THE PEDAGOGY OF INNOCENCE:
REFLECTIONS ON THE ROLE OF
INNOCENCE PROJECTS IN CLINICAL
LEGAL EDUCATION

KEITH A. FINDLEY*

The service and policy missions of innocence projects have received considerable scholarly attention. Relatively little, however, has been written about the pedagogical mission of innocence projects as law school clinical programs. This article examines the pedagogical challenges and opportunities presented by clinical programs that investigate and litigate large, complex innocence cases. First, the article analyzes what innocence projects can and should teach law students, including lessons about facts and investigation skills; about the need for thoroughness and skepticism, and what that means in practice; about essential values of the profession, and about the risk that the narrow focus on representing only the “innocent” might convey unintended messages about the value of legal representation to all criminal defendants; about ethics; about doctrine and a critical perspective of legal institutions; and, finally, about judgment. Second, the article considers how innocence projects might meet those educational objectives. Among other things, the article probes how innocence projects—and other similar large-case clinical programs—can manage the traditional tensions between the goal of nondirective student supervision, including the need to allow students to gain “ownership” of their cases, and the responsibility of ensuring quality representation to the clients in these complex cases, in which so much is at stake.

I. INTRODUCTION

In recent years, innocence projects have become increasingly significant players in clinical legal education. Beginning at just a few law schools in the early 1990s, innocence projects have emerged now at close to 40 law schools.1 These projects investigate and litigate claims of actual innocence on behalf of people wrongfully convicted of seri-

* Clinical Professor and Co-Director, Wisconsin Innocence Project, Frank J. Remington Center, University of Wisconsin Law School. J.D., Yale Law School 1985; B.A., Indiana University 1981. I am grateful to Bridget McCormack, Juliet Brodie, Meredith Ross, Byron Lichstein, and John Pray, for their helpful comments on this article.

1 For a list of innocence projects in the United States, see the Wisconsin Innocence Project web site at http://www.law.wisc.edu/fjr/innocence/other_ips.htm (last visited 7/17/2006). Innocence projects have also emerged in journalism schools, public defender’s offices, and private, non-profit organizations. Id.
ous crimes. The projects have been remarkably successful in the last
decade in proving innocence; as of August 2006, at least 183 people
had been exonerated by post-conviction DNA testing, and within the
last 15 years literally hundreds more had been exonerated with other
types of evidence (although not all were innocence project clients).
Innocence projects represent a high-profile example of large case, im-

3 Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery &
CRIMINOLOGY 523 (2005).
4 For a sampling of some of this literature, see Gross, supra note 3; Barry Scheck,
Peter Neufeld, & Jim Dwyer Dwyer, Actual Innocence: Five Days to Execu-
tion, and Other Dispatches from the Wrongly Convicted (2000); George H.
Ryan, Report of the Governor’s Commission on Capital Punishment (April 15,
2002), available at http://www.idoc.state.il.us/ccp/ccp/reports/index.html; Innocence Com-
Gary L. Wells et al., Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads, 22 LAW AND HUM. BEHAV. 9 (1998); Thomas P. Sullivan, Police Exper-
ences with Recording Custodial Interrogations, Special Report, Northwestern University
School of Law (Summer 2004); Steven A. Drizin & Richard A. Leo, The Problem of False
Confessions in the Post-DNA World, 82 N.C. L. REV. 991 (2004); Richard A. Leo & Rich-
ard J. Ofshe, The Consequences of False Confessions: Deprivations of Liberty and Miscar-
riages of Justice in the Age of Psychological Interrogation, 88 J. CRIM. L. & CRIMINOLOGY
429 (1998); Gail Johnson, False Confessions and Fundamental Fairness: The Need for Elec-
tronic Recording of Custodial Interrogations, 6 B.U. PUB. INT. L.J. 719 (1997); Steven A.
Drizin & Beth A. Colgan, Let the Cameras Roll: Mandatory Videotaping of Interrogations:
Is the Solution to Illinois’ Problem of False Confections, 32 LOY. U. CHI. L.J. 337 (2001);
Keith A. Findley, Learning from Our Mistakes: A Criminal Justice Study Commission To
Study Wrongful Convictions, 38 CAL. W. L. REV. 333 (2002); Michael J. Saks, et al., Toward
a Model Act for the Prevention and Remedy of Erroneous Convictions, 35 NEW ENG. L.
REV. 669 (2001); Sharone Levy, Righting Illinois’ Wrongs: Suggestions for Reform and a
Call for Abolition, 34 J. MARSHALL L. REV. 469 (2001); Steven Clark, Procedural Reforms
in Capital Cases Applied to Perjury, 34 J. MARSHALL L. REV. 453 (2001); Michael J. Saks &
Jonathan J. Koehler, What DNA “Fingerprinting” Can Teach the Law About the Rest of
Forensic Science, 13 CARDOZO L. REV. 361 (1991); George Castelle, Lab Fraud: Lessons
Learned, THE CHAMPION 12 (May 1999); Scott Bales, Turning the Microscope Back on
Forensic Scientists, 26 LITIG. 51 (2000); U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PRO-
GRAMS, NATIONAL INSTITUTE OF JUSTICE, A REPORT FROM THE NATIONAL COMMISSION
ON THE FUTURE OF DNA EVIDENCE, POSTCONVICTION DNA TESTING: RECOMMENDA-
177626.htm; Rob Warden, Northwestern University School of Law, Center on Wrongful
www.law.northwestern.edu/wrongfulconvictions/documents/SnitchSystemBooklet.pdf;
Daniel Givelber, Meaningless Acquittals, Meaningful Convictions: Do We Reliably Acquit
the Innocent?, 49 Rutgers L. REV. 1317 (1997); Brandon L. Garrett, Innocence, Harmless
Error, and Federal Wrongful Conviction Law, 2005 WIS. L. REV. 35; Stanley Z. Fisher,
Convictions of Innocent Persons in Massachusetts: An Overview, 12 B.U. PUB. INT. L.J. 1
written about the role of innocence projects in clinical legal education. One article primarily provides an overview of various models of innocence projects and a primer on how to create a project.\(^5\) The other highlights some of the pedagogical limitations of innocence case work, while suggesting that involving students in the case selection process can add educational value.\(^6\) Little else, however, has been written about the educational value and objectives of innocence projects, and about ways to structure such projects to obtain maximum educational value from the large, complex cases these projects handle.\(^7\)

Volumes, of course, have been written about clinical legal education in general—its history, theoretical underpinnings, methods and objectives. Much has been written about specific clinical models and the substantive legal areas that comprise the work of various clinics. The literature includes a rich discussion about the comparative advantages and disadvantages of clinics that focus on large, high-impact litigation cases as opposed to clinics that handle smaller or more routine cases.\(^8\)

An inquiry into the pedagogical approaches and challenges of in-
nocence projects can make an important contribution to this literature. While the experience of innocence projects is unique in several important respects, inquiry into innocence project pedagogy yields insights that are, I believe, of value both to those teaching in innocence projects, and more broadly to clinical legal education in general. Inquiry into the “pedagogy of innocence” is important for several reasons.

First, without a deliberate focus on pedagogy, the educational goals of innocence projects are susceptible to being overwhelmed by the client service, research, and public policy missions of the projects. One of the tremendous virtues of innocence projects is that the dominant mission—to free the innocent—is one that engenders passionate commitment by clinical faculty, students, and volunteers alike. The specter of a wrongful conviction and imprisonment or execution of an innocent person is so abhorrent, and the possibility of helping to exonerate one so wronged by the state is so dramatic, that energy and attention naturally focus primarily on the client service aspect of the work. In addition, because the exonerations produce so much publicity and public sympathy for the plight of the wrongly convicted, the “innocence movement” has produced a rare opportunity for policy reform efforts to minimize the risks of wrongful convictions, and these reform efforts naturally demand significant attention from clinical faculty.9 Indeed, at annual innocence project conferences, the vast majority of the sessions and discussions focus, as they should, on investigation and litigation strategies and policy reform efforts. While there have been some efforts in recent years to address the teaching objectives of clinical projects at conferences of the national Innocence Network and the Association of American Law Schools, that attention is largely overshadowed by discussion of the substantive case objectives and policy goals of the innocence movement.10 Therefore, for those innocence projects that operate as law school clinical or


10 Pedagogy is not a prominent subject at innocence project conferences and in the literature generated by the work of innocence projects also in part because many of the innocence projects are not clinical programs and have no formal affiliation with a law school or university, and hence do not have an explicit teaching mission. The Georgia Innocence Project and the Innocence Project New Orleans, for example, are independent non-profit organizations. See Wisconsin Innocence Project, U.S. Innocence Projects 2004 [hereinafter Innocence Projects 2004] (survey listing of innocence projects nationwide, on file with the author). Others, such as the Delaware project, are housed in the public defender’s office, and yet others, such as the Kentucky Innocence Project, the Arizona Justice Project, and the Colorado Innocence Project, consist of a consortium or coalition of private attorneys, public defenders, and law students. Id.
other university- or college-based programs, a deliberate effort to step back and consider the educational implications of the work is important.

Second, the work of the innocence projects provides opportunities for learning that are in some ways unique, and that ought to be acknowledged and analyzed. As discussed below, innocence projects, even more so than many other clinical programs, involve students in extensive fact investigation. They offer a learning model that is quite different than the traditional law school focus on appellate opinions, in which the facts are presented as a given or even insignificant. At the same time, innocence projects provide a valuable opportunity to examine the criminal justice system from the back end, by deconstructing cases that have already been tried and appealed, and in which the system failed. But just what is it that students can or should be learning from these experiences? Effective teaching at least requires awareness of what it is we hope students are learning, and what value there might be in such lessons.

Third, working with large-scale wrongful conviction cases yields additional insights into the advantages and disadvantages of building a clinic upon such large cases, and suggests methods for handling these cases for maximum educational benefit. Innocence project cases share certain characteristics with civil rights and other large scale litigation projects that raise questions about their appropriateness for clinical education. As Daniel Medwed has described, the size, complexity and unpredictability of innocence project cases pose challenges to clinical teaching methodology. Medwed concludes that the size and complexity of innocence project cases make it difficult if not impossible to allow law students to take ownership of the cases, and to gain the benefits of nondirective clinical supervision. He therefore suggests an alternative role for law students in innocence projects that de-emphasizes their engagement in direct case work and provides more opportunities for handling more manageable tasks such as case screening. Medwed raises important concerns about innocence project pedagogy, but is his solution the only one? I want to suggest that, based on my experiences with the Wisconsin Innocence Project at the University of Wisconsin Law School, there are ways to give students “ownership” of their cases, to provide them with a rich and valuable learning experi-

---

11 Some programs are affiliated with undergraduate journalism schools or departments, such as the Medill Innocence Project at Northwestern University’s Medill School of Journalism and the Innocence Institute of Point Park University, which is affiliated with the Department of Journalism and Mass Communications at Point Park University in Pittsburgh. Innocence Projects 2004, supra note 10 at 7, 15-16.
12 Medwed, supra note 6, at 1128.
13 Id. at 1141-50.
ence at every stage of the process—from screening to investigating to litigating the cases. With proper attention to methods for making the large cases accessible to and manageable by students, large cases such as these can offer superb clinical learning opportunities.

This article thus seeks to extend the discussion that is just beginning to emerge about the pedagogical issues presented by innocence projects, and in the process to draw lessons of value to clinical education in general. First, the article analyzes what it is that innocence projects can and should teach law students. Second, the article considers how innocence projects might meet those educational objectives. Among other things, that discussion probes how innocence projects can manage the traditional tensions between the idealized goal of nondirective student supervision, including the need to allow students to gain “ownership” of their cases, and the responsibility of ensuring quality representation to the clients in these complex cases in which so much is at stake.

II. EDUCATIONAL GOALS OF THE INNOCENCE PROJECTS

A. The Foundation: Pedagogical Goals of Clinical Education

The learning objectives of clinical legal education have been widely discussed and expressed in various ways. In the early 1990s, the ABA’s MacCrate Report included a Statement of Fundamental Lawyering Skills and Professional Values that students ought to possess upon graduation. The skills and values identified in that report included problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and resolution of ethical dilemmas.14 Thereafter, in 1992, the AALS Committee on the Future of the In-House Clinic identified nine goals of clinical education.15 That Report built on the MacCrate Report’s list of fundamental skills and values and added goals that reflect the unique capacity of clinical education to teach students about such matters as how to analyze and problem-solve in unstructured situations as opposed to the “pre-digested world of the appellate case,” how to learn from experience, how to work collaboratively, and how doctrine actually applies in the real world.16
Elsewhere, Philip Schrag has developed a similar list of educational goals for law school clinical programs, adding such goals as teaching about responsibility, cross-cultural awareness, values, creativity, and the role of emotions.\textsuperscript{17}

1. Developing modes of planning and analysis for dealing with unstructured situations as opposed to the “pre-digested world of the appellate case”; 
2. Providing professional skills instruction in such necessary areas as interviewing, counseling, and fact investigation; 
3. Teaching means of learning from experience; 
4. Instructing students in professional responsibility by giving them firsthand exposure to the actual mores of the profession; 
5. Exposing students to the demands and methods of acting in the role of attorney; 
6. Providing opportunities for collaborative learning; 
7. Imparting the obligation for service to clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people; 
8. Providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law; and 
9. Critiquing the capacities and limitations of lawyers and the legal system.

