from Philip Schrag, Delaney Fam. Professor of Pub. Int. L., Ctr. for Applied Legal Stud., Georgetown Univ. L. Ctr. (Nov. 20, 2019) (on file with authors). By demonstrating some of the students' and lawyers' worst tendencies, the videos raise questions regarding best practices in client interviewing, including using an interpreter. These videos provided rich material in the classroom, but in both videos, the "law student" was operating solo, so the videos do not raise issues around collaboration.

[252] *See* Lindsay M. Harris & Laila L. Hlass, *Learning Legal Interviewing Video Project*, YOUTUBE, https://www.youtube.com/channel/UCFRiQyrhpHmdxgAE_DoMeRA/featured?view_as=subscriber [https://perma.cc/NC6L-JHDR] (last visited Nov. 9, 2020, 9:29 AM). The videos include a one and a half minute long introduction video, followed by the first video, and the second video, surfacing issues that arise in using interpreters. Both videos are divided into chapters that allow for easy navigation and pauses when using in the classroom.

[253] *See* Jennifer M. Chacón, Susan Bibler Coutin, Stephen Lee, Sameer M. Ashar, Edelina M. Burciaga & Alma Garza, *Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions*, 52 U.C. DAVIS L. REV. 1, 55 (2018) (acknowledging that the discrimination and oppression experienced by immigrants can be exacerbated due to intersectional vulnerabilities that immigrants experience based on "race, limited English proficiency, socioeconomic status, [legal status] and gender"); *see also* Johnson & Pérez, *supra* note 136, at 1458. We also note that it is likely more important than ever for immigration clinics in the current moment where odds are increasingly stacked up against them due to the administrative changes in policy and practice to train students to engage in critical lawyering. In this environment, the way in which students interact with and collaborate with clients and communities, who are feeling very targeted and at times terrorized, is critical to ensuring that clients and communities are truly heard and empowered.

this includes more than 60 immigration clinicians. However, educators teaching in a variety of other clinics, purely doctrinal courses, as well as courses focused on client counseling and interviewing skills have considered adopting the videos. Many non-immigration clinics, ranging in practice area from tax, general practice, family law, human rights, children's rights, community economic development, Native American law, veterans, housing, elder law, bankruptcy, workers' rights, consumer, post-conviction, pre-trial litigation, disability rights, detainee rights, and domestic violence, have also expressed interest in using this tool.[254]

The two videos feature the same set of law student clinic partners—Lisa and Max, who interview two different clients, Victor, a bilingual Honduran youth, and Josefina, a monolingual Spanish-speaker. Lisa is a Black female student who speaks Spanish fluently. Max is a White male who is a monolingual English speaker. Although their age is not clear, Max may appear to be older than Lisa. In the *Interviewing Victor: The Initial Meeting* video, Lisa and Max meet their client, Victor, for the first time. This interview is conducted completely in English. Although the facts supporting Victor's potential asylum claim are not fully explored, essentially, Victor is fleeing gang recruitment along with violence at the hands of a gang leader named Antonio, who is somehow connected with Victor's mother.

In the *Josefina: Using an Interpreter* video, Lisa and Max meet their second client, a Salvadoran woman named Josefina who is a monolingual Spanish speaker. As they will discover, Josefina is a lesbian woman who is a survivor of domestic violence at the hands of her husband in El Salvador. She fled that violence and came to the United States, at some point entering into a relationship with a woman named Carla. The video reveals some sort of incident involving a police report and violence with Carla, which may be a qualifying crime to render Josefina eligible for a U-visa, a form of immigration relief.

The LILA videos focus on helping students engage in the necessary discussion and thinking to build their critical interviewing skills, specifically considering collaboration in interviewing between partners, client, and interpreter and intersectional and race-conscious interviewing, informed by an understanding of historical and structural biases. In learning how to critique others and providing specific examples, both of "good" and "bad" interviewing, these videos encourage students to become more reflective about their own interviewing skills, habits, and tendencies.[255] Further, using videos is one method of modeling listening techniques—both positive and negative—which can be an effective way to engage law students in skills learning.[256] Indeed, although experts agree that active listening

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[254] At the time of writing, we have also received several requests from legal service providers across the country, and even internationally, to use the teacher's guide for the videos.

[255] Gellhorn et al., *supra* note 34, at 295 (explaining that professors review videos of real students interviewing within the clinic seminar and "[u]sing concrete examples, teachers can effect more lasting changes in students' interviewing skills").

