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Directiveness in Clinical Supervision

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DIRECTIVENESS IN CLINICAL SUPERVISION

BY

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Among the hardest questions clinical law teachers face is how much responsibility to give fledgling student-attorneys. Student performance in the lawyering role is at the heart of clinical education.[1] Many clinicians are committed to supervising nondirectively, giving students broad authority to plan and carry out lawyering tasks and to learn from their own performance.[2] Clinicians writing about supervision theory have endorsed the view that autonomous decision-making facilitates adult learning.[3] But if nondirective supervision represents the best way to help students learn, it is not always the best way to serve clients. As lawyers, clinical teachers must be conscious of their duty to provide high quality and timely client service. This imperative often exerts a pressure to tell students what to do or to intervene in their performance.

All clinicians experience the tension between their educational obligations to students and their professional obligations to clients.[4] This problem is often discussed at clinical teachers' conferences.[5] Yet the clinical legal education

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[1] Association of American Law Schools Section on Clinical Legal Education, *Final Report of the Committee on the Future of the In-House Clinic* (August 1990), I-5. According to the Report, clinical legal education is "first and foremost a method of teaching" in which students are confronted with and required to solve legal problems in role and then subject their performance to intensive critical review. *Id.* at I-1.

[2] *Id.* at I-5-6.

[3] *See* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 328-44 (1982); Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223, 223 n.1, 245 n.55 (1981).

[4] The *Final Report of the Committee on the Future of the In-House Clinic* characterized this issue as a "persistent" one for clinical supervisors. *Id.* at IV-6-7.

[5] *See* Peter T. Hoffman & Kathleen A. Sullivan, *Role Conflict for the Clinical*

literature[6] has rarely addressed the issue, despite a growing body of scholarship on the nature and theory of supervision.[7]

In 1989 we initiated a study in order to better understand clinical law teachers' views on directiveness in clinical supervision. We developed a thirty-five item questionnaire,[8] which was published in the October-November, 1989 newsletter of the Association of American Law Schools Section on Clinical Legal Education. We received sixty-nine responses from this initial solicitation. In December, 1989, we mailed the questionnaire to another seventy-four clinical teachers around the country, thirty-eight of whom responded. In all, 107 clinicians — about one sixth of the nationwide total[9] — completed the survey.[10]

Teacher: Teacher or Lawyer, (speech given at conference held in Ann Arbor by the Clinical Legal Education Section of the AALS, June 4, 1990).

[6] Much has been written about the pedagogic advantages of role assumption in live client clinics. *See*, e.g., Peter T. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 283 (1982); Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV., 185, 186 nn.5 & 6 (1989) (collecting articles). Not much has been written about the potentially constraining effects that obligations to clients may have on the supervisor-student relationship. A recent exception is George Critchlow, *Professional Responsibility, Student Practice and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1991), which discusses criteria for determining when experiential learning by students poses an unacceptable risk to the client, justifying the supervisor's intervention in the student's performance of a lawyering task.

[7] *See, e.g.*, Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT 374 (Council on Legal Education for Professional Responsibility ed., 1973); Jane H. Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Bloch, *supra* note 3; Condlin, *supra* note 3; Hoffman, *supra* note 6; Peter T. Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986); Kotkin, *supra* note 6; Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Michael Meltsner et al., *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989); Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978); Ann Shalleck, *One Theory of Clinical Supervision: Drama and Commentary* (1989) (unpublished paper on file with the authors).

[8] We sent a "pre-test" version of our questionnaire to ten clinicians, for comments. We received many useful suggestions, which resulted in our amending or deleting certain questions and adding others. This was not a formal pre-test, in that we did not subject our survey instrument to reliability and validity studies.

[9] The Association of American Law Schools' *Directory of Law Teachers 1991-1992* lists 590 active clinical teachers.

[10] Our sampling method was not scientific and thus our sample may or may not be representative. Our 107 respondents were drawn from 59 law schools in 29 states plus

In February and September, 1991, we presented drafts of a paper analyzing the survey results to clinical law teachers at workshops at Boston University and Columbia University Law Schools. The participants' comments at these workshops greatly enriched our understanding and are liberally reported throughout this article.

In conducting this study, we had two principal objectives in mind. First, we wanted to explore clinicians' attitudes about directiveness and client service. To what extent are clinicians committed to nondirective supervision? How do they view a clinic's obligations to its clients? Do clinicians experience tension between their educational and client service goals? If so, how does this tension affect their practice? What variables influence their directiveness? Part I of this article addresses these questions.

A second purpose of our study was to compare the characteristics and beliefs of "directive" and "nondirective" supervisors, to obtain a better understanding of what distinguishes the two groups. We found no unanimity among clinicians about how to supervise. Some favor distinctly "directive" or "nondirective" approaches; some fall in between. These findings appear in Part II.