William P. Quigley, \textit{Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor}, 28 \textit{Akron L. Rev.} 463, 471-73 (1995) (footnotes omitted).\textsuperscript{17} Schrag, \textit{supra} note 8, at 180-85. Schrag’s objectives include teaching students about:

1. Responsibility: teaching students “to accept and assume responsibility for matters of great importance to real clients;”
2. Doctrine and institutions: teaching students about “the doctrines, institutions, procedures, conflicts, folkways, and ethical problems unique to that area;”
3. Problem-solving;
4. Collaboration;
5. Cross-cultural awareness: “helping law students to learn by interacting closely with people from other cultures, because although most law schools teach abstractly about diversity, only small numbers of law students live in abject poverty or come to law school from other countries;”
6. The role of emotions: “practicing law with real clients and before real judges often generates very strong feelings, and a clinic can help students to become more aware of those feelings and better able to make feelings work for them rather than prevent them from achieving their work goals;”
7. Coping with facts: countering the “tendency in most law school courses to take facts as given and study only law and policy” by helping students understand that “developing a legal theory is only one step, and usually not the most important one;”
8. Values: creating “opportunities for students to think about their own social values;”
9. Ethics;
10. Creativity: teaching student to “(1) recognize those occasions when doing a task by the book is not likely to achieve satisfactory results, (2) figure out a creative alternative, and (3) find the courage to deviate from the accepted norm of practice;”
11. Authority: teaching students “to make and execute virtually all the case-related decisions;”
12. Learning to learn: helping “student to study their own learning processes so that they can continue to use the insights they have gained long after the brief clinical experience has ended;” and
13. Traditional skills: “interviewing, case planning, investigating facts, counseling,
Still others have more generally described the goals of clinical legal education in broad terms. George Critchlow has written: “The purpose of clinical student practice, in addition to technical skills training, is to provide students an opportunity to develop sound and independent legal judgment, including good moral judgment.” Margaret Martin Barry, Jon Dubin, and Peter Joy have observed that, since the early days of scholarly attention to clinical legal education, clinical scholars have “explained that the primary goal of clinical legal education should be to teach students how to learn from experience.” A key aspect of this goal has been to help students develop the skill of self-reflection.

Early attention to clinical education focused heavily on teaching practical skills like interviewing, counseling, negotiating, and research and writing. As important as these skills are, clinical educators have come to recognize that even more significant value lies in the deeper understanding that the clinical experience can provide about the law, the role of lawyers in the justice system, and the problem-solving capacities required of an effective attorney. Anthony Amsterdam has taught that the benefit of clinical experiences is that they teach not just practical skills, but also “methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as case reading and doctrinal analysis are foundations for practical skills and for much else.” These foundations, according to

legal writing, witness examination, and oral argument.”

See also Michael Meltsner & Philip G. Schrag, Report from a CLEPR Colony, 76 COLUM. L. REV. 581, 615-22 (1976); Lester Brickman, Contributions of Clinical Programs to Training for Professionalism, 4 CONN. L. REV. 437, 443-44 (1971).


20 Id.

21 Amsterdam, supra note 19 at 612. Amsterdam explains that traditional law school pedagogy based on the case-Socratic method teaches three kinds of analytic thinking thought essential to lawyering: case reading and interpretation; doctrinal analysis and application; and logical conceptualization. Id. at 613. But, without attention to other modes of learning—particularly practice-oriented clinical experiences—law schools fail to teach other equally important kinds of reasoning. Clinical education, he notes, can teach these other kinds of reasoning, including what Amsterdam calls “ends-means thinking,” a subset of problem-solving—“the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved
Amsterdam, are “no less conceptual or academically rigorous than case reading and doctrinal analysis.”

B. Pedagogical Goals of Innocence Projects—Previous Formulations

Innocence projects offer a rich opportunity for achieving many of these educational goals and for teaching most of these skills and conceptual abilities. In this sense, innocence projects are not unique, and further discussion here cannot add much to the thoughtful analyses of these issues already included in the literature on clinical legal education. But there are some unique aspects of innocence projects that make them particularly good vehicles for advancing some educational goals, and less effective means for achieving others.

In the scant literature that addresses specifically the educational goals of innocence projects, Jan Stiglitz, Justin Brooks, and Tara Shulman have identified skills they believe their innocence project students learn. They include writing, how to “handle legal questions ‘on the run,’” the importance of finding and proving facts, effective organization and time-management skills, and lessons about the “kinds of people who will play roles in [the students’] professional lives”—“supervisors, clients, relatives, adversaries, bureaucrats, clerks, judges, etc.”

In his recent article, Daniel Medwed has highlighted the opportunities that innocence projects offer for learning about “fact investigation, interviewing, and counseling as well as some portion of the techniques—legal analysis, research, and writing—developed in appellate clinics.” Medwed also notes that innocence project students are exposed “to the criminal justice system and to the general skills of organization and time management,” are provided opportunities for addressing difficult ethical issues, and are provided “training in the art of creative problem solving (‘thinking outside the box’) because these

or the opportunity might be realized”; “hypothesis formulation and testing in information acquisition”; and “[d]ecisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts.” Id. at 614.

Id. at 615. Robert Keeton has made a similar point. See Robert Keeton, Teaching and Testing for Competence in Law Schools, 40 Md. L. Rev. 203, 211-12 (1981). Similarly, John O. Mudd, former Dean of the University of Montana Law School, has noted that experience-based legal education, or “performance-referenced legal education,” is not “beneath [law schools’] academic dignity as members of the university community, but is terribly demanding precisely because it is so rich in both conceptual and practical elements.” John O. Mudd, Beyond Rationalism: Performance-Referenced Legal Education, 36 J. LEGAL EDUC. 189, 197 (1986).

Stiglitz, supra note 5, at 430-31.

Medwed, supra note 6, at 1135 (footnote omitted).
cases often lack a clear trajectory. 25

While these are accurate assessments of some of the educational goals of innocence projects, they do not fully capture the educational value that I perceive my students are getting from these cases, or the goals that motivate my teaching in this area. For example, while litigation skills—including legal research and writing and oral advocacy—are important, and students can sometimes get valuable learning experiences in these areas, innocence project students do not get a uniform experience in such matters. The cases are large and complex. The cases often live through several generations of law students, over a span of years. 26 Much of the time on a given case might involve investigation and fact-development. Although students may write numerous investigation reports, case summary memos, and extensive correspondence related to the file, they might spend an entire year on a case without writing a legal research memorandum, motion, or brief in that case. 27 Many students do get intensive writing and sometimes even courtroom experiences when their cases go to litigation, but the experience is somewhat hit-or-miss. 28 If the goal is primarily to teach legal writing or litigation skills, other programs do a better job of offering a consistent experience. 29

25 Id.

26 The Wisconsin Innocence Project began taking cases and students in September 1998. At least one of the cases taken during that first year is still open, being actively investigated now eight years later, and several others from that original group just closed within the last year or two. Of course, many cases are resolved much more quickly—some within a semester or academic year—but it is not at all unusual for cases to remain open and active for several years.

27 Students, of course, handle more than one case at a time—usually five to ten cases over the course of a year—so the variety of cases they work on enhances the range of experiences they get, and the chances of working on a case that goes to litigation.

28 Students in the Wisconsin Innocence Project have conducted postconviction hearings on motions for postconviction DNA testing, hearings on motions for a new trial, and oral arguments in the Seventh Circuit Court of Appeals. They have also drafted extensive pleadings and briefs, including discovery motions, postconviction DNA testing motions, federal civil rights complaints under 42 U.S.C. § 1983, federal habeas corpus petitions and supporting briefs, affidavits, *amicus curiae* briefs, appellate briefs, administrative claims for compensation for wrongful conviction, and, in conjunction with the Wisconsin Attorney General’s Office, model guidelines on eyewitness identification procedures and model guidelines on electronic recording of police interrogations. But not all students have these opportunities in their innocence project work.

29 For example, students at Wisconsin can enroll in an appellate advocacy clinic, in which they represent convicted criminal defendants in the direct appeal of their convictions. Students are guaranteed an extensive brief-writing experience, and many receive in-court litigation experience. *See* John Pray & Byron Lichstein, *The Evolution Through Experience of Criminal Clinics: The Criminal Appeals Project at the University of Wisconsin Law School’s Remington Center*, 75 Mss. L. J. 795 (2006). Or, students can enroll in a family law project, prosecutor and public defender externships, an in-house trial-level misdemeanor criminal defense clinic, a neighborhood poverty law clinic, a consumer litigation clinic, and others, which involve extensive litigation experiences. *See* University of Wis-
More significantly, innocence projects offer particularly good opportunities for learning about the importance of facts; about the importance of being skeptical, vigilant, and thorough; about ethics, values, and judgment; and about the criminal justice system itself—from obtaining a critical perspective on legal doctrine to a critical understanding of “the law in action,” that is, how the criminal justice system actually works, and how it might be made to work more effectively and fairly. Without reiterating all of the educational objectives of clinical education in general, the following section addresses why these particular goals are especially significant for innocence projects. My purpose in highlighting these particular goals is not to create a complete catalogue of the educational objectives of innocence projects, but to begin a discussion about some of the most significant goals, including how and why they should be taught in innocence projects. In the process, I hope that this discussion will provide some useful insights about clinical education in general, as many of these goals will also be applicable outside the innocence project model as well.

C. Reassessing the Unique Pedagogical Goals of Innocence Projects

1. The Importance of Facts and Investigation Skills

Others have certainly observed that most clinical programs offer students an opportunity to learn about the importance of fact development. Traditional doctrinal courses tend to skew students’ understanding of the legal world, by presenting cases as pre-packaged fact scenarios from which one can draw a rule of law. Indeed, even traditional practice-oriented law school educational opportunities, such as moot court, as valuable as they can be, perpetuate this misperception. Law students participating in moot court are given a packaged fact pattern and told to write an appellate brief, as if brief-writing were analogous to writing a scholarly doctrinal article. Students then begin

30 “Law in action” is a defining concept of the legal educational philosophy at the University of Wisconsin Law School. As Dean Kenneth Davis has explained, Wisconsin has a tradition of focusing its scholarship and teaching on “law in action,” the concept that “in order to truly understand the law, you need not only to know the ‘law on the books,’ but also to look beyond the statutes and cases and study how the law plays out in practice.” Dean Davis has written, “‘Law in Action’ reminds us that no matter how interesting or elegant the theory or idea, we always need to ask, ‘Why should this matter to people in the real world?’” Kenneth B. Davis, Law in Action: The Dean’s View, available at www.law.wisc.edu/Davislawinactionessay.htm at 1.

31 See, e.g., Medwed, supra note 6, at 1135; Stiglitz, supra note 5, at 430-31.

each oral argument by asking if the court would like a brief recitation of the facts, presumably before the student gets into arguing the salient features of the case—the law!

Students need to learn, however, that there is no such dichotomy between the facts and the law, that the law is absolutely nothing without the facts. Students need to understand that the facts and the law together make a case, and that in arguing a case no competent lawyer would segregate them. For without the facts, the case has no meaning, no context in which to make sense, and no ability to move people. As Judge Alex Kozinski has put it, “There is a quaint notion out there that facts don’t matter on appeal—that’s where you argue about the law; facts are for sissies and trial courts. The truth is much different. The law doesn’t matter a bit, except as it applies to a particular set of facts.” Judge Murray Gurfein of the United States Court of Appeals for the Second Circuit has similarly recognized the importance of facts in determining the “right” result in a case, and how the law follows, rather than leads, the analysis and decision of cases: “It is still the mystery of the appellate process that a result is reached in an opinion on thoroughly logical and precedential grounds while it was first approached as the right and fair thing to do.”

Yet the traditional law school curriculum pays scant attention to the importance of facts and fact-development. Critics of the traditional case-method-based curriculum have long noted that the “cases” studied in the case method are not really “cases,” but merely the end-product of cases—the post hoc rationalizations of appellate judges for the decisions they reach. Appellate opinions contain but distilled statements of facts and legal analysis, and omit all of the myriad facts and circumstances that actually produced the decision. As Jerome Frank has put it, “There are a multitude of factors which induce a jury to return a verdict, or a judge to enter a decree. Of those numerous factors, but few are set forth in judicial opinions.”


35 As Mark Aaronson has put it, “appellate cases more often than not present a distorted view of the world. The presentation of facts is frequently simplified and always instrumental. Factual situations usually are framed to advance particular positions, not the full range of interests of the parties.” Mark Neal Aaronson, We Ask You to Consider: Learning About Practical Judgment in Lawyering, 4 CLIN. L. REV. 247, 265-66 (1998).