[256] Hamilton, *supra* note 69, at 161 ("Modeling of listening techniques makes effective practices visible to students."); Warren, *supra* note 44, at 42 (recounting an exercise in a

is fundamental to a strong lawyer-client relationship, "it is generally not seen by the novice as a very natural or comfortable way to respond."[257] In Pedagogy of Oppressed, Freire suggests that we "restore students' dignity by practicing problem-posing education where [] student and teacher engage in teaching and are taught by each other."[258] Thus, examining models of active listening is an important first step in orienting law students to the skill of active listening. Film allows students to engage in critical thinking and joint problem-solving *with* professors. Finally, these videos can incorporate a few of the existing methods to teaching legal interviewing—utilizing observation and modeling, as well as encouraging role-playing. While teachers utilizing the videos are inherently having their students observe the simulated interviews, faculty may also encourage role play by stopping the video at various points and asking students to suggest an alternative method in role.

While the videos raise numerous questions, we focus specifically on eight moments in the videos that center issues of critical lawyering—involving three types of collaboration, informed by an intersectional approach: (1) with the client, (2) between students, and (3) with the interpreter. These moments raise a number of questions to which we do not provide explicit answers. There is no easy or single answer to addressing these thorny issues. Therefore, our purpose in teaching critical interviewing is to raise these hard questions, create space to discuss these dynamics, and encourage students and supervisors in each specific situation to chart a thoughtful way forward.

1. Collaboration with the Client

In considering collaboration with the client, the videos raise a multitude of issues, but we highlight here five particular moments that provide opportunities for exploration of this relationship from a critical interviewing perspective, considering client's perceptions of student representatives, students' lack of intersectional approach to client, expressing empathy, building client rapport, and interviewers with different language abilities.

(a) Client's Perceptions of Student Representatives

There is no telling how race, gender, and other characteristics of a representative may be perceived and responded to by an individual client or others within the legal system. A client may gravitate towards the law student of her same gender or race, for example, for any number of reasons. Another client may present a totally different dynamic where he or she feels more comfortable or assumes a representative with different gender and race traits has more authority than a

first-year legal writing class where students observe an upper-class student interview a professor "often with a healthy mix of promising work, awkward moments, and outright snafus").

[257] Dinerstein et al., *supra* note 44, at 762.

[258] Ball, *supra* note 21, at 19.

representative who shares traits with the client. We presented just one scenario in these videos, where the young male, Central American client establishes a connection with the White male law student and does not demonstrate the same level of respect for the Black female law student. This tension is brought to light in the following situation.

After sharing the agenda for their first meeting, Max then asks whether there is anything worrying Victor, the client. At this point, Victor discloses his concern about finances and his need to work to support his younger sisters in Honduras. This poses an ethical problem that students should dig into. Lisa and Max exchange glances, but then Max gives a somewhat quick answer—confirming that Victor is 18 years old and quickly saying that asylum seekers are allowed to work. Lisa puts on the brakes and recalls the rule where an asylum seeker can apply for a work permit a certain number of days after their application is filed. Victor asks about the consequences of working before he has secured a work permit, and Max says, "Honestly, dude, everyone works without permission." Lisa interjects and explains that they will consult with their professors and get back to Victor on this question. Victor presses Max, who he refers to as "the lawyer" on what he would do in this situation.

This is intended to raise some clear questions about gender, race, power and privilege. In this scenario, Max could have easily jumped in to clarify roles. He does not appear to notice how his race or his gender may be implicated in the interaction. Instead, he leans back in his chair and seems quite comfortable sharing his opinion with the client as the "lawyer." Max appears oblivious to the privilege he is experiencing and how his whiteness and maleness are benefiting him. As Russell G. Pearce writes, "[W]hite lawyers . . . have a tendency to treat whiteness as a neutral norm or baseline, and not a racial identity, and tend to view racial issues as belonging primary to people of color . . . ."[259] In addition to drawing out how a client may perceive law student representatives relating to gender, race, age and other characteristics, this is a moment to reflect on how students can sometimes direct, rather than collaborate with, clients. Max does not clarify that he is *not*, in fact, "the lawyer," or that he needs to provide key and accurate information to Victor so that Victor can make the decision ultimately. This is particularly fraught when the student is White, and the client is a person of color, as the relationship can reinforce entrenched racism.[260]

This example can help facilitate a discussion in which White students need to reflect on their role in perpetuating racism. This small example, an assumption that the client makes that the White male is the "lawyer," can open up ways to openly identify whiteness as a social category and understand the impact of white supremacy and white privilege.[261] Lisa steps in and asserts herself when Max starts

[259] Pearce, *supra* note 206, at 2083.

[260] *See* Johnson & Pérez, *supra* note 136, at 1459.