Section I(A) defines the terms "directive" and "nondirective" supervision. Section I(B) analyzes the responses to survey questions about how clinical supervisors should behave in different situations. We found that most clinicians do appear to favor nondirective approaches; however, a substantial minority do not.

Section I(C) analyzes respondents' views about a clinic's obligations to clients. A large majority of clinicians endorsed an ideal of providing clinic clients with the "best possible" service, where the quality of work reflects the best efforts of the supervising attorneys as well as the students. We discuss the tensions between this view of client service and the educational goals of clinical programs, a tension that is particularly pronounced for clinicians who believe in the nondirective model.

In Section I(D), we examine clinicians' perceptions of this tension and how it affects their approach to clinical supervision. Nearly all respondents reported concern about directiveness in their own supervision. Most felt that they supervise more directively than they should, and cited as their primary reason for directive supervision concerns about client welfare. Clinicians' responses to questions about how they actually supervise also suggested that clinicians' practices are often more directive than their beliefs.

Part I(E) examines the variables affecting clinical teachers' directiveness. Most clinicians believed that they should modify the directiveness of their supervision depending on factors likely to affect client interests, such as student experience and ability. The survey responses also suggest that clinicians favor more directive supervision of writing as compared with other lawyering tasks, and of ethical decision-making as compared with tactical decision-mak-

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the District of Columbia. A high proportion (33%) came from the Northeast.

ing. We consider possible explanations for these differences in Section I(E).

In Part II, we compare the characteristics, beliefs and practices of directive and nondirective supervisors. We devised a scale to classify respondents as "directive," "nondirective" or "neutral" in their beliefs about supervision. This scale is explained in Section II(A). We discuss these comparisons in Section II(B).

The two groups did not differ significantly in terms of gender, years of experience, caseload or student-teacher ratio. Directive supervisors were more committed to providing clients with the highest quality service and were less willing than nondirective clinicians to compromise this standard for the sake of student learning. Both groups, however, worried a great deal about directiveness issues and both groups shared a sense that their own supervision was at times too directive. Surprisingly, there were no significant differences between the two groups in their beliefs about how students best learn, or in their degree of commitment to a client-centered model of the attorney-client relationship. Section II(B) concludes by examining comments made by directive and nondirective respondents to a number of open-ended survey questions.

The article's conclusion addresses some implications of our study for clinicians. Three appendices follow. Appendix A reprints our questionnaire, marked with the percentage results for each question. Appendix B contains selected comments written by survey respondents to narrative questions. Appendix C addresses several issues concerning the validity of conclusions based on the survey data and how we formulated our "directiveness scale."

I. Supervisory Directiveness and Client Service

A. *Defining "Directiveness"*

To explain what we mean by "directive" or "nondirective" supervision, we begin by distinguishing some aspects of directiveness that the study did not address.

Issues of directiveness arise in the three settings in which most clinical education takes place: classes, simulated lawyering exercises and client representation. Our survey focused exclusively on clinicians' supervision of students engaged in representing clients.

Clinicians' decisions about the structure and organization of their programs also implicate directiveness issues. These decisions include: what kinds of cases to handle (subject matter, complexity), which specific clients to represent, how many cases to assign to each student and whether to assign students individually or in teams. Some clinicians involve students in making these decisions; others do not.[11] We did not ask clinicians about their approaches to these types of decisions.[12]

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[11] *See* Aiken et al., *supra* note 7, *passim*.

[12] Our survey also did not address the directiveness with which supervisors approach two other issues that might be termed "structural." One involves the process by which students make case decisions. Many clinicians require their students to go through a

We also did not address directiveness issues that relate to two important facets of clinical case supervision. Minna Kotkin has described clinical teaching as consisting of five essential steps: exposing the student to models of lawyering, having the student apply these models in planning a particular task, evaluating the plan with the student, having the student perform the task and, finally, critiquing the performance with the student to examine its conformity to, and the sufficiency of, the model or plan.[13] Our survey did not address directiveness issues that relate to this last stage, providing feedback on completed tasks.[14]

Nor did we address the first item on Kotkin's list: exposing students to models of lawyering. All clinicians are directive in the sense that they seek to impart to students, through classroom instruction, selection of reading assignments or skills demonstrations, certain ideas about what constitutes a good client interview, direct or cross examination, or approach to case planning. Also, most clinical teachers probably seek to inculcate "certain core ideas [about professional values], such as the client's right to make decisions and to high quality service."[15] But clinicians may approach some skills and values in less directive ways by "exposing students to an array of ideas, without caring what ideas students accept or reject."[16]

Our study focused on the interaction between supervisors and students when working on cases. We were interested in how much student responsibility and autonomy supervisors allow when students plan and perform the lawyering tasks involved in representing clients. Directiveness, in this sense, has three

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formal, structured case planning process (for example, by requiring completion of a planning form), while allowing students considerable freedom to make their own decisions. *See* AALS Section on Clinical Legal Education Conference, Boulder, Colo., 1983, [hereinafter *Boulder Conference*] (comments of Elliott Milstein) (tapes and partial transcripts on file with authors). The imposition on students of a particular method of making decisions may be viewed as a form of directiveness.