36 Frank, supra note 32, at 910. Frank emphasizes that students need to learn “[t]he transcendent importance of the ‘facts’ of a case” and “[t]he inherent subjectivity of those ‘facts’ in ‘contested cases.’” Id. at 918.
Few experiences in the law teach students about the importance and role of facts as well as work with an innocence project. Students in our project approach the cases first from a fact-based story-telling perspective. Students examine the cases to determine what went wrong, what feels wrong about the case, and what new evidence (facts) might be developed to prove innocence—whether that be new DNA testing, other scientific analyses, discovery of new documents or new witnesses, or the recantation of old witnesses. We spend considerable time in the classroom portion of our project studying the various known causes of wrongful convictions—including mistaken eyewitness identification evidence, false confessions, jailhouse snitch testimony, prosecutorial and police misconduct, false or mistaken forensic science, and the inadequacy of defense counsel. Students then take part in the actual investigations themselves—pounding the pavement to talk to witnesses, track down documents and other evidence, and find and arrange for testing of physical evidence, to find out if any of those mistakes, or others, occurred in their cases.

While many of these tasks will likely be performed by investigators working for these students when the students become lawyers, there is great value in helping the students learn what is involved in a thorough investigation, what the possibilities are, how to keep going even when confronted with apparent dead-ends, and how to be creative in approaching a complex factual problem. Knowing how to conduct a factual investigation is an important lawyering skill that can only be learned by engaging directly in the process.

Legal analysis comes later. We tell students not to worry initially about whether a forum exists to entertain a client’s claim of innocence, about what legal claims might support a plea for a new trial, or about how to navigate the often complex procedural maze that faces any postconviction challenge to a criminal conviction. We teach our students to focus first on finding the facts to make a compelling claim of actual innocence; if that compelling story can be told, we will find a way to get someone in authority to listen to it. Eventually, students do analyze the cases to find the legal theories that can be used as a wedge, to open the door to the claim of innocence, and the students do examine the procedural history and rules that will govern any litigation of the claims. But that comes after the factual claim of innocence has been developed.

When such a claim can be made, students then have added incentive to be creative about finding avenues for relief. Having found the facts that suggest a client is innocent, students can be tremendously resourceful in finding ways to solve the client’s problem. Students construct impressive legal arguments to overcome waiver (an omni-
present obstacle in postconviction litigation)—including arguments that the evidence meets the standard for newly discovered evidence,\textsuperscript{37} or claims of prosecutorial misconduct, or ineffective assistance of counsel.\textsuperscript{38} Students have helped organize community groups to build support and public pressure to help obtain relief for a client.\textsuperscript{39} Students have worked with the media to create a climate of receptiveness and sympathy for the plight of clients in a given community. When the criminal justice system has provided no avenue for obtaining the evidence needed to prove innocence, such as access to biological material for DNA testing, students have sought and obtained relief in the civil system through civil rights actions under §1983.\textsuperscript{40} And when the judicial system has turned its back, students have turned to the executive branch, to obtain parole or clemency for clients.\textsuperscript{41}

In this way, a fact-based approach to the clients’ legal problems teaches valuable lessons about creative lawyering and problem-solving, as well as about the limits of the judicial process and the options for seeking relief outside that process, even in an arena such as criminal justice that at first blush appears to be entirely determined and bound by the judicial system.

\textsuperscript{37} E.g., Wis. Stat. § 805.15.


\textsuperscript{39} One of the first cases taken by the Wisconsin Innocence Project at its inception in 1998 involved representing Maurice Carter, a poor black man, who had been imprisoned since 1976 for a shooting of a white off-duty police officer in Benton Harbor, Michigan. That shooting took place in a community torn by racial and class conflict, and many in the community saw Maurice’s case as a symbol of the local judicial system’s inability to provide justice for poor black people. Students from our project traveled to Benton Harbor many times over the next few years, and, while they investigated the case, helped create a local Citizens Committee for the Release of Maurice Carter that first met in the basement of a local Baptist Church. Eventually, although efforts to reverse Maurice’s conviction were rebuffed in Michigan’s courts, our Project and the Citizens Committee working together were able to generate significant publicity and community support and eventually the governor granted clemency (on medical grounds), resulting in Maurice’s release in July 2004, after he had served 28 years in prison. For a description of the case, see generally DOUG TIAKES, SWEET FREEDOM: BREAKING THE BONDAGE OF MAURICE CARTER (2006).

\textsuperscript{40} The 1983 actions are premised on a theory that withholding evidence that can prove actual innocence constitutes a violation of a defendant’s due process rights. See Osborne v. Dist. Attorney’s Office for Third Judicial Dist., 423 F.3d 1050 (9th Cir. 2005); Bradley v. Pryor, 305 F.3d 1287 (11th Cir. 2002); Godschalk v. Montgomery County Dist. Attorney’s Office, 177 F. Supp. 2d 366 (E.D. Pa. 2001).

\textsuperscript{41} See, e.g., Maurice Carter’s case, described supra note 39. Of course, one of the most dramatic examples of an innocence project’s use of the executive clemency power was the successful effort of the Center on Wrongful Convictions at the Northwestern University School of Law to convince former Governor George Ryan of Illinois to grant blanket commutations of all 167 death sentences in Illinois in January 2003. See Northwestern University School of Law, Center on Wrongful Convictions, Clemency: the Illinois Experience, at http://www.law.northwestern.edu/depts/clinic/wrongful/ClemencyExperience.htm.
2. **Thoroughness and Skepticism**

Innocence project students also learn another lesson that is taught particularly effectively in this context: the importance of thoroughness and preparedness, and of the need to be skeptical always. While the ideals are easy to state, they are much more difficult to truly understand in practice. Only by structured practice can students fully grasp and internalize what it means to be thorough and skeptical. Innocence Projects offer an ideal opportunity for that experience.

This lesson is one that is critical, but surprisingly difficult to learn. Too often, in the criminal justice world at least, lawyers, particularly those representing clients with no money, skate by with minimal effort—they accept the police reports and government laboratory analyses, without independent investigation or examination.

Indeed, the problem is so pervasive that some of its effects have become institutionalized features of the criminal justice system. Since the development of many of the forensic sciences, for example, defense lawyers have accepted the results without probing inquiry. After all, most lawyers went to law school because they weren’t inclined toward science; they are naturally intimidated and overwhelmed by scientific evidence. Accordingly, until recently, many of the forensic sciences were never challenged by defense lawyers, but were merely accepted as good science, whose results in a given case were presumed valid. Fingerprints, handwriting comparison, microscopic hair analysis, fiber analysis, ballistics, arson investigations, forensic odontology—indeed, most of the forensic sciences—have become fixtures in criminal cases, and until recently their reliability, objectivity, and claim to scientific foundation—and hence admissibility—have scarcely been the subject of inquiry.42

But almost all were developed in police crime laboratories to aid the investigation and prosecution of crimes.43 Most have no corollary in the academic sciences; they are not studied, taught, or tested in academic settings where reliability and accuracy—scientific “truth”—are the only values; rather, they are developed and utilized in the adversarial world of crime investigation and prosecution, where those developing and evaluating the methods have an incentive to assume or accept their validity, because they are useful in producing evidence of guilt.44 Only recently, with the example set by the use of DNA tech-

---


44 Id. at 1113-18. Thompson argues that “[f]orensic scientists play a fundamentally different role in society than do academic scientists. The major imperative of the academic
nology—a discipline that does arise from an academic science and accordingly has been subjected to exacting scientific standards—and with the attending spate of proven wrongful convictions, has more rigorous scrutiny been focused on other, traditional forensic sciences.

The DNA exonerations, in particular, have exposed that all of these sciences are fallible, and that some—like microscopic hair examination, compositional analysis of bullet lead, handwriting analysis, and bite mark evidence—are largely baseless. New scrutiny occasioned by the innocence cases reveals that even the most venerated of the traditional forensic sciences—fingerprint analysis—is pre-

scientist is to advance scientific knowledge—to find truth through the use of the scientific method.” Id. at 1113. For forensic scientists, on the other hand, Thompson argues, the “major purpose is to provide a service to a client by answering specific questions about evidence.” Id. at 1114. Accordingly, “forensic scientists have incentives to put the best possible face on their work, to promote the impression that their techniques are accurate and reliable and that their conclusions are trustworthy.” Id. Thompson maintains that forensic scientists thus have incentives to “avoid openly raising questions about the reliability of forensic tests, avoid public discussion of technical problems or concerns, and refrain from publicly criticizing the work of other forensic scientists.” Id. And, because the forensic scientist’s primary client is law enforcement, forensic scientists are susceptible to being coopted so that they “adopt the goals of their clients as their own,” and this “is problematic because the goals of law enforcement sometimes conflict with the goals of scientific objectivity and neutrality.” Id. at 1115.

45 While DNA analysis has a counterpart in the academic sciences, forensic DNA analysis is still uniquely a forensic application of that science. Accordingly, especially in the first years of its use in criminal cases, it was subject to criticism about its methodology, subjectiveness, and reliability. See, e.g., William C. Thompson, Accepting Lower Standards: The National Research Council’s Second Report on Forensic DNA Evidence, 37 JURIMETRICS 405 (1996-1997).

46 See Michael J. Saks & Jonathan J. Kochler, What DNA “Fingerprinting” Can Teach the Law About the Rest of Forensic Science, 13 CARDOZO L. REV. 361, 361 (1992) (“The most important legacy of DNA ‘fingerprinting’ and the debate surrounding it will likely be a spillover of standards of empirical testing and statistical rigor to many other forensic sciences which, somehow, have exempted themselves from the conventional standards of scientific rigor. In short, the debate over DNA fingerprinting may compel the rest of forensic science to become more recognizable scientific.”) (footnotes omitted).

47 See Clive A. Smith & Patrick D. Goodman, Forensic Hair Comparison Analysis: Nineteenth Century Science or Twentieth Century Snake Oil, 27 COLUM. HUM. RTS. L. REV. 227 (1996) (discussing the questionable scientific foundation of microscopic hair analysis); Neufeld, supra note 42, at §107-8; Rosen, supra note 4, at 276-77.


mised on untested assumptions and unknown error rates, is not supported by statistical analyses that measure the significance of any purported matches, is ultimately subjective, and hence is sometimes flat wrong. And DNA analysis, with its rigorous scientific methodology, including references to population databases and sophisticated statistical analyses to calculate the likelihood of a random match, have exposed the laxness in the methodologies of the other forensic sciences.

This is not to say that none of these other forensic sciences has validity or probative value, but rather that they cannot be accepted at face value, without scrutiny of the underlying methodology and of the particular application and conclusions of the forensic scientists in any given case. Students learn that this applies to even the most scientific of the forensic sciences—DNA testing. Students learn first-hand


52 No databases exist that catalogue the range of fingerprint patterns or the frequency of any such patterns in any population groups. Without such databases, no statistical assessment can be made of the frequency with which any particular series or collection of fingerprint patterns might appear randomly in the population. See Robert Epstein, Fingerprints Meet Daubert: The Myth of Fingerprint “Science” Is Revealed, 75 S. Cal. L. Rev. 605, 609-13 (2002). DNA analysis, by contrast, carefully assesses the frequency of particular alleles—or genetic variations—in various population subgroups. With that data, scientists can calculate the chances of a random match to any particular DNA profile in a given population group. See generally, U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, National Commission on the Future of DNA Evidence, The Future of Forensic DNA Testing, Predictions of the Research and Development Working Group 20-26. Without such data for fingerprints, analysts use their subjective judgment to determine when a series of fingerprint patterns is unique and rare enough to be deemed a match to the suspect, to the exclusion of all other persons. See Epstein, supra note 52, at 613-14.

53 Simon Cole has recently catalogued 22 cases from the public record in which fingerprint evidence was mistaken. Simon A. Cole, More Than Zero: Accounting for Error in Latent Fingerprint Identifications, 95 J. Crim. Law & Criminology 985 (2005). Among the mistaken fingerprint matches, one of the most notorious in recent years is that of Brandon Mayfield. FBI analysts investigating the Madrid terrorist bombing in 2004 matched Mayfield’s fingerprints to a crime scene print, claiming the match was “a 100% identification.” Id. at 986. Subsequent analysis by Spanish authorities linked the print to Ouhnane Daoud, an Algerian national living in Spain, and the FBI eventually conceded that its analysis had erred. Id. at 985-86.

54 Of course, DNA evidence too is subject to error, and has elements of subjectivity in its analysis. But compared to the other forensic sciences, its methodology has been a beacon of scientific light.

both the necessity and the means for undertaking a thorough and independent analysis of disputed scientific evidence; they learn when and how to consult independent experts, demand access to raw data and lab analyst case bench notes, and retest the evidence, when appropriate.\textsuperscript{56} Innocence project students see the mistakes first-hand, and learn the importance of remaining constantly vigilant and skeptical, even when confronted with authoritative-sounding “scientific” evidence.