[261] Calmore, *supra* note 208, at 919 ("Whites must realize that their racial identity, like that of people of color, is also socially and culturally constructed, subject to contestation and change. They must come to realize that while not authoring racism, they may nonetheless be implicated in racism.").

to say, "well, I would work," and clarifies that she and Max are both students, not lawyers, and should consult with their professors on the issue of work authorization.[262] The question for instructors to pose to students in the classroom is—what responsibility did Max have in this situation to address the client's misperception?[263] How might he have handled this situation differently and avoided putting the onus on Lisa to correct the client's mistaken assumption? How might Max have used this situation to re-frame the lawyer-client relationship and recognize the client's own agency and power in decision-making?[264]

(b) Lack of Students' Intersectional Approach

The videos also surface issues around students' own privilege as well as blind spots in approaching a conversation intending to draw out Josefina's sexual orientation. The students have an inkling that Josefina is the victim of a crime involving her former roommate, Carla, and their questions reveal that they suspect that Josefina and Carla were romantically involved. At this point, the students have reflected neither on the lack of confidentiality in the interview by using Josefina's brother as an interpreter, nor how having a family member present during a discussion around a potentially very sensitive subject should not be a default decision. This provides a clear example of a failure of law students to educate themselves in advance of meeting with their client about power and privilege and how that may be implicated in legal relationships and representation.[265] Further, Lisa and Max do not pause in their interview after learning of Josefina's relationship with her brother and observing his more dominant role than his sister in the interview. They do not seem to consider how a woman of color who may identify as LGBTQ, who is monolingual Spanish speaking and appears to be dependent in some ways on her bilingual brother, might be particularly vulnerable to harm.[266] The students rather clumsily pursue a line of questioning to try to understand Josefina and Carla's relationship, despite the fact that members of the LGBTQ community often face stigma and even violence in their homes—as well as from society more generally. Furthermore, violence against LGBTQ community members is common in both the U.S. (where Josefina and her brother live) as well as in El Salvador, where Josefina has come from (and we do not know whether her brother has grown up exclusively

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[262] This issue can also surface an important discussion with students about how to respond to a client question where they are not sure of the answer, but also ethical questions about advising an undocumented person to work without authorization, and also potentially even rendering advice as law students and touching on unauthorized practice of law.

[263] *See* Aiken, *supra* note 146, at 21–22 ("[Some] circumstances . . . offer those of us who have privilege and opportunity to act, using our privilege and credibility to identify the injustice.").

[264] *See* Kashyap, *supra* note 9, at 407 (emphasizing the need to "ac[t] *with* rather than *for* clients and communities.").

[265] *See id.* at 408–09.

[266] It is unclear from the videos how Max and Lisa identify in terms of gender and sexual orientation themselves.

in the U.S. or when/if he migrated). In making this move, Lisa and Max display the privilege that they have in not even considering the dangers they have raised by potentially outing their client to a male family member on whom she appears to depend.

(c) Expressing Empathy

The *Victor* video provides a couple of different examples of students responding to client emotion. At one point, the client, Victor, shares that he cannot return to his native Honduras. Avoiding the emotion, at that stage, the student, Max, responds quickly, "Absolutely not, so, that's what we're going to work on with you. Your asylum claim. This form is just the first step. We're going to try to fill it out with you and submit at your court date in two weeks." While Max is trying to provide reassurance, his quick reassurance and pivoting to another topic fails to allow room for the client to express his emotions, and potentially to address the most important topic in his case—the reason he cannot return to Honduras, which is at the heart of his asylum claim. Max displays some discomfort with client emotion and tears. Later in the interaction, however, it is Max who pauses and allows a moment of silence and time while Victor is crying, defying traditional gender norms around tears and displays of emotion, while Lisa awkwardly hands the client some tissues, and it is Max who actually says, "It's OK, man, this is hard stuff to talk about. It's OK to cry."

These scenes provide room for students to engage in thought and discussion around how we display empathy as attorneys and how we truly engage with our clients, including how identities—race, gender and other aspects of one's identity—may be implicated in particularly tense interactions.[267] Although we cannot make assumptions about how race, gender, and other aspects of our and our clients' identities might manifest, this scene encourages discussion around how clients express emotion and how we as attorneys and law students respond. In some situations, clients may be more comfortable and open crying in front of a woman, but for other individuals, it may be the opposite. In some instances, attorneys and law students may project their own discomfort with emotion onto their clients, sometimes offering the client an "out" by reassuringly changing the topic to avoid discomfort on both sides. These scenes from the videos often lead to frank discussions in the classroom around emotions in lawyering.

(d) Building Client Rapport

At the beginning of the first video, Max leaves the room alone to meet the client, Victor, "downstairs." Viewers may note that Max gives his partner Lisa a fist bump on the shoulder as he leaves. This can raise questions about how students feel about

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[267] *See* Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. Rev. 259, 260–65 (1999) (emphasizing the importance of an attorney's emotional intelligence in dealing with clients).

partners touching one another, particularly in a professional context. While we do not suggest a "right" answer, moments like this can raise conversations about what to consider and how to plan for different scenarios.