In addition, supervisors often make structural decisions about the allocation of responsibility between supervisor and student. A supervisor who tells students that all case decisions are theirs to make, and that the supervisor will intervene only to prevent malpractice, would be nondirective in the sense that we use the term. *See infra* notes 17-27 and accompanying text. However, viewed from another perspective, this supervisor might be seen as directive, for she imposes this approach on students, some of whom might prefer an arrangement in which the supervisor takes greater responsibility for client representation. *See* Meltsner & Schrag, *supra* note 7, at 4 n.7.

[13] *See* Kotkin, *supra* note 6, at 193-4.

[14] Feedback might be viewed as directive when the supervisor explicitly tells the student what was effective and ineffective about her performance. A nondirective approach to feedback would focus more on training students to critique their own work.

[15] This comment was made by a participant at the Clinical Theory Workshop, Columbia University School of Law, September 27, 1991. (Audio tapes and a partial transcript are on file with the authors).

[16] *Id.* For example, a clinician might present "positional" and "cooperative" approaches to negotiation without seeking to influence students to accept either model.

dimensions:

1. *Decision-making.* What kinds of case decisions should students make, and what kind should supervisors make? How should students and supervisors interact in the decision-making process?

2. *Information-sharing.* When should supervisors provide information or advice to students? When should supervisors demand that students develop information or generate ideas themselves? When supervisors provide advice, how specific or general should it be?

3. *Task Allocation and Performance.* What lawyering tasks should students perform, and what tasks should supervisors perform? When should supervisors intervene in a student's performance?[17]

Based on discussions with clinical law teachers and our observations of different supervisory styles, we can describe some characteristic attitudes and approaches of "directive" and "nondirective" supervisors.[18]

Nondirective supervisors stress the value of fostering student independence. They argue that clinic students, as "soon-to-be-graduated professionals," should be required to formulate and execute strategy, "call the shots, and exercise the power of a lawyer."[19] Directive supervisors may question allowing students to make such core decisions, believing that students can learn as well in the role of co-counsel, with an experienced supervising attorney acting as

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[17] These dimensions of directiveness clearly overlap at the margins. For example, the information that a supervisor shares with or withholds from a student may strongly influence the student's autonomy in the decision-making process.

[18] In addition to our own experiences and conversations, our descriptions draw on two sources. George Critchlow has described the attitudes of directive and nondirective clinicians towards supervisor intervention in student task performance. Critchlow, *supra* note 6, at 428. In a panel discussion at the 1983 conference of the Association of American Law Schools Section on Clinical Legal Education in Boulder, Colo., panelists discussed three approaches to clinical supervision: an "analytical" model, presented by Elliott Milstein and Paul Bergman; a "vocational" model, presented by Roy Stuckey and Peter Toll Hoffman; and a "contract" model, presented by Philip Schrag, David Koplow and Lisa Lerman. *Boulder Conference*, *supra* note 12. The panelists' descriptions of the "analytical" and "vocational" approaches largely correspond with what we call, respectively, "nondirective" and "directive." The "contract" model, which calls for a negotiation between supervisors and students concerning their respective roles, does not fall neatly into a nondirective/directive dichotomy, although its proponents generally seem to favor a nondirective style. *See* Aiken et al., *supra* note 6, at 1073-75.

[19] *Boulder Conference*, comments of Elliott Milstein and David Koplow. Many nondirective clinicians favor student autonomy for educational reasons. As George Critchlow puts it, they view "learning from mistakes and self-discovery" as crucial. Critchlow, *supra* note 6, at 428; *see also* Bloch, *supra* note 3, at 328-44; Condlin, *supra* note 3, at 223 n.1, 245 n.55.