Beyond realizing the need to scrutinize scientific evidence, innocence project students learn the value of thoroughness and skepticism in all other aspects of the cases as well. Ineffective assistance of counsel is a recurring theme in wrongful convictions.\textsuperscript{57} Students see, time and again, how lawyers accept the police versions of the evidence, when further investigation—even the simple task of independently interviewing the witnesses—can reveal entirely different stories. In one recent case, students obtained reversal of our client’s conviction for first-degree intentional homicide by showing that trial counsel failed to develop or present available evidence that powerfully suggested innocence. Among other things, trial counsel failed to call state crime laboratory experts who could have testified that tests they had performed before trial excluded our client as the source of DNA on several items of physical evidence found next to the victim’s body; failed to consult an independent medical examiner who would have rebutted the state’s medical examiner and hence the state’s theory of the case; and failed to challenge testimony from a witness whose memory was improperly “refreshed” by hypnosis.\textsuperscript{58} At the retrial, with new coun-

\textsuperscript{56} For a primer on how to respond to scientific evidence, which we have our students read each year, see Castelle, \textit{supra} note 4.

\textsuperscript{57} In their analysis of the first 79 postconviction DNA exonerations, Scheck, Neufeld and Dwyer found that ineffective assistance played a role in 32 % of the cases. \textit{Scheck, Neufeld \& Dwyer, supra} note 4, at 318.

\textsuperscript{58} State v. Zimmerman, 2003 WI App 196, 266 Wis. 2d 1006, 669 N.W.2d 762. Although the Wisconsin Innocence Project ordinarily does not handle trials, we decided to continue with this case through the retrial to assist the new trial attorney appointed by the State Public Defender’s Office. In this process, students again repeatedly learned the lessons of thoroughness. In the months leading up to the retrial, the state produced three purported jailhouse snitches—current or former inmates who claimed that our client had confessed to them or made other incriminating statements. In each instance, the students went to work to reveal the truth beneath those allegations. Students literally searched across the nation to find the histories of these snitches. They obtained prison and court records on these inmates from Washington, California, and Arizona. They spent a week in California camped out at a courthouse reading through voluminous files on one of these men from a prior trial. They interviewed prison personnel and prison records in Wiscon-
sel, a case that had ended in a conviction for first-degree intentional homicide the first time around produced a dismissal with prejudice on the prosecutor’s own motion four days into what was to be a two-week trial. Students saw first-hand that, when the defense was lack-luster, the state was able to convince a jury of guilt beyond a reasonable doubt, but when the defense was vigorous, the state was forced to dismiss the case with prejudice, for lack of a case, before it even completed putting in all of its evidence.

Students in innocence projects thus learn that looking under every stone, questioning and re-examining every lab report, talking to every witness, doing all the things that a lawyer with a moneyed client would do, often reveals new truths—the alibi could have been corroborated; the lab analysis was wrong. In 2001, we were successful in obtaining DNA testing that proved that Christopher Ochoa and his co-defendant were innocent of a brutal rape and murder committed in Austin, Texas, in 1988. Until then, no one, not even Ochoa’s own lawyer, was willing to entertain the possibility that he might be innocent, because he had confessed and pled guilty to that heinous crime. Indeed, he had signed a six-page, single-spaced confession, rich with details of the crime that, seemingly, only the actual killer could have known. When our students called Ochoa’s trial lawyer during the early stages of our work on the case, that lawyer told the students that we shouldn’t waste our time on this guy, that there was not a chance he was innocent, and that the state had conclusive evidence corroborating his confession and proving his guilt, including an eyewit-

59 The Public Defender agreed to appoint an excellent private attorney, Keith Belzer, to serve as lead trial counsel at the second trial. Belzer took the case with the understanding that he would work closely with Wisconsin Innocence Project faculty and students, and that we would provide investigative support, draft the pretrial motions and briefs, and second-chair the trial. The cooperative arrangement worked out spectacularly, and Belzer’s performance at trial was masterful, serving as a tremendous model from which students (and Wisconsin Innocence Project faculty) learned a great deal.


ness and fingerprints on the murder weapon. Those facts turned out to be wrong (as were details in the confession), and DNA testing on semen from the dead woman’s body proved that another man—who was by then serving life in prison for a subsequent rape, and who confessed to the crime for which Ochoa was wrongly convicted—was the true perpetrator. No better lesson could have been provided about the need to remain skeptical of the state’s evidence, to keep an open mind, and to keep working hard for a client, despite the overwhelming appearance of the case.

Innocence project cases teach students that no matter how guilty someone looks, he or she might not be; and that the only way to find out is to dig deep and work hard and take nothing for granted. They teach the importance of keeping an open mind. Imagine how different the criminal justice system might look if all judges, prosecutors and defense attorneys learned such lessons.

3. Ethics

Like any clinical program, innocence projects provide multiple and varied opportunities for learning about legal ethics. Others have previously explained how clinical experiences—because they inevitably expose students to real ethical dilemmas—offer one of the most effective means for educating students about professional ethics. While innocence projects are not alone in that respect, they do provide particularly rich material for exploring ethical issues.

The very structure of an innocence project in some ways alters the traditional role of counsel, and thereby raises ethical issues and questions about lawyering values and attorney conduct. Ellen Yankiver Suni has noted that innocence projects generate unique ethical issues because they tend to limit the scope of the representation they provide, and because they screen cases extensively before agreeing to begin “representing” a client. Although there is no one uni-

---

62 Findley & Scott, supra note 4, at 332.
64 Ellen Yankiver Suni, Ethical Issues for Innocence Projects: An Initial Primer, 70 UMKC L. REV. 921 (2002). Because Innocence Projects have a limited mission, and limited resources in the face of overwhelming demand for assistance, they must screen cases extensively. All innocence projects report enormous demand for assistance from inmates claiming to be innocent, and describe the screening process as one of the most difficult challenges they face. The Wisconsin Innocence Project, for example, with a staff of three clinical faculty members, each of whom devotes only part of his time to the Innocence Project, and between 12 and 20 students each year, has received well over 3,500 requests
form model that defines all innocence projects,65 most innocence projects limit their mission to representing individuals with provable claims of actual innocence.66 They are not all-purpose legal services providers, or even all-purpose criminal defense or postconviction legal services providers. They generally do not take cases in which a defendant might have a viable claim that his or her rights were violated, that the sentence imposed is excessive, or any other such legal claims that might challenge the fact or duration of confinement—unless, at least, those claims are coupled with a viable claim of actual innocence. In this sense, innocence projects “provide a form of limited legal assistance”—and the ethical issues “created by provision of limited legal assistance have just begun to be discussed and debated."67

Such limited representation raises questions about when the attorney-client relationship is created.68 It also challenges students to reconcile their narrow focus with their duties of zealous representation, diligence, and competence.69 It imposes special duties of communicating with clients and ensuring that the clients understand and agree to the limited scope of the representation.70 And, as discussed in the next subsection, it raises interesting issues about the values that motivate and guide lawyers in criminal cases.

Innocence cases also present other ethical concerns in stark forms. Students frequently have to analyze and resolve potential conflicts of interest raised when multiple co-defendants, each claiming innocence, request assistance; or when, as happens with some frequency, current or potential clients are witnesses or even suspects in cases the Project is handling on behalf of other inmates.71 Not infrequently, proving one person innocent means trying to assign culpability for the crime to another. In these innocence cases, students

---

65 Suni identifies several models that she calls: “The ‘No Representation’ Model” (typically adopted by projects that are not affiliated with law schools or run by attorneys); “The ‘Full Representation’ Model”; and “The ‘Limited Representation’ Model.” Id. at 926-30. The latter two are both typical of law-school-based or affiliated programs. Id.

66 For a summary of the case selection criteria of many of the innocence projects, see Suni, supra note 54, at 926-30; Stiglitz, supra note 5, at 421-25.


68 Id. at 930-34. See also Medwed, supra note 6, at 1123-25.

69 Suni, supra note 54, at 960; AMERICAN BAR ASS’N, MODEL RULES OF PROF’L CONDUCT R. 1.1 and 1.3 (2003) [hereinafter MODEL RULES].

70 Suni, supra note 54, at 933.

71 Id. at 947, 953.
grapple with the ethics—and the morality—of shifting blame from one person to another, especially in situations where the guilt of the second person may not be clear.

Conflict of interest issues also arise with some frequency when witnesses who have expressed an interest in recanting prior testimony against our clients ask what the legal consequences might be to them if they recant. Students struggle with an appropriate response—that protects the interests of our clients, while making it clear to the witnesses that they cannot offer legal advice to them, because they represent another.

The duty of confidentiality also poses challenges in innocence cases.\(^7^2\) Because innocence cases require extensive investigation and often are very high profile, they often involve significant communication and contact with the outside world. Students frequently have to grapple with questions about when, in the course of interviewing witnesses, talking to experts, or seeking information from police and prosecution agencies, disclosure of information about the case is “impliedly authorized,”\(^7^3\) and when the students must first obtain explicit consent for disclosure from the client. Because multiple innocence projects sometimes coordinate efforts on cases and sometimes rely on non-lawyers, including private investigators and university journalism programs, to assist in investigations, issues arise about consent to disclose information to these organizations, and about preserving confidentiality once these groups become involved.\(^7^4\) Moreover, because the media is often interested in innocence cases, students and faculty together must grapple with the ethical (as well as strategic) issues surrounding disclosure of information to the media—in terms of client confidentiality, and in terms of the rule against making statements in the media if “the lawyer knows or reasonably should now that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”\(^7^5\)

Students also must learn to be vigilant about the possibility that an inmate witness or suspect whom they wish to interview might be represented by counsel. Under Model Rule 4.2, an attorney “representing a client shall not communicate about the subject of the repre-

\(^7^2\) See id. at 934-45; Model Rules, supra note 59, R. 1.6.

\(^7^3\) Model Rules, supra note 59, R. 1.6(a) permits disclosure of otherwise confidential information, without the client’s consent, when it is “impliedly authorized” to carry out the representation.

\(^7^4\) See Suni, supra note 54, at 940-45 (discussing the confidentiality implications of the various types of information-sharing required in innocence cases).

\(^7^5\) Model Rules, supra note 59, R. 3.6. This latter rule is generally more of a concern in the context of pretrial publicity that might affect a jury trial, but is nonetheless something that students should consider as well in postconviction proceedings before a judge.
sentation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. . .”76 When interviewing inmate witnesses, does the mere fact of imprisonment sufficiently warn students that the inmate may have a lawyer, so that the students are required to inquire about whether the inmate is represented before commencing the interview? If an inmate is represented by counsel, when is that representation sufficiently related to the case the students are investigating to constitute the same “matter”?

Rules requiring honesty also provide unique challenges in the course of investigating criminal cases. Innocence students quickly learn that police frequently employ deceit as an investigative tool, and see that various ruses can be very effective methods of obtaining information. Yet Model Rule 4.1 bars lawyers, “[i]n the course of representing a client,” from “mak[ing] a false statement of material fact or law to a third person.”77 When, in the course of interviewing witnesses, is a fact “material,” and what, if any, duty do students conducting investigations have to avoid any misleading of witnesses while attempting to obtain information?78 Model Rule 8.4 goes even further, raising questions about how these two provisions should be interpreted together. Rule 8.4 provides broadly that “[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation. . .”79

Finally, some innocence projects, like the Wisconsin Innocence Project, take cases from other states. The Model Rules provide that an attorney shall not “practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction.”80 Because Innocence Project students and lawyers may engage in investigative activities and eventually litigation in out-of-state jurisdictions, they must consider the limits of what they can do in that state, and the requirements and procedures for obtaining permission to appear pro hac vice, at least prior to any litigation in that state.

In sum, the ethical issues that arise in innocence case work are many and varied. They provide rich opportunities for teaching and learning about professional responsibility, in context. For this reason,

76 Id., R. 4.2.
77 Id., R. 4.1.
78 We routinely discuss these issues with students, and ultimately conclude, both as a matter of ethics and to protect the integrity and reputation of our program, that the students will never make statements they know to be untrue. That often does not mean, however, that they will always tell witnesses the “whole” truth, so long as what they do say can be defended as truthful.
79 Model Rules, supra note 59, R. 8.4.
80 Id., R. 5.5.
many innocence students have remarked that they learned more in this clinical experience about professional ethics than they could have hoped to learn in their classroom course on professional responsibilities.

4. Values

Clinical educators have long noted the need to ensure that the traditional focus on skills training does not overshadow the opportunity, and obligation, to teach the fundamental values of the profession, such as fairness, justice and morality.81 The MacCrate Report identifies four core professional values that should be taught in law schools: the provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development.82 More provocatively, Jane Aiken has described the clinical teacher’s role as that of a “provocateur of justice.”83 Others have expressed the values component of clinical education as including “the duty to provide legal services to the poor,”84 the need to offer students “a practical vision of law as an instrument of social justice” and an opportunity to engage in efforts that “have real social impact and create new and better law under a system of self-government.”85 Still others emphasize teaching that offers “a social, political and moral agenda . . . that exposes students to the mal-distribution of wealth, power and rights in society, and that seeks to inculcate in them a sense of their own ability and responsibility for using law to challenge injustice by assisting the poor and the powerless.”86 In short, clinical education presents an opportunity and a responsibility to expose law students in a profound way to important

83 Aiken, supra note 81, at 288.
84 Kruse, supra note 8, at 424.
85 Wizner, supra note 81, at 331. See also Stephanie M. Wildman, Democracy and Social Justice: Founding Centers for Social Justice in Law Schools, 55 J. LEGAL EDUC. 252, 252-53 (2005) (arguing that law schools should teach social justice values that “give material meaning to democratic ideals in the daily lives of individuals and communities that are marginalized, subordinated, and underrepresented”).
social justice issues of the day, whether that means unjust convictions, exploitation of low-wage workers, the plight of unrepresented family law litigants, or the like.