When Max leaves to meet their client, Lisa waits for her partner and client to arrive. The screen shows that seven minutes have passed. This, too, may be a moment for comment—should both partners have gone to meet the client downstairs? How might one partner greeting the client for the first time, even if just to show the client to the interview room, have unintended consequences? Max enters the room laughing and talking about soccer with the client, Victor, clearly having built some rapport. Lisa has to awkwardly interject in order to introduce herself, and Max does not facilitate the introduction.[268] Later in the video, Lisa works hard to catch up in the rapport-building and to establish that she, too, is a soccer player and fan.

2. Collaboration Between Students

The videos also raise issues around critical interviewing involving the collaboration between student partners. So often, clinics assign students to work in teams of two or more, and working together and engaging in critical lawyering requires conscious examination and articulation of the ways in which systemic bias and oppression come into play in that collaboration. Three moments in the LILA videos provide windows to raise these challenging partnership dynamics and are discussed below.

(a) Gender and Race Dynamics Within the Student Partnership

Issues of gender and racial privilege are surfaced again when Victor produces original documents and the team needs to make copies. Max actually asks Lisa to make the copies, but Lisa pushes back and asserts herself by asking Max to make the copies. This is a good example of modeling and stepping in early when a partner dynamic is heading down the wrong track.[269] In our own experience and that of our colleagues, we have often seen female law students take on the role, whether consciously or subconsciously and whether requested or not, of scribe and note-taker, and sometimes seen male partners expect and rely on the female law student to play a quasi (or full!) secretarial role. Indeed, we tried to surface this issue in the videos where, at one point, Max's computer makes a dinging noise. He apologizes and says he will not use his laptop anymore, but it should not be a problem because Lisa is taking notes. This again raises the question of gender roles and an assumption that a female student, and in this case a woman of color, will take an administerial

[268] This scenario is similar to that raised by Professor Susan Bryant in her article where she recounts a male student and client "bonding" and excluding the contributions of the female law student. *See* Bryant, *Collaboration in Law Practice*, *supra* note 169, at 487–88.

[269] O'Grady, *supra* note 78, at 505 ("Even in non-hierarchical teams of co-equal peer attorneys, successfully working collaboratively is difficult, often because communication in the team breaks down.").

although critical role, while the White, male student engages in the more authoritative, lawyering role.[270]

In the videos, we chose to model Lisa, the Black female student, pushing back against her White,[271] male colleague when he assumed she would make copies, take notes, and where the client assumed he was the "lawyer" in the room. In doing so, we did not address a common scenario where a student who is othered stays silent in the face of microaggressions[272] and other forms of explicit and implicit bias. We hope that in modeling a student asserting her own interests, this can be a topic for a live discussion with students—instructors can pose questions, such as, "What should Max do after he has realized how he is undermining Lisa?" "What would you have done in Lisa's situation?" "Is there anything that might prevent you from acting in the way she did to assert herself and change the dynamic?"

Building in a small interaction like this to the videos, we hope, opens up a discussion within the classroom of racial and gender privilege. Some students may benefit from White, male, cisgender, or other forms of privilege such that clients or other institutional actors identify them as more legitimate legal actors than classmates who are people of color, women, or belong to other cultural groups facing oppression. It can also raise questions about the obligation of the partner who is benefiting from privilege to proactively confront these biases in support of their partner.

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[270] Also notable, Max doesn't type from here on, but leaves up the physical barrier of his computer screen, without closing his laptop. Professor Susan Bryant examines the issue of gender difference in collaboration. *See* Bryant, *Collaboration in Law Practice*, *supra* note 169, at 459, 484 ("These [gender] differences provided the material for insightful discussions about the role of the lawyer, the strengths and problems of the different [client] boundaries, and the role that gender may play when boundaries are set without prior critical reflection.").

[271] We capitalize "W" here, as there is a growing call to do so. Historian Nell Irvin Painter argues "in terms of racial identity, white Americans have had the choice of being something vague, something unraced and separate from race. A capitalized 'White' challenges that freedom, by unmasking 'Whiteness' as an American racial identity as historically important as 'Blackness'—which it certainly is." Nell Irvin Painter, *Why 'White' Should Be Capitalized, Too*, WASH. POST (July 22, 2020, 8:57 AM) https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/ [https://perma.cc/QPJ8-DM9D].

[272] While "racial microaggressions" was first proposed as a concept by psychiatrist Chester M. Pierce, M.D. in the 1970s, academics in a number of fields have significantly amplified the concept in recent years, which have been defined as "brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color." Derald Wing Sue, Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M. B. Holder, Kevin L. Nadal & Marta Esquilin, *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271, 271 (2007).

(b) Dividing the Interview When Collaborating with a Partner

In general, through the videos, we hoped to encourage law student viewers to consider how they might approach a client interview, structurally, when working with one or more partners. Should they divide up interview topics? In the interview, Lisa and Max go back and forth asking questions, with one often interjecting while the other is pursuing a line of questioning. There may be advantages to this approach, as two brains are surely better than one, but the downside may be that the client finds the questioning intense and disorienting.