The justice mission of innocence projects is obvious, but not simple. Students representing innocent people in prison are presented with opportunities to learn about the potential for injustice, the effects of poverty, class, and race on access to justice, and the political and social disenfranchisement that confronts individuals accused or convicted of crimes. They comment, frequently, that they are surprised to learn how little evidence it can take to satisfy the standard of proof “beyond a reasonable doubt.” And they see the institutional impediments to postconviction relief that make it difficult to obtain justice after conviction. They become passionate, and sometimes outraged.

At the same time, they learn to understand the importance of adequate legal services to all—both before trial, and at the postconviction stage when the students enter the cases. And they recognize the potential for using their legal skills to challenge injustice, both by assisting individuals who have been wrongly convicted, and by working to create new and better laws and institutions.

In addition to helping to exonerate the innocent, students in our project, in this past year alone, have helped write amicus curiae briefs in the Wisconsin Supreme Court that have contributed to significant reforms in the way law enforcement officers interrogate juveniles, in the admissibility of questionable eyewitness identification evidence, in the way courts consider requests for postconviction DNA testing.

87 For a listing and summaries of the 183 cases to date in which postconviction DNA testing has proven innocence, see the web site of the Innocence Project at Cardozo Law School in New York, at www.innocenceproject.org. That Project has participated, by far, in the most DNA-based exonerations in this country.

88 In In re Jerrell C.J., 2005 WI 105, 699 N.W.2d 110, the Wisconsin Supreme Court became just the third court in the nation to mandate electronic recording of interrogations of suspects in order to protect the rights of suspects and create a reliable record of the interrogation and the suspect’s statements. In Wisconsin, that mandate arose in a juvenile case and, therefore, was limited to interrogations of juveniles. The Wisconsin Innocence Project submitted an amicus brief urging the court to adopt the electronic recording requirement. That amicus brief is available at http://www.law.wisc.edu/fjr/innocence/jerrell.htm.

89 In State v. Dubose, 2005 WI 126, 699 N.W.2d 582, the Wisconsin Supreme Court adopted a new rule, proposed by the Wisconsin Innocence Project, limiting the admissibility of eyewitness identification testimony in “showup” cases, and changing the standards for admissibility of eyewitness identification evidence in general, to comport to the growing body of social science literature on eyewitness reliability. A showup is a one-on-one identification procedure, in which police show a crime victim or witness a single suspect and ask if that suspect is the perpetrator. The procedure is a highly suggestive one that, as the Dubose opinion recognizes, is less reliable than identification procedures utilizing multiple photographs or multiple individuals in a lineup. For the Wisconsin Innocence Project’s amicus brief in this case, see http://www.law.wisc.edu/fjr/innocence/dubose.htm.
and motions for new trials based on newly discovered evidence.\textsuperscript{90} Students have also helped advance legislation that reforms eyewitness identification procedures,\textsuperscript{91} and have contributed to work conducted jointly with the Wisconsin Attorney General’s Office to rewrite guidelines on eyewitness identification procedures designed to minimize the risks of eyewitness error, and to train police officers about those guidelines.\textsuperscript{92} And students have advocated for new laws increasing the compensation available to those who were wrongly imprisoned.\textsuperscript{93}

The narrow focus of innocence projects—limiting representation to cases in which there is a viable claim of actual innocence—however, also poses a challenge to the mission of teaching fundamental lawyering values. Antoinette Sedillo Lopez has argued that the trend toward specialization in clinical legal education “narrows the students’ ability to appreciate the client’s full perspective and may limit problem solving and creativity.”\textsuperscript{94} She also argues that limiting cases to a particular subject matter, rather than a particular client population group, affects the socialization of students: “[W]hen students are asked to serve the community, they focus on understanding and learning about the broader client community. They are encouraged to see problems and issues holistically.”\textsuperscript{95} Focusing on narrow issues threat-

\textsuperscript{90} See State v. Armstrong, 2005 WI 119, 700 N.W.2d 98 (granting a new trial based on new DNA evidence), and State v. Moran, 2005 WI 115, 700 N.W.2d 884 (granting a defendant a right to access to biological evidence for postconviction DNA testing). The \textit{amicus} briefs filed by the Wisconsin Innocence Project in these cases are available at http://www.law.wisc.edu/fjr/innocence/armstrong.htm. Students also wrote an \textit{amicus} brief urging the court to adopt a presumption of admissibility of expert testimony on eyewitness identification evidence. Although the court declined to adopt that presumption, the court did acknowledge the importance of such testimony in appropriate cases and a growing receptiveness to admissibility of such testimony. See State v. Shomberg, 2006 WI 9, 288 Wis. 2d 1, 709 N.W.2d 370.

\textsuperscript{91} See Wisconsin Department of Justice, Division of Law Enforcement Service, Training & Standards Bureau, Eyewitness Identification, http://www.doj.state.wi.us/dles/tns/eyewitness.asp.


\textsuperscript{93} Under current law in Wisconsin, exonerated individuals are entitled to compensation only at a rate of $5,000 per year of wrongful imprisonment, up to a maximum of $25,000 plus attorneys fees. Wis. Stat. § 775.05.

\textsuperscript{94} Lopez, supra note 81, at 311 (footnote omitted). Lopez also recognizes that there are advantages to specialization in a clinic. Specialization can promote “efficiency in delivering legal services,” increase the comfort level of teachers and students alike, take advantage of faculty expertise, improve the quality of representation, and advance a specific service or social justice agenda. \textit{Id}. at 309.

\textsuperscript{95} \textit{Id}. at 325. For additional debate about the merits of specialty subject-matter projects, versus general population-centered projects, see Schrag, supra note 8, at 191-92 (summarizing the debate over specialization); Paul D. Reingold, \textit{Why Hard Cases Make Good (Clinical) Law}, \textit{2 ClIN. L. REV.} 545, 545-46 (1995-1996) (arguing the benefits of specialization in a clinic).
ens to undermine that holistic understanding of client problems and client communities.

Indeed, the narrow focus of innocence projects presents the most significant challenge to the pedagogical viability of innocence projects. To begin, the narrow focus on innocence presents challenges to teaching “client-centered” lawyering. That concept requires lawyers to understand that “[e]ach client is entitled to individualized consideration, to be seen and represented as a person with a legal problem and not as a legal problem accompanied by a person.”96 The concept also requires lawyers to recognize that “clients are usually more expert than lawyers when it comes to the economic, social and psychological dimensions of problems,” and that, “because any solution to a problem involves a balancing of legal and nonlegal concerns, clients usually are better able than lawyers to choose satisfactory solutions.”97 The narrow focus of innocence projects requires clinical faculty to pay deliberate attention to helping students understand the importance of the clients’ nonlegal concerns, to allow students to explore those concerns with clients, and to encourage students to respect and empower clients in their full range of needs, even while primarily working to achieve one particular goal—proving innocence.

More fundamentally, the focus on innocence runs the risk of implicitly teaching students that only innocent prisoners are deserving of zealous legal representation, and that the criminal justice system need only be concerned with issues of guilt or innocence, and not any of the other myriad issues of fairness and justice that attend to criminal proceedings.

While this risk is real, experience has suggested that it can be overcome. Experience suggests that in fact the overriding effect of work on innocence cases heightens, rather than diminishes, students’ concern about adequate representation for all criminal defendants, and for fairness in all aspects of criminal cases, even for the guilty.

Students do indeed, as part of the screening process, learn to turn down requests for assistance that focus on sentencing, alleged constitutional or procedural violations unaccompanied by a claim of innocence, and a host other legal issues—directly related or not related at all to the inmate’s conviction. The Frank J. Remington Center—the umbrella clinical program at the University of Wisconsin Law School that houses the Wisconsin Innocence Project—has a variety of other clinical programs that provide legal assistance to prison inmates on a

wide variety of other issues.\textsuperscript{98} Innocence Project students frequently recognize the need for legal assistance in non-innocence cases, and refer the cases to those other projects.

The very process of screening cases in that fashion creates not only risks, but also an opportunity for discussion and learning about the need for legal services on a broader range of issues than just innocence. We take every such opportunity to discuss with students that the case selection criteria we use are self-imposed and artificial; that they do not reflect the full need for legal services that exists in the prison population, or the demands and obligations the students will face as practicing attorneys in other contexts. That discussion serves as a vehicle for reflection on the need for and role of attorneys and the inadequacy of legal resources for the most powerless and needy members of our society.

Moreover, as noted above, working on innocence cases powerfully teaches students about the consequences of inadequate representation at all stages of criminal cases. Day in and day out, students see the harmful consequences of inadequate representation. They are reminded constantly about the dangers of making assumptions about the guilt or innocence—or more fundamentally, the worth—of their clients. Ironically, they learn very effectively that, at most stages of the process, guilt or innocence is irrelevant to the lawyer’s obligations and duties. They see that if lawyers attempt to judge guilt or innocence, the system breaks down. And, through contact with prison inmates, they learn to see those who are incarcerated as human beings, deserving of respect and concern, regardless of what bad things they might or might not have done in their lives.

Student reactions to the cases reflect this broad concern for justice. Students who entered the project with a single-minded focus on the glorious mission of freeing the innocent find themselves, not infrequently, advocating for helping a client for whom there is no viable or provable claim of innocence. And because our case selection criteria are self-imposed, we have the luxury of deviating from those criteria, when it is pedagogically sound to do so.\textsuperscript{99} Thus, for example, we have helped inmates challenge the legality of their sentences, challenge

\textsuperscript{98} For a description of the Remington Center’s other prison-based clinical projects, and a history of those projects that explains how and why they were created, see Meredith J. Ross, Who? What?—Should Law School Clinics Be Focused on Client Populations or Substantive Law Areas? (unpublished paper presented at the Sixth Annual International Clinical Conference, co-hosted by the UCLA School of Law and University of London at Lake Arrowhead, California, October 27-30, 2005).

\textsuperscript{99} Group discussions about whether to deviate from our case selection criteria to help a client with real needs outside our primary mission frequently involve rich debates about the allocation of scarce legal resources and the values that ought to guide our work.
their convictions in federal habeas proceedings on grounds apart from innocence, seek parole, and seek protection from improper treatment by prison personnel. In each of these cases, we have undertaken this representation outside our core mission because the students, whose sense of justice was offended by their experience working with the client, affirmatively sought to broaden the scope of representation in this way.

Student responses to written self-evaluation questions further confirm that, despite the narrow focus of the innocence cases, the experience can actually broaden the students' commitment to justice for all criminal defendants. Among the most recent group of evaluations, for example, one student commented that, after his experience in the innocence project, “My values tell me to help [the client] with all his issues, even those that are not related to his innocence.” Another student, reflecting on doubts he harbored about the innocence of a client, wrote: “I am willing to continue to help because I am troubled by [the client’s] sentence and I believe that regardless of what she may have done she is entitled to a fair trial, which she may not have gotten.” Another student expressed similar sentiments:

Personally, while the individual client and his claim of actual innocence are important to me, I choose to focus on the legal questions in my cases. Essentially, I decided to take a pass on such claims [premised on innocence] and focus on the facts of the individual case, the defendant’s rights, and the fairness of the trial. I can still work toward the goal of getting a new trial or exoneration without having to come down on either side of the question of actual innocence.

Another student wrote that she entered the program believing that all of her clients were innocent, that she would be able to prove it, and that “[t]he most surprising thing about my cases is that not all of the clients are actually innocent.” Despite having entered law school thinking she was interested just in helping the innocent, she concluded that her experience in the project had “made me seriously consider criminal defense more broadly.” Another student, also explaining that the experience had made him consider criminal defense work as a career option, wrote, “this experience has helped me to better understand what incarceration is like, and I have been struck by the lengthy

---

100 In each of these examples, except the last, we have undertaken direct representation and litigation where appropriate on behalf of the prisoner. In conditions of confinement cases, we have sought informal resolution of the inmate’s complaint with the institution, but we do not engage in litigation, primarily because we receive funding from the Wisconsin Department of Corrections and the Federal Bureau of Prisons, and thus have a conflict of interest that bars us from litigating against those institutions. We make that conflict and limitation very clear to inmates with complaints against the institutions.
sentences that have been given to my clients. . . As such I could see myself representing a guilty defendant without qualms by reasoning that the system may punish him more severely than is warranted if I don't represent his interests.”

Yet another student articulated how the experience had broadened his perspective:

What surprised me about myself was how difficult the first few prison trips were, and how ambivalent I felt about the claims of innocence initially. The prison trips got much easier the more I did. I just had to get over some notions and attitudes I had about criminal defendants, people who are convicted of criminal offenses, people in prison, etc. I was really troubled about [the provability of some of] the claims of innocence. . . but I got over that when I shifted my focus to issues of rights and fairness. I was also very surprised by my decision to pursue criminal defense law, which I never would have thought was in the cards for me prior to working on the Innocence Project.

Jane Aiken has argued that one goal of clinical education ought to be to help students to become “justice ready,” her term for learning “how to reflect on . . . experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role [lawyers] play in either unearthing hierarchical and oppressive systems of power or challenging such structures.” Among the tools she contends are essential for becoming “justice ready” is the ability to identify various assumptions that reinforce the prevailing social, political and cultural conditions. One category of such assumptions she calls “paradigmatic assumptions.” Her description of paradigmatic assumptions, and the role that clinical programs can play in exposing such assumptions, aptly describes part of the value of the innocence projects:

Paradigmatic assumptions are perhaps the most difficult to pin down because they are the very structural assumptions we use to put our experience into fundamental categories. Many times we see these assumptions as merely facts, the way things are. These assumptions are the most difficult to examine critically because they seem as if they are the bedrock of our understanding. For example, students often believe that if a person is actually innocent, he cannot be legally held in prison. Clinics that do post-conviction work

101 Yet others have been moved by the experience to pursue careers as prosecutors. One student wrote in her recent self-evaluation: “Criminal law is an area that I am very interested in, and [the innocence project] has cemented my belief that conscientious prosecutors can alleviate many causes of wrongful convictions. As such, I am once again considering a job as a prosecutor. . .”

102 Aiken, supra note 81, at 289.

103 Id. at 298. The other two she calls prescriptive and causal assumptions. Id. at 298-99.
provide eye-opening experiences for students who learn that actual innocence often is not a ground for a habeas petition. Grappling with that offers students the opportunity to explore how the criminal justice system works and the degree to which a defendant’s lack of resources at trial is treated as irrelevant in an assessment of post-conviction remedies.  

That exploration is what law school-based innocence projects are all about. Clinical educators in innocence projects need to recognize that, and actively encourage such exploration.

5. Perspective on Doctrine and the System  

Clinical education also offers an experience-based methodology for teaching substantive law and, as the preceding section suggests, insights about legal institutions. Clinical programs help students understand the substantive material traditionally taught in the classroom because clinical programs utilize a methodology that fits adult learning styles. As others have noted, psychological, educational and management studies reveal, among other things, that “adults learn best when faced with questions that arise in real-life experiences followed by opportunities to answer and reflect upon those questions.” Hence, “[i]t is axiomatic in learning theory that when cognitive studies are accompanied by active engagement in their application to concrete problems, a likely result is fuller comprehension, better retention, and apter recall of the cognitive material.” Adult learning theory generally holds that: “(1) Learning should be through mutual inquiry by teacher and student. . .; (2) emphasis should be on active, experiential learning. . .; (3) learning should relate to concurrent changes in the students’ social roles. . .; and (4) learning should be presented in the context of problems that students are likely to face. . .” That, essentially, is the clinical model.

Innocence projects, in particular, can effectively use the experience-based methodology to enrich students’ understanding of substantive law, and the way the substantive law plays out in the real world. Students learn substantive law, of course, by researching and applying the law to the cases they are handling. Moreover, as is common in

---

104 Id. at 299 (footnotes omitted).
106 Id. at 495.
clinical education, the Wisconsin Innocence Project integrates case work with a classroom component. In the classroom, innocence students study the causes of wrongful convictions (eyewitness identification error, false confessions, fraudulent or mistaken forensic science, jailhouse snitch testimony, police and prosecutorial misconduct ineffective assistance of defense counsel, etc.); the basics of DNA and other forensic sciences; the law governing both pretrial and postconviction discovery in criminal cases, preservation of evidence, admissibility of scientific and expert testimony, state postconviction procedures, basic habeas corpus principles, and executive clemency. Although students also study some of these subjects in traditional classroom courses outside of the Innocence Project, students frequently comment that the material meant little to them in the classroom context, and only began to make sense when studied in conjunction with their work on cases in which they were required to apply the law.109

Perhaps more significantly, work on innocence cases helps students develop a critical perspective on the system itself, on the limits of lawyers and courts, and on alternatives for achieving goals. Students work on criminal cases in which the system failed. They are thus afforded an opportunity to reflect critically on the law and on the criminal justice system as a whole. Innocence projects enter at the back end of the process, after all trials and direct appeals are completed and the case is officially closed or “final.” That aspect of the work—coming at the end of a case—offers a unique opportunity for students to learn by doing “autopsies” on the cases. As the students review trial transcripts and police reports, they critically evaluate the way the lawyers, the judges, the police, and the criminal justice system in general performed. That review, however, is not merely academic—it is not the traditional case method writ large. Rather, while evaluating past performance on a case, students are actively engaged in future-oriented problem solving. Having applied hindsight to their analysis of a case, they put their critical judgments into action—they become investigators and litigators in the very cases they have reviewed critically. Innocence cases—like any type of postconviction case—offer the valuable opportunity both to apply retrospective analysis of a case already concluded, and to affirmatively develop and implement a plan for solving the problem presented by that case. The learning is significant.

109 See Engler, supra note 81, at 153 (“The more clinics students take, the more their classroom learning appears to be enhanced as well. Students regularly report, through journals and discussions, that their fieldwork helps them understand their classroom work.”).
Equipped in this way with the knowledge and experience to think critically about the system, students also then envision ways the system might be made to perform more reliably. In addition to pursuing justice for individual clients, they imagine reforms, and they work to effectuate those reforms through litigation, legislation, and other policy initiatives.110

6. Judgment

A capstone goal of innocent projects, and of clinical education in general, is to contribute to teaching law students how to develop and exercise the elusive lawyerly quality of “judgment.” While good judgment is one of the most essential qualities of a good lawyer, it is rarely addressed explicitly in law school. As Mark Aaronson has expressed it, practical judgment “is the key faculty needed when lawyers seek to identify, assess, and propose concrete solutions in particular and often complex social circumstances. Its absence is often sorely noted. Yet exercising judgment as a subject within clinical legal education is usually something mentioned in passing, not something seriously explored.”111

Although difficult to assess and to convey to students,112 judgment is surely a goal for our students, and of our teaching. Many of our students are motivated by the innocence project experience to go into criminal defense work as a career, but many choose other careers. Some go into corporate law, some intellectual property, and some become prosecutors. Whatever the career choice, good judgment will be a critical asset.

Judgment is a particularly complex concept, the full contours of which are well beyond the scope of this article.113 For purposes of this article, it suffices to note that, at bottom, judgment requires “a highly developed talent for identifying and weighing competing considera-

110 Through such analysis and effort, the Wisconsin Innocence Project has contributed to the process of significant systemic reform of eyewitness identification procedures, electronic recording of interrogations, and postconviction access to DNA evidence. The Wisconsin Innocence Project’s experience is not unique in this regard; many innocence projects have contributed to significant systemic reforms elsewhere. See supra notes 53, 97-103, and accompanying text; see also Carey, supra note 7, at 533-35 (describing the impact of innocence cases on the death penalty).

111 Aaronson, supra note 35, at 249.

112 See Burton, supra note 33, at 20 (noting that, one reason law schools rarely address judgment is that “we do not know how to describe good judgment in a way that is easily conveyed to students”).

113 Aaronson has produced a sophisticated analysis of practical judgment that borrows from Aristotle, Anthony Kronman, Immanuel Kant, Hannah Arendt, Karl Llewellyn, Donald Schön, and Ronald Beiner, among others. Aaronson, supra note 35.
tions comprehensively and responsively.”

It requires the ability to be both empathetic and detached at the same time, so that one can “imagine how things look from . . . [an]other’s standpoint,” and then “step back and decide what really needs to be acknowledged and what does not.”

It requires the ability to “tak[e] into account opposing and varied perspectives and multi-dimensional considerations all at once.”

It requires attention both to intellectual capacities and “to moral concerns and the immediate, human consequences of our actions.”

And it requires access to relevant knowledge, and the ability “to invoke and apply such knowledge to the particularities of a specific situation.”

If nothing else, innocence projects equip students with the experience and perspective to help them “identify[ ] and weigh[ ] competing considerations.”

As discussed above, students learn that things are not often what at first they appear to be. They study the strategies in their clients’ cases that have been tried and failed. They experience the frustrations of dealing with inflexible and bureaucratic systems and institutions. They gain the perspective of those citizens who have been essentially banished from our communities. They come to see the humanity of individuals convicted of the most heinous crimes; they learn to empathize and detach. And they become sensitized to the vices of tunnel vision, that natural human condition that has such pernicious effects in the criminal justice system.

---

114 Mark Neal Aaronson, Thinking Like a Fox: Four Overlapping Domains of Good Lawyering, 9 CLIN. L. REV. 1, 37 (2002).
115 Aaronson, supra note 35, at 269.
116 Id. at 253.
117 Id. at 258. See also Burton, supra note 33, at 36 (noting that narrative reasoning is an important component of judgment because it “permits a range of contextual factors, including ‘moral, political, sociological, philosophical, psychological, or jurisprudential’ considerations, and is thus an important tool for lawyers in assessing potential options for client decision and action.”) (quoting Regina Austin, “Bad for Business”: Contextual Analysis, Race Discrimination, and Fast Food, 34 J. MARSHALL L. REV. 207 (2000)).
118 Aaronson, supra note 35, at 264.
119 Id. at 269.
120 See Findley & Scott, supra note 4. Among all the factors that have been identified as contributors to the problem of wrongful convictions, the one that appears almost uniformly in such cases, is tunnel vision. Virtually every inquiry into wrongful convictions identifies tunnel vision—the unwillingness, once a theory of guilt has been developed, to consider the possibility of innocence, or alternate suspects—as a pervasive problem in the criminal justice system, at all stages, from investigation through prosecution and appeal. See, e.g., REPORT OF THE GOVERNOR’S COMMISSION ON CAPITAL PUNISHMENT (Ill., April 15, 2002), available at http://www.idoc.state.il.us/ccp/ccp/reports/index.html; Innocence Commission for Virginia, A VISION FOR JUSTICE (2005), available at http://www.icva.us; Fred Kaufman, REPORT OF THE KAUFMAN COMMISSION ON PROCEEDINGS INVOLVING GUY PAUL MORIN, available at http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/. Innocence project students learn that they too are susceptible to such tunnel vision, and they openly speak about the need to avoid falling into seeing a case through only one lens, to avoid the
Whatever field the students may pursue upon graduation, such perspectives should be invaluable. Judgment is a matter that deserves even greater and more sophisticated attention in our teaching in the innocence projects, but at least innocence projects offer what appear to be the raw materials for fostering the development of good judgment.

III. Optimizing the Educational Value of the Innocence Project Experience

A. The Problem of Size and Complexity

As rich as are the learning opportunities in innocence projects, the sheer size, complexity, and unpredictability of the cases challenge the ability of students to gain maximum educational benefit from the work. Innocence cases present in stark terms some of the features that fuel the on-going debate over the benefit of big, complicated cases, as opposed to simpler, more routine cases.

Others have noted that complex cases help “students to learn that lawyers can have a major impact on society,” and “enable students to observe the system in its most complex form, and to learn how tenaciously litigation is fought when a lot is at stake.” “They teach us about the complex nature of the law, client decision-making, problem solving and collaboration.” They inspire faculty and students alike, which leads to “better teaching.” And the long-term nature of the cases allows students and faculty alike to get to know clients better as individuals, and not just as legal problems. Given these, and the other considerable educational goals and possibilities outlined above, the learning value of the large innocence project cases is significant.

But big cases can present problems for clinics. The generally accepted ideal in clinical education is to allow students to take primary responsibility for a case—to take “ownership” of the case—so that they are forced to engage in autonomous decision-making. To facil-

121 Schrag, supra note 8, at 192. See also Reingold, supra note 95 (describing the advantages to a clinical program of “hard” cases).
122 Maurer, supra note 8, at 879.
123 Id. at 882.
124 Id. Nancy Maurer has noted that big cases also benefit the host law schools by helping to satisfy the law school’s commitment to the community, and by generating public relations benefits. The experience at Wisconsin has certainly been that these benefits are substantial.
125 See Kruse, supra note 8, at 407; Bloch, supra note 108, at 352; Quigley, supra note 16, at 484-88.
ittate that process, most clinicians adhere to a general model of “non-directive” supervision.126 Additionally, clinical teachers recognize the value in allowing students to see a case through from beginning to end, in part because it “permits students to remain involved at the critical stage of revising and modifying the problem-solving strategy.”127 But big cases, because of their complexity and their high-stakes nature—and that certainly includes innocence cases—can make it difficult for supervisors to relinquish control of the cases, and for students to get a full or even experience from handling a case.128

As discussed already, innocence cases can last years, and the stakes are enormous—freedom, versus a lifetime or lengthy term of imprisonment, or even life versus death, for an innocent person. Both of these aspects of the cases can challenge the ability of students to take ownership of the cases and to see their projects through from beginning to end. Daniel Medwed has recently written about this aspect of innocence project pedagogy. He notes first that one pedagogical problem with many actual innocence claims is that it is difficult to anticipate at the outset whether any particular case may be worthwhile for students. . . . [T]here is an element of ‘take what you can get’ with innocence claims and there are usually not enough meritorious claims within a project’s specific mandate to provide the luxury of picking them based on educational value.129

Medwed then tracks his experience in an actual innocence clinic, in which four pairs of students were assigned one innocence case each, which Medwed and his colleagues had selected in advance.130 Medwed concludes that only one of the four student teams “had a truly stimulating and educationally rewarding experience solely through its work on an innocence case that we had preselected for

126 See, e.g., James H. Stark, et al., Directiveness in Clinical Supervision, 3 B.U. PUB. INT. L.J. 35 (1993); Critchlow, supra note 18; Schrag, supra, note 8, at 213-14 and n.71 (noting that surveys of clinical teachers reveal that significant majorities believe clinical teachers should not guide students on the law or tactics until students have found what they can on their own and developed their own tactical ideas).