As the story develops, Victor shares that things got worse after his friend Felipe Manuel was killed and a gang leader named Antonio showed up at his house. Max is doing a generally good job asking good follow-up questions. Lisa, though, at one point, jumps in and proposes an answer in the form of a leading question: "Ok, so now you're saying that M-18 wanted to recruit you, too?" In doing so, Lisa interrupts the client's narrative and framing of his case and his feelings, suggesting an answer to Victor which could shape the information that is disclosed. This kind of interruption, particularly during a first client interview, may undermine the client's power and agency and serve to reinforce a hierarchical lawyer-client relationship.

Max jumps in after Lisa's interruption and opens up the conversation again, following the client's line of thought. This is an opportunity for students to discuss what to do when their partner takes an approach with which they do not agree. Should Max, as the White male in the student partnership, holding the most power and privilege, take extra care not to interrupt his partner, undermining her authority? What if Max feels that Lisa is acting in a way that is detrimental to the clients' interest? Are there ways in which Max could course correct, if indeed Lisa has taken the interview off track, without undermining Lisa?

(c) Interviewers with Different Language Abilities

The Josefina video demonstrates how partners' different linguistic identities might be implicated in collaborating with their client. Prior to the client, Josefina's, arrival for the second video, Max thanks Lisa for arranging the interview, which he comments would have been hard for him because he speaks no Spanish. This is an opportunity to discuss with students the dynamics and assumptions within a team where one clinic partner speaks the client's language and the other does not. Does this mean the foreign language speaker is responsible for all client communications? Is that fair? Does it make sense in terms of building client rapport? What might the consequences of this division of labor be in how the client perceives the students—perhaps the client will connect more to the Spanish speaker and/or perhaps the client will assume the Spanish speaker is merely the interpreter while the other student is the attorney? How might the labor in other pieces of the case be divided to ensure equality? How might the non-Spanish language speaker communicate with their client?

Later on in the video, Lisa starts speaking in Spanish, without any interpretation being provided to Max. This provides the opportunity to discuss whether there are

points, in an asymmetrical language partnership, where one partner may be able to communicate information more efficiently to the client. This may be discussed ahead of time and has pros and cons that students will need to consider.

3. Collaboration with Interpreter

The final mode of collaboration the LILA videos explore collaboration with the interpreter. The *Josefina* interview video presents a situation where the client brings her own interpreter, who is her brother. A client appearing with a family member or friend to interpret is not, of course, an uncommon situation. In the video, this plays out in a rather dramatic fashion. Not only is the brother, Miguel, not a competent interpreter, but he also hampers his sister's telling of her story as he seems not to know, and seems highly offended by the suggestion that she may be a lesbian.

The video also presents an opportunity to discuss the physical setup of the room. The interpreter, Miguel, sits closest to the law students and the Spanish-speaking law student. Josefina is quite far away from the law students, and the non-Spanish speaking law student, Max, is sort of on the outside.

The video raises the question of when and how to prepare an interpreter to provide interpretation services. Partway into the interview with Josefina, Max pauses and gives some guidance to the interpreter, Miguel. This is, however, already within the interview and also none of his English instructions are interpreted to the client.

The videos present some fairly common interpreter errors—such as the use of the third person or failing to interpret what the interpreter deems perhaps not essential information (such as, for example, a moment where Lisa expresses sympathy that the client had endured domestic violence). At another point, Miguel interjects and answers for his sister, the client. He also includes his own point of view about police in El Salvador. Some attorneys may find this inappropriate, but others may see this as a helpful addition.[273] On the flip side, the videos also present common errors for legal interviewers working with interpreters—including failing to break down sentences or pause for interpretation frequently enough.

Ultimately, after conferring outside the presence of both the interpreter and the client, Lisa and Max decide to use another volunteer interpreter by phone. This decision can engender much discussion with law students viewing the videos about whether they would make the same decision at this point, along with the pros and cons of telephonic interpretation.

With the new interpreter, law students Lisa and Max model asking the client if she understands the interpreter. This allows for a discussion in the classroom of how and when exactly to gauge client comfort with an interpreter and whether or not the interpreter is doing a good job.

The performance of the second interpreter is much better, although several issues are still raised. The students, Lisa and Max, model how to address a situation

[273] *See* Ahmad, *supra* note 122, at 1076 (arguing that disruptions to the lawyer-client relationship may be productive in better representing the client).

where an interpreter does not understand a word—in this case, the significance of "*la bestia*"—the beast—which refers to the train migrants take through Mexico. Rather than allowing the interpreter to follow up, they first ask him to interpret what he did understand. Instructors can raise questions about the role of the interpreter in viewing this video—are there ways in which there can be more multidimensional collaboration in the lawyer-client-interpreter relationship?[274]

Ultimately, the LILA Film Project is a first step in creating a pedagogy for teaching critical interviewing skills. Much more remains to be explored broadly within critical lawyering, and specifically within critical interviewing and the following section identifies some of these areas for exploration.