127 Kruse, supra note 8, at 425; see also Schrag, supra note 8, at 192 (“to the extent that the stewards of a clinic want students to learn about a legal process by seeing a case through from beginning to end (rather than, for example, handling part of the discovery in a multi-year case), smaller cases seem better suited to the goal”).

128 As George Grossman has put it, “law reform programs have serious limitations as teaching devices. The actual litigation is usually done not by the students, but by the faculty. Cases can be complex and litigation protracted. Consequently, individual students may receive uneven, unpredictable, and fragmented exposure to cases. The contribution of (and to) students can often consist of little more than fragments of orthodox legal research.” George Grossman, Clinical Legal Education: History and Diagnosis, 26 J. LEGAL EDUC. 162, 179 (1974).

129 Medwed, supra note 6, at 1135-36.

130 Id. at 1137.
representation.”131 In two of the other three, the investigations quickly went nowhere, leaving the students with little to do. In the third, the case “became fraught with complexity and the involvement of too many lawyers, in effect, grounding the students before they could take flight.”132 In sum, Medwed concludes that “the reality is that innocence cases are often intricate, protracted, and politically sensitive, suggesting that faculty intervention, either actual or potential, to some extent may be an omnipresent cloud over student autonomy.”133

Nonetheless, Medwed finds pedagogical value in some aspects of the innocence project experience. Specifically, Medwed concludes that permitting students to participate in the case screening process—initially viewed primarily as a necessity because of the overwhelming volume of prisoner requests for assistance—has proven to be a valuable learning experience. Medwed notes that student work on case screening involves many of the skills cited in the MacCrate Report and by the AALS Committee on the Future of the In-House Clinic, and permits significantly freer non-directive supervision.134 Additionally, Medwed argues that “[c]ase selection for an innocence project also provides a suitable means to teach students about self-reflection.”135 In short, Medwed concludes that refocusing students more toward handling the case selection process provides the students with many of the benefits of a “small” case clinic.136

Medwed has contributed to our understanding of the educational value of a largely overlooked aspect of the innocence project experience (case screening), and has explained how, even in a “big” case clinic, some of the benefits of “small” cases can be achieved by varying the nature of the tasks assigned to students. And he has shown how variety can provide a healthy learning experience by catering to students with varying learning styles.137 Medwed does not advocate limiting students only to screening cases; he suggests instead that students should do both: work in teams on a full actual innocence case, and combine that work with individual work screening applications for assistance. Medwed suggests that the largely autonomous screen-

131 Id. at 1140.
132 Id.
133 Id.
134 Id.
135 Id. at 1145.
136 Id. at 1147.
137 Id. at 1149. Medwed notes, for example, that the case screening experience accommodates those students who do best working largely on their own, while others learn better from the give-and-take of team work. Id.
ing task can be used effectively to compensate for the limitations he observed in the case work, while at the same time, the large case work—despite its limitations—can provide some learning opportunities not available if students were only to screen applicants.\footnote{Id. ("If case selection were the sole task performed by students in an innocence project, then utilizing that same skill set exclusively might soon reach a point of diminishing returns.")}

While I agree that student involvement in screening cases has significant educational merit, I want to suggest that it is indeed possible to structure an innocence project in a way that permits students to take more significant ownership of cases beyond the screening stage, to give students a rich learning experience on the casework itself. But it takes an intensive investment of time and resources, from both the law school and the students. It cannot be done through a three- or four-credit, one-semester clinical offering. It requires an integration of three methodologies: (1) immersion; (2) a strategic approach to making the cases manageable, such as that developed by Katherine Kruse; and (3) offering a variety of experiential opportunities, much like the variety that Medwed suggests can be provided by case screenings. In the next section, I explore each of these strategies in turn.

B. Overcoming the Challenges

1. Immersion

The most significant strategy for resolving the large-case and unevenness problems Medwed has identified is simply to give students sufficient time in the project to enable them to handle those large cases, and to give them enough cases to smooth out the unevenness. Students in the Wisconsin Innocence Project make a year-long (12-month) commitment to the project.\footnote{Nancy Maurer has previously suggested that in any big case clinic, students “should be required to commit a full year or two semesters to the clinic. They are more likely to see significant case development over the course of a year than during a single semester. And the projects are less likely to lose students just as they have mastered the law and procedure and are ready to undertake more complex matters.” Maurer, supra note 8, at 896.} That commitment is more than just a typical two-semester commitment. Students work full time in the summer, and then continue for seven credits (about half their academic load) in the fall and another one to three credits in the spring. Students invested at this level handle more than one case—typically five to ten cases over the course of the year—and they can and do learn to take the lead even on extremely large and complex cases.

Requiring this significant level of commitment was not the original plan; the requirement emerged after a number of years of trial and error. It has proven to be the most effective means of utilizing inno-
cence cases as teaching tools. When my colleague, John Pray, and I began the Wisconsin Innocence Project, we envisioned it in part as an alternative to the traditional prison-based clinical program at the University of Wisconsin’s Frank J. Remington Center, which typically begins with a full-time summer experience.\footnote{The Wisconsin Innocence Project is just one of several prison-based projects, and several low-income-community-based projects, all comprising part of the Law School’s Frank J. Remington Center. The longest standing, and largest, of the prison-based projects is the Legal Assistance to Institutionalized Persons (LAIP) Project, which has been providing general legal services to prisoners since the 1960s. LAIP, like most of the other Remington Center prison-based projects, begins with a full-time summer program open to students after their first year of law school. For a description of the Remington Center’s clinical programs, as well as other clinical offerings at Wisconsin outside the Remington Center, see http://www.law.wisc.edu/clinics/clinicaleducationskilltraining.htm.} We envisioned the Innocence Project in part as an effort to meet a special need of our prison population client community, to enable us to free up sufficient resources to handle the significant demands of actual innocence cases. We also saw it as an opportunity to provide a fall-semester entry point for students, so that those students who could not commit in the summers still had an opportunity to enroll in a prison-based clinical program. In its first iteration, therefore, the Wisconsin Innocence Project consisted of a three-credit offering in the fall semester, followed by one to three credits in the spring. The Project had no summer component.

We quickly realized, however, that this structure allowed students insufficient time to get full value out of the innocence project clinical experience. Students suffered many of the frustrations described by Medwed, including an uneven experience and an inability to take ownership of the cases. And because the innocence cases continued to demand attention year-round, we realized that having no students, and hence no active program, over the summer months was detrimental to the client service mission. We therefore shifted the project to begin with a full-time summer commitment, like most of the other prison-based projects at the Law School’s Remington Center. That shift enabled students to better handle their cases, and ensured better client service. It also was consistent with the general philosophy of the prison-based clinical programs, which emphasizes “immersion” as a guiding principal: the notion that students learn best and most fully about the interaction of law and a complex institution like the correctional system by full-time immersion in the system.\footnote{Meredith Ross, current director of the Remington Center, has described this immersion approach while tracing the history of the Remington Center’s clinical offerings:

In one other important way, the prison clinical program at Wisconsin was unique. From its inception, and through all of its many changes, Wisconsin’s clinic has emphasized a full-time immersion experience for students. Thus, unlike programs at virtually all other law schools in the country, Wisconsin’s prison-based clinic}
The down side, of course, was that we no longer continued to offer a fall semester entry point for students who could not participate in the summer. To compensate, we experimented for a time with permitting some students to begin the project in the summer, and permitting a smaller number of students to enter in the fall. We found that this approach, however, created hierarchies among the students, and almost insurmountable barriers for the late-entering students who constantly felt behind, less well-informed, and less capable of full participation in the case work. Staggering the entry of our students also created logistical problems in our attempt to offer a companion classroom experience; we had to repeat in the fall some of the classroom sessions already conducted for summer students, and we struggled with trying to meet the varying needs of students who were working together on the same cases, but who had been provided different levels of preparation.

We finally concluded that the program could only work if all students entered at the same time, in the summer, for a full-time immersion experience, and if all students then continued with the program for at least a full year. An alternative entry point for students would have to be provided by other clinical offerings at the Law School.\textsuperscript{142}

The summer immersion program worked wonderfully. But students became frustrated when the fall semester began, and they had to cut back their work on the cases from full time to just the 12 hours or so each week that they could commit to their three-credits of innocence case work. The case loads they had built up over the summer, and the investments they had made in the cases, could not be sustained with just three credits in the fall. Students asked us to increase the credit load in the fall semester.

We began by increasing the fall semester to four credits, but even that was inadequate. Eventually, at the prodding of the students, we increased the fall semester to seven credits, thereby effectively permitting the students to work half-time during the fall semester, following their full-time work in the summer. In the spring, students are still permitted to enroll for one to three credits, depending on their assess-

\textsuperscript{142} The Remington Center offers an appellate advocacy clinic, a neighborhood law project, a consumer litigation clinic, and a family court assistance project, all of which permit students to enter in the fall, or in some cases, the spring. Additionally, other clinical programs outside the Remington Center also offer entry points in the fall and spring semesters. See University of Wisconsin Law School, Clinical Programs and Skills Training, at http://www.law.wisc.edu/clinics/clinicaleducationskilltraining.htm.

\textsuperscript{98} Ross, supra, note 98.
This immersion approach has proved successful. Students do indeed take ownership of the cases. Students work on some cases in teams of up to five students, other cases in pairs, and a few, particularly screening cases, individually. The case loads are sufficiently high, and the cases are sufficiently complex, that we as clinical faculty have no choice but to give students primary ownership. We simply cannot read all of the massive case records, observe directly all (or even many) of the witness or client interviews, or take part directly in the myriad other aspects of the students’ case work. In our weekly meetings on each case, we typically begin by asking the students what is happening on the case, or where the students see the case going at that time. We usually ask because we don’t know. Nondirective supervision becomes a necessity, not just a strategy.143

Fortunately, it also seems to work. Students spend the time necessary to truly know their cases. They brainstorm among themselves, and more formally with us and the entire class, about problem-solving on the case. They develop innovative approaches to case strategy. And they do virtually everything that must be done on the cases. In the most recent teacher evaluations (which are consistent with evaluations in past years), students reflected that they felt “less like a student and more like a partner,” and that they appreciated that they felt “in control” of their cases.

There are, of course, limits to the degree to which we permit students to handle all aspects of the cases, and those limits may be reached more frequently in innocence projects than in clinics based on smaller or lower-stakes cases. For example, when court appearances are involved, students usually handle the courtroom representation, to the extent permitted by supreme court student practice rules.144 But when we helped obtain a new trial for a man convicted of first-degree intentional homicide, we chose to play a backup role at the client’s retrial.145 Neither the students, nor the clinical faculty, who are all postconviction and appellate lawyers rather than trial lawyers, were capable of effectively representing the client directly at his retrial.

143 This is not to suggest, of course, that students are left to flounder about without guidance, or that they are permitted to practice law without supervision. The supervision is there. But the case work begins with the students, not the teachers.

144 Under Wisconsin Supreme Court Rule 50.03(1)(b), law students may be certified to appear in court when they have satisfactorily completed half of the credits required for graduation from law school. Students begin work in the Wisconsin Innocence Project in the summer after their first year of law school, but cannot be certified to appear in court until part-way through their clinical experience, at the end of the fall semester in their second year of law school.

145 See notes 58-60, supra, and accompanying text.
But even the experience of providing backup to the trial attorney was a valuable learning experience for all, drawing on the significant benefits that can be obtained from observation and modeling.146

2. Strategies for Making the Big Cases Small

Simply giving students more time on the cases, however, does not solve all problems posed by the big innocence cases. Even for full-time and half-time students, the cases are usually bigger than any student alone can handle. And many cases still carry over from year-to-year, so that students are not able to see their cases through from start to finish.

Kate Kruse has analyzed strategies for involving students in cases that transcend a single semester or academic year. Her model was designed specifically for clinical projects that address large-scale problems of client communities rather than individual client representation.147 Although not designed expressly to address big cases that involve direct representation of individual clients, Kruse’s model provides useful guidance for big, individual-client cases as well.

Kruse contends that, when handling big, multi-semester cases in a clinic, “[i]t is important to conserve the components of the small, manageable cases that make them good vehicles for learning: primary student control, a sense of ownership for the student, and the ability to see a project through from initiation to completion.”148 To do so, Kruse suggests that clinics employ four strategies: compartmentalization, connection, collaboration, and continuity.149

Compartmentalization. Compartmentalization simply means breaking the enormity of a project into manageable pieces so that each student can take ownership of one portion of the project, which the student can see through to completion.150 In many large inno-

146 See Kimberly E. O’Leary, Evaluating Clinical Law Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method, 29 N. KY. L. REV. 491, 501 (2002) (describing the observation and modeling approaches to clinical teaching); Minna J. Kotkin, Reconsidering Role Assumption in Clinical Education, 19 N.M. L. REV. 185, 196 (observing that modeling can be a benefit, particularly for students not ready to “learn best by being thrust into role. . .”).