IV. CRITICAL GAPS FOR FURTHER RESEARCH AND EXPERIMENTATION

> *In the hands of clinical educators, experience can generate theory which can circle back to inform experience, which in turn can alter, refine, and improve the theory.*[275]

In reflecting on the LILA videos since their creation and launch in 2018, there are a number of areas important to critical interviewing ripe for further exploration. These include: 1) modeling pre-interviewing preparation; 2) demonstrating meaningful collaboration with a client and/or community groups, and with one another; 3) addressing and raising a variety of privilege issues between students, client and/or interpreter; 4) touching on power dynamics at play within supervision; and 5) modeling or opening a window to discuss post-interview debriefing, reflection, and trauma stewardship. Each of these areas is ripe for further exploration and potentially could be addressed in future videos or other teaching tools.

A. Preparing to Collaborate with an Interpreter

While the choices in the *LILA* videos that the students make often generate conversation in the classroom about how they might have prepared better and how might students in the class prepare going forward—there is no modeling of the pre-interview in the videos. This is particularly true in the instance of collaboration with interpreters. The *Josefina* video fails to model how students should think about engaging with interpreters before the interview. The students determine during their first client interview that they cannot work with Josefina's brother, Miguel, and change course. In opting to work with a new interpreter, the students do model some of the best practices in terms of preparing to work with an interpreter, but not everything.

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[274] *See id.* ("We might then reconstitute a more porous form of the lawyer-client relationship, one in which the lawyer retains a central role, but is far more open to multidimensional collaboration.").

[275] Goldfarb, *supra* note 1, at 721.

After determining that an interpreter is needed, students must identify an appropriate interpreter.[276] After doing so, students must consider how to prepare for the collaboration. Ideally, the law students should not be meeting or interacting with the chosen interpreter for the first time at the time of the interview. Rather, expectations and roles should be discussed and shared, along with key topics such as confidentiality, before the interview. Students should anticipate a longer interview time,[277] or to make less progress within a set interview time when using an interpreter. As demonstrated by students Lisa and Max consulting with their new telephonic interpreter prior to introducing him to Josefina, prior to the interview, the students should meet or communicate with the interpreter to review confidentiality and potentially the professional code of ethics for interpreters.[278] The best practices for working with an interpreter in an interview are many. First, communicating in the first person, speaking directly to the client, and maintaining eye contact with the client is generally advised.[279] Next, using short sentences, asking questions to confirm client understanding, and avoiding interrupting the interpreter or the client, are all important habits.[280]

Central to critical interviewing, students must also consider how gender, race, age, region, and country of origin of the interpreter may impact their client's comfort level, as well as ensure the interpreter is a disinterested party. As language is complex and, at times, the interpreter may not know a technical term or certain slang, the students and interviewer should prepare for gaps in interpretation.[281] In addition to ensuring interpreters have a dictionary, interpreters should feel empowered to state they do not understand a certain word or term, so that students can ask further questions to ensure they understand the nuance, or they can change their terminology to ensure what is being interpreted for the client is accurate. For untrained interpreters, students, and professors should consider training regarding use of short-hand and providing paper and pencil.

Related to pre-interview preparation, is the teaching collaboration—with the interpreter, as well as with the client and clinic partner. Professor Ahmad has thoughtfully considered the role of the interpreter, and proposes that interpreters could play one of three roles: "interpreter as guardian, the interpreter as advocate, and the interpreter as linguistic and cultural authority."[282] Ahmad's proposed model

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[276] *See* McCaffrey, *supra* note 85, at 375–83 (identifying considerations when selecting an appropriate interpreter).

[277] *Id.* at 383.

[278] *Id.* at 384.

[279] *Id.* at 384–85; Nidia Pecol, *Reflections on Interpreting: Help for the Criminal Practitioner,* 32 CRIM. JUST. 28, 32 (2017) (discussing the use of first versus third person by an interpreter).

[280] McCaffrey, *supra* note 85, at 385.

[281] Ahmad, *supra* note 122, at 1031–34 (emphasizes the complexity of language and communication and the importance of context).

[282] *Id.* at 1053–54. *But see* Pecol, *supra* note 279, at 33 (advising to keep uninterpreted client conversations and unsupervised client interactions with interpreters to a minimum).

of community interpreting, while not ideal for all situations,[283] has the potential to encourage lawyers to engage not only "in the cases of clients, but in the struggles of communities" in a far more collaborative manner.[284] Ahmad argues, "By accepting the interpreter as a partner rather than rejecting her as an interloper, by resolving the dynamic of dependence and distrust in favor of collaboration, lawyers can enhance [limited English proficient] client voice and autonomy while increasing their engagement in the communities from which their clients hail."[285] We do not learn, in the LILA video, where the phone interpreter David comes from or how he may be able to play a role in the team in enhancing collaboration and client empowerment.

B. Collaboration Between Attorneys, Clients, and Community Groups

The videos raise a number of issues around collaboration, but there remain broad areas within collaboration ripe for exploration, including effectively modeling collaboration between lawyers, lawyer-client collaboration, and collaboration with impacted communities such as interviewing organizers and community leaders, representing larger groups.[286] In terms of lawyer collaboration, the videos skip over the discussion of what the students have done ahead of time to ensure smooth collaboration between the two of them. Students should plan broadly for how they will work together—not only how to plan to divide key portions of the interview, but how they plan to create space for their partner to contribute as needed, and how they may approach a need to reorganize and adapt. Students should be encouraged to self-reflect and think through the dimensions of themselves they bring to the interview and how the power dynamics between themselves as partners, their supervisor, and their client may play out and affect the interview. In engaging in this self-examination, students become more mindful of their own assumptions and biases and can better engage in truly collaborative interviewing.

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[283] Ahmad, *supra* note 122, at 1070–71 (discussing instances where a client may seek legal assistance to "gain distance from, rather than closeness to, her community," including, for example, a battered woman trying to escape an abusive relationship).

[284] *Id.* at 1086.

[285] *Id.* at 1003.

[286] In THE CLINIC SEMINAR, Epstein, Aiken, and Mylniec devote an entire chapter to collaboration but do not focus explicitly on collaboration in interviewing. *See generally* EPSTEIN et al., *supra* note 173, at 409–34. This exercise encourages students to self-identify preferences and habits and then work with a partner to flesh out how the differences and similarities between partners may present strengths and weaknesses in their collaboration. *Id.* at 427–34; *see also* Camp, *supra* note 169, at 932–34 (detailing how Camp and her co-teacher, Deborah Epstein, engage students in a discussion and exercise around collaboration within the clinic seminar). Likewise, in *Connection, Capacity, and Morality*, there is no explicit focus on collaboration in interviewing. *See* Dinerstein et al., *supra* note 44, at 778–79 (sharing an example of two law students interviewing a client but without any analysis of the collaboration specifically); *see also* CHAVKIN, *supra* note 41, at 85–91 (devoting a short chapter to the merits and challenges of collaboration but without discussion of collaborative interviewing).

As critical educators, we must also find ways to demonstrate and raise issues relating to lawyer-client collaboration. For example, in introducing the client to the legal process, students could explain how the client will be the key contributor to their own case, and establish how client and students can work best together. Asking a client if they have worked with a lawyer in the past, and what was good or bad about that experience can be one approach to learning how to develop a successful collaboration with a client. Students can also acknowledge the client's power, dignity, and value by communicating sentiments such as, "You are the expert in your own life," or by offering different modes of engagement.[287]

For example, in Victor's asylum case, the students could have explained that while often students or lawyers interview the client to then write the client's declaration, the client may decide he or she would rather write a first draft themselves or play a very active role in editing the declaration back and forth after each meeting. The students also could have explained evidence gathering in a way that would have encouraged and allowed for collaboration—"we are going to work with you to gather evidence from your family and friends to support your case." Students could also have explained, especially in an asylum case, that they will need the client's help developing an understanding and expertise on dynamics at play in the client's country of origin. Students could invite the client to send relevant articles or news sources that he or she may have come across. Of course, collaboration is going to look very different depending on the client. Some clients may be more or less politically mobilized, more or less literate or formally educated; some students and clients may have disabilities that require particular accommodation for effective communication. Ultimately, we believe that there are ways in which meaningful client collaboration can and should be modeled and discussed with students embarking on critical interviewing.

While the videos raised some collaboration issues around race, gender and language ability, future work must address other elements of identity and privilege that are neglected in interviewing texts, such as hetero-normativism, gender identity and cisgender privilege, as well as ableism. Although the *Josefina* video focuses on a seemingly cisgender client who had engaged in a romantic relationship with a woman, we did not draw out how *Josefina* identifies (given the scant information shared she presents as potentially either lesbian or bisexual), and gender identity as a difference between the law students and the client does not surface. While there is clear tension manifested with the client's brother, Miguel, who makes some overtly homophobic remarks, we did not dive deeply into gender identity and the dynamics of privilege between the law students and client and how that impacts lawyer-client collaboration.

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[287] *See, e.g.*, Kashyap, *supra* note 9, at 407 (citing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 50 (1992)) (explaining the second principle of community lawyering as solidarity in a collaborative lawyer-client relationship where the lawyers "acknowledge the leadership capacity, expertise, resilience, and determination of their clients").