147 Her model is designed for projects that staff legal assistance centers for pro se litigants, teach in community education projects, pursue legislative reform, or create other programs “to prevent or address some of the underlying economic or political situations that led to their clients’ legal problems.” Kruse, supra note 8, at 408-09. In particular, her model was developed to help solve the pedagogical problems attendant to her Family Law Pro Se Project at the University of Wisconsin Law School, which sought to address the problems created by large numbers of low income pro se litigants in family law cases, where there were insufficient resources to provide direct service. Id. at 411-22.

148 Id. at 410.
149 Id. at 410, 433.
150 Id. at 433.
In innocence project cases, compartmentalization is a necessity. The investigation and litigation demands of the cases are often too great for any one student to handle alone, or to permit all students to address all the issues. In such cases, for example, students might divide up responsibility for investigating particular alternate suspects, or for handling the eyewitness research and forensic science issues separately, or for researching and writing arguments on distinct legal points.

But compartmentalization alone is not a pedagogically sound technique, as it limits the ability of students to reflect on the larger problem, much like being assigned to write a research memo for a law firm partner denies students' access to the full range of issues and considerations presented by a case or facing a client. Accordingly, Kruse contends that strategies are needed for providing connection to the larger problem and for opportunities for collaboration.

**Connection.** Effective problem-solving requires “students to both listen to the individual, and to work on overcoming their assumptions about what that client’s life is like.” While classroom exercises and reading materials can help make some connections, Kruse suggests that the most important means of providing connection with the lives and perspectives of the client community is to represent some clients directly.

In innocence projects, connection in that sense is easily achieved because, even while working on specific parts of a case, students are representing individuals. Connections can be made most directly by regularly visiting and communicating with those clients. We ask students to ensure that they all visit each of their clients in prison, where geographically feasible, and that they communicate with those clients, whether in person, by phone, or by letter, at least once a month. Indeed, Wisconsin’s philosophy of encouraging immersion in the prison milieu is premised in part precisely on this notion, that such immersion provides connection to the client population and an understanding of the realities of the lives of imprisoned people.

Connection to the larger case is also effected by ensuring that each student on a case understands and takes part in planning and strategizing the entire case. Students all participate in weekly meetings with their case team and supervising attorney to discuss progress on the case and discuss strategy. They all participate in assessing the big picture of the case, simultaneously participating in group strategizing while holding one another accountable for their individual work on the case. While the experience is unavoidably more compartmen-

---

151 Id. at 436.
152 Id.
153 Id.
talized than would be the experience of an individual student with responsibility for all phases of a case, or of a team of students who together are able to see a smaller case through from beginning to end, it is far less disconnecting than the experience of a law firm associate assigned to write a research memo on a case. Students have a hand in, and a view of, the entire case.

**Collaboration.** As the preceding discussion suggests, collaboration further compensates for the disadvantages of compartmentalization. Collaboration is an important part of many clinical programs, and a recognized teaching goal for many.154 As Kruse notes, “[c]ollaboration can be an especially useful tool at the stage of generating possible alternative solutions to a problem, because it brings a diversity of perspectives into the problem-solving enterprise.”155 Collaboration also effectively acts as a check on (and hence a learning opportunity about) the judgment of any individual student. It also enables students to learn from, and teach, one another,156 through, for example, editing each others’ drafts of letters, memos, motions, and briefs. Collaboration is a constant and essential feature of innocence project work, as students work jointly on case tasks, meet as case teams to discuss and brainstorm their cases, and periodically present their cases to the entire class of innocence project students and faculty for input and feedback.157

As is common in other types of clinical programs, collaboration also describes the nature of the student-teacher relationship that tends to develop on innocence cases. As noted above, students in our project truly do take ownership of the cases, and typically know more about a case than the clinical faculty—up to a point. At some point, supervising attorneys do become more involved, and deviate to some degree from the non-directive ideal. Too much is at stake to permit students to learn by making significant mistakes.158

---

154 See Schrag, supra note 8, at 217; Kruse, supra note 8, at 438; Maurer, supra note 8, at 890 (noting that one advantage of big cases is the opportunity they provide for students to collaborate with each other and with faculty); Catherine Gage O’Grady, Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer, 4 CLIN. L. REV. 485 (1998).

155 Kruse, supra note 8, at 438.

156 See David Chavkin, Matchmaker, Matchmaker: Student Collaboration in Clinical Programs, 1 CLIN. L. REV. 199 (1994).

157 For example, in one recent student self-evaluation, the student wrote:
   In college, I despised group projects and usually completed them mostly alone because I found that alone I could save time and do a better job. At the Innocence Project I have found the complete opposite. The students here come up with ideas I would never think of. I have learned so much by listening to others’ ideas and trying out their strategies; this has helped me immensely with interpersonal communication for accomplishing a task.

158 In this sense, innocence cases, in my judgment, require us to reject the proposition,
The litigation in most innocence cases, as is typical in postconviction and appellate practice, is largely paper litigation—it involves motions and briefs more than courtroom appearances. So when faculty do intervene, they can generally do so without taking the project away from the students, unless or until deadlines demand more direct intervention. Typically, the initial stages of supervision on such written projects involve feedback—ideally of a non-directive type, questioning, for example, why students wrote an argument in a particular way, what they were trying to accomplish, or how they might better communicate their point.\footnote{See Mary Kate Kearny & Mary Beth Beazley, \textit{Teaching Students How To “Think Like Lawyers”: Integrating Socratic Method with the Writing Process}, 64 Temp. L. Rev. 885, 899-900 (1991) (recommending that, when teaching legal writing, teachers should respond to student drafts with Socratic questions, rather than judgmental comments, so as to encourage the students’ independence as legal writers).} Eventually, we typically complete the writing process through another collaborative experience: group editing of the motion or brief. Typically, at that phase in the process, all students on a case gather around a computer with their supervisor and painstakingly go through the document, line by line, with each member of the team offering suggestions for revisions, and with the group then debating and reaching consensus on the final revisions. In this way, the process is meant to achieve “an ideal co-counsel” or “partner-partner” relationship.\footnote{See O’Grady, \textit{supra} note 154, at 516 (noting that clinical teachers and scholars have often “described their collaborations with students as resembling an ideal co-counsel, or lawyer-client, or partner-partner relationship”) (footnotes omitted); Kruse, \textit{supra} note 8, at 442 (noting that in big projects, the supervisory relationship can turn into “a partnership between the students and [teacher]”); Bloch, \textit{supra} note 108, at 338, 348 (noting that adults learn best in a climate that includes “a spirit of mutuality between teachers and students as joint inquirers,” in which there develops a “co-counsel relationship between the student and the teacher”).} In reality, of course, hierarchies develop in the collaborative relationship, and supervisors’ perspectives are given more deference than others.\footnote{O’Grady, \textit{supra} note 154, at 521; Kruse, \textit{supra} note 8, at 442 (the partnership between students and teachers is “not a partnership of equals”).}

But the collaboration is to a great extent real, as students frequently debate their colleagues’ and supervisors’ suggestions, or offer editing suggestions to portions other students or the supervisor might have written or suggested. In the end, if given sufficient time—and this process takes significant time—the product is almost always superior to what any individual student or supervisor would have produced alone. Through this process, stu-
dents more fully understand the edits to their work, and see the value of collaboration.

Continuity. Finally, Kruse suggests that, when a clinic addresses problems that cannot be resolved in one semester or one academic year, mechanisms must exist to provide continuity from one group of students to the next, to give the new students “a sense of the process that has come before, and to give them meaningful input into the direction of the project after they leave.”162 In her experience, Kruse became the primary vehicle for achieving continuity, because she was the only one who carried the institutional memory of the project.163

In the innocence projects, at least as constructed at Wisconsin, clinical faculty do play a role in providing continuity. But because I frequently do not know as much as the students about many of the cases, I cannot provide adequate institutional memory to achieve necessary continuity from one year to the next. Nor should I, as that would make more difficult the transition to student autonomy on the cases. Instead, the real mechanisms for achieving continuity in our project take three forms.

First, students who begin their innocence project work after their first year of law school are eligible, but not required, to enroll for additional credits (usually 1-3 credits) during their third year of law school. When those students elect to return for their third year of law school (a second year in the clinic), they overlap with newer students on the cases, and provide significant case memory and expertise. The benefit, however, is minimized by the fact that these students do not participate in the summer—when the new students first begin working on the cases. So the returning students are generally not available during the most critical time period when new students are learning about the case.164 They are, however, generally available for telephone and email consultation with the new students, and they provide significant continuity through such communications during the summer.

Second, during the final month of each academic year, we plan an informal get-together around a barbecue, bringing together the outgoing and incoming students so they can meet one another and begin the process of sharing information about the cases. Initial case assignments are made at that meeting in order to facilitate the exchange of

162 Kruse, supra note 8, at 439-40.
163 Id. at 440.
164 And when they do return during their third year (about a third to half of each class of 12 students returns), they enroll for significantly fewer credits than the new students and are accordingly more distracted by other coursework and sometimes less engaged than the newer students.
information. In practice, the meeting has only very limited capacity for meaningful exchange of information, since the new students do not know enough yet to have an informed discussion with the outgoing students. But the new students do begin to get some feel for the cases, and more significantly they meet the outgoing students and develop a comfort level for contacting those students as questions arise on the cases. The meeting at least creates an atmosphere of shared enterprise between the outgoing and incoming students that facilitates future communications.

Finally, the bulk of the continuity is achieved by simple hard work on the part of the new students. The initial part of the innocence project experience—which can last days, weeks, or even months on particularly large cases—involves extensive time spent simply reading the files—the investigation and research memos, police reports, trial transcripts, briefs, appellate opinions, and whatever else may make up the file. This process is monumentally inefficient, requiring new sets of students to relearn the details of sometimes massive case files anew each year. But in a clinical model with student turnover it is unavoidable. And the process also has case benefits—careful examination of the cases by new students with new perspectives each year often reveals insights about the cases that were overlooked by previous students and faculty. The process can be tedious, but more often is enlightening and interesting to students who have no previous experience handling cases. It provides a graduated process for introducing students to case work. The process also impresses on students the necessity of proper file maintenance and clear recording of case activity (a lesson that, sadly, seems to be quickly forgotten). And the routine is broken by our insistence that students begin traveling to the prisons during their first week in the project to begin meeting clients, and by the demands for immediate investigation or litigation activities that often are present in at least some of the students’ cases.

3. Variety

Finally, as all of this suggests, innocence projects can be made pedagogically valuable if students are provided enough variety in cases and problems to compensate for the sometimes unsatisfying nature of any one case that dead-ends.\[165\] Hence, as Medwed points out, combining case screenings with open case work can provide a mix that enhances the learning experience. Similarly, assigning students to work on larger cases in teams, and smaller cases in pairs or singly,

\[165\] Even the dead-end cases have educational value for the lessons they teach about client relations, the system, and the limits of the law. But, alone, they are not enough to justify the clinical experience.
helps students learn different working styles, and responds to different learning styles. Working on a variety of cases also helps students deepen their critical knowledge of the criminal justice system and the substantive law. Students challenging the medical foundation for a homicide conviction based on a shaken baby syndrome theory learn very different lessons than students who utilize DNA testing to expose a mistaken eyewitness identification. And students can gain a very different learning experience by working not just on individual case representation, but also policy and legislative reform efforts based upon the lessons from the wrongful conviction cases. All of these are opportunities available to innocence project students, and each helps to ensure that, even if some project cannot be seen through to completion, or any case turns out to have minimal pedagogical value, the experience on balance can be extremely valuable. In the end, however, it all depends on providing sufficient immersion in the experience to permit such varied exploration.

IV. Conclusion

Innocence projects have shaken up the criminal justice world. They have created new insights about flaws in the system, and a new receptiveness in some quarters to reforming that system. They have energized law students and clinical faculty alike. They have created what Barry Scheck refers to as the “new civil rights movement.”

Because many innocence projects are based in law school clinical programs, they also must justify their pedagogical value. While innocence projects present challenges to good teaching, they offer considerable value in achieving many of the traditional, and a few unique, educational goals of clinical education. In particular, they provide an effective means for teaching about the importance of and how to work with facts, about the importance of being thorough and skeptical, about professional ethics and values, about fostering a capacity for critical reflection about doctrine and the criminal justice system, and, ultimately, about judgment. Although large innocence cases present pedagogical challenges, those challenges can be met by providing a variety of learning opportunities, by employing strategies for structuring the large case work to mimic many of the advantages of small cases, and by committing students to spend significant time immersing themselves in the experience. In the end, the lessons from the innocence project experience transcend the innocence projects themselves, by revealing in stark terms both the necessity—at least in big case clinics—and the value, of assigning a significant portion of a student’s law school career to immersion in a clinical program.