The videos, through a focus on interviewing in the context of direct representation, did not focus on a key aspect of many modes of critical lawyering, which is collaboration with communities.[288] As Herrera and Trubek explain, "[t]ackling problems through multiple perspectives is a core part of critical lawyering,"[289] and critical lawyers view the law as a tool while equally valuing "the experience of clients and communities in their quest to democratize law."[290] Increasingly scholars and advocates emphasize the importance of engaging beyond individual representation.[291] While some clinics work with organizers and community groups "to develop the capacity of marginalized people to obtain and exercise power,"[292] there is a gap in interviewing pedagogy considering interviewing in the context of working with organizers and community groups.

C. Collaboration with Supervisors

Another key topic in clinical education that must come into play when considering critical interviewing is the role that the supervising attorney(s), instructor(s), and/or professor(s) have as part of a collaborative interviewing process. Although clinical supervisors are often not in the room when students interview clients, the supervisors collaborate with students in planning and reflection as part of the interviewing process. Supervisors' own identities—status within their institution, race, gender, age, and other characteristics—undoubtedly have an effect and interplay in student supervision and client representation, including students' approach to client interviewing. Integral to clinical supervision—particularly in the context of overseeing student-client relationship-building and interviewing—is observation and reflection about the diverse "generations, races, genders, political affiliations, learning styles, and personalities" involved in the work.[293] Excellent

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[288] Herrera & Trubek, *supra* note 137, at 376 at ("Critical lawyers today aim to collaborate with clients and communities. Collaborations permit clients and communities to articulate their priorities that often reflect their cultural and ideological preferences. [They] view the engagement with clients, communities and other stakeholders, including non-legal professionals, as instrumental for seeking justice.").

[289] *Id.* at 376, 380 ("Social justice lawyering moves away from the lawyer as the central protagonist to the lawyer as collaborator with the client and community.").

[290] *Id.* at 370.

[291] *See, e.g.*, Archer, *supra* note 16, at 401–02 (defining political lawyering as teaching law through a "systemic reform lens in case selection, advocacy strategy, and lawyering process, with a focus on legal work done in service to both individual and collective goals"); *see also* Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133, 2140–41 (2007); GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 63–64 (1992) (discussing the potential benefits of client-lawyer collaboration in the context of "practical moments," such as factual investigations).

[292] *See* Ashar & Lai, *supra* note 210, at 84.

[293] Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLINICAL L. REV. 517, 517–18 (2013).

clinical instructors regularly and thoughtfully observe situations that arise in clinical work, and adapt teaching approaches to best fit these situations.[294]

D. Post-Interview Reflection

Critical lawyering necessarily entails critical reflection. Future work should engage the imperative that students engage, as part of interview debriefing in the process of self-examination and reflection and connecting their own lawyering with larger themes and theories of social change.[295] As discussed above, students must engage in the process of self-examination to gain self-awareness in preparing for the interview, but also in reflecting on their performance; they must be able to engage in critical reflection as to how their assumptions, biases, privileges and other power dynamics played out in the course of the interview. Also critical is debriefing to ensure that students are taking trauma stewardship seriously—the notion that they are responsible for preventing and managing any vicarious trauma as a result of their work with clients as a part of their ethical obligations as an aspiring attorney.[296]

CONCLUSION

When considering critical theory in interviewing pedagogy, a number of practical questions arise: How can we train students on best practices in communicating with others, with an eye towards disrupting existing power disparities, leveraging their clients' strengths, and using a collaborative approach with their clinic partner, clients and communities, and often an interpreter? Furthermore, how do we impart to students that integral to client communication and representation must be an attempt to understand and respond to the intersectional systems of oppression that may impact their clients' lives, communities and legal cases, such as racism, misogyny, classism, homophobia, transphobia, and ableism?[297] How should law students working collaboratively in a client interview identify and address the ways in which bias and structural oppression may be implicated within their legal relationships and the larger legal system? In the context of a legal interview, what will those implications mean in how they collaborate with one another, their client, an interpreter or other individuals?

There is no singular answer to these questions, which are context-specific. This Article and the LILA Film Project are one effort—the videos should be critiqued,

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[294] *Id.*

[295] *See* Kashyap, *supra* note 9, at 409.

[296] *See* Section I(A) (discussing vicarious trauma and trauma stewardship).

[297] As Jane Aiken says, "[i]n the educational context, as teachers, we have the ability to share our own power and privilege in the classroom. We do this through our curricular choices and the comments we choose to ignore and those that we develop and examine in class. As members of an institution, we share our privilege through our willingness to encourage diversity among the faculty and the student body. We, like our students, can recognize that our choice not to speak may reinforce privilege and contribute to others' pain." Aiken, *supra* note 146, at 22.

revised, and improved. New methodologies should be envisioned, designed, and implemented. We challenge ourselves, our colleagues, and those beyond the field of experiential legal education to engage in open dialogue on how to center collaboration and intersectionality within interviewing, but ultimately to explore how to infuse all lawyering skills with critical lawyering theory.