Nondirective supervision may also be attractive to clinicians as a matter of politics or temperament. We suspect that many clinicians are uncomfortable with the ideas of hierarchy and authority that inhere in the traditional law school curriculum and private law firm practice. *Cf.* Duncan Kennedy, *Legal Education as Training for Hierarchy*, *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 40 (David Kairys ed., 1982).

lead counsel and ultimate decision-maker. The directive supervisor emphasizes that client service must take precedence over student autonomy or educational objectives, and believes that limits must often be placed on student responsibility to avoid endangering client interests.[20]

Nondirective supervisors are more committed to long-term educational goals, such as helping students to "learn how to learn" from their practical experience.[21] Directive clinicians tend to focus more on immediate case-related objectives such as "what to do next and why." They tend to believe that there are certain accepted norms of practice and having students "reinvent the wheel" on matters about which most lawyers agree is not an efficient use of time.[22] Nondirective supervisors may be more skeptical of certain lawyering norms and wish to subject them to critical inquiry.

In order to promote student responsibility, nondirective supervisors are more likely to withhold information and advice from students.[23] They may also give students substantial freedom to make different decisions than the supervisor would make.[24] Their approach "question[s] the presumption that the teacher's judgment of how to handle a case is always better or more accurate than the student's."[25]

These differences in approach will affect a supervisor's willingness to intervene in student decision-making and performance. As noted by George Critchlow, nondirective clinicians may be "willing to sacrifice efficiency and control for the perceived educational benefits derived from student autonomy so long as malpractice is avoided and the Rules of Professional Conduct are not violated."[26] Directive supervisors take a contrasting view:

> [Directive supervisors] believe that it is not sufficient simply to avoid malpractice. The client also has an interest in reasonably efficient representation and in avoiding anxieties and demands caused by student mistakes and delays. An additional concern is that it is not appropriate to inflict on the legal system and other participants in the adjudicative process inordinate strain on resources and time which may result from repeated, albeit remediable, student mistakes. Intervention for teachers of this persuasion is therefore more likely to occur. . . .[27]

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[20] *Boulder Conference*, comments of Philip Schrag.

[21] *Boulder Conference*, comments of Elliott Milstein (analytical supervisors are interested in using cases as "metaphors" for future kinds of cases the student is likely to confront); *Final Report of the Committee on the Future of the In-House Clinic*, *supra* note 1, at I-5.

[22] *Boulder Conference*, comments of Roy Stuckey and Peter Hoffman.

[23] *Boulder Conference*, comments of Paul Bergman.

[24] *See* Aiken et al., *supra* note 7, at 1053. "We try to empower our interns by . . . permitting them to make case decisions entirely at odds with those that we would make if we were counsel for the client." *Id.*

[25] Critchlow, *supra* note 6, at 428.

[26] *Id.*

[27] *Id.*

Of course, no clinician believes that students should have complete autonomy in casework or that supervisors should take complete control. Directiveness is a matter of degree. This paper uses the terms "directive" and "nondirective" as a shorthand for the relatively directive and relatively nondirective approaches described above.

B. *Beliefs About Directiveness*

Our survey included questions designed to obtain respondents' views on how supervisors should behave in situations involving decision-making, information-sharing and task-performance.[28] Based on contacts and conversations with clinical teachers and writings by clinicians about supervision theory,[29] we expected that most clinicians would endorse nondirectiveness.[30] The survey results confirmed this hypothesis, although a substantial minority of clinicians favored directive approaches.

1. Decision-making

Most respondents endorsed nondirective approaches to both tactical and ethical decision-making. Sixty-three percent of the respondents said that supervisors should allow students to make "important tactical decisions" unless student decisions were "positively harmful to the client" (12%) or "clearly less effective than other available choices" (51%). Thirty-five percent favored more expansive criteria for intervention: when students' tactical decisions were "not optimal for the client" (22%) or "somewhat less effective than other available choices" (13%).[31]

A somewhat smaller majority responded nondirectively to the question about ethical decision-making. Fifty-four percent of respondents stated that decisions on ethical matters should be made by students, except when student decisions "clearly" (14%) or "possibly" (40%) violate ethics codes. However, forty-three percent said that decisions on ethical matters should be made by the supervisor, "in general" (7%), or when student decisions "[do] not violate

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[28] *See supra* notes 17 & 18 and accompanying text. These questions focused on how supervisors *should* supervise. Other items in the questionnaire asked clinicians to describe what they actually do when they supervise. *See infra* note 56.

[29] *See* articles cited *supra* note 7, *passim*.

[30] *Cf.* Kotkin, *supra* note 6, at 196, noting that the dominant model of clinical legal education is premised on student role assumption, and therefore clinicians tend to value (and give high grades to) good "role assumers," those students who with relatively little guidance can do careful, high quality work on behalf of clients.

[31] *See infra* Appendix (App.) A, Item 16. Throughout this article, percentages will be used to refer to the percentage of respondents who answered the question. The number of respondents who gave no response is indicated next to each question in Appendix A. Where percentages reported in this article do not add up to 100% (here, for example, where 63% + 35% = 98%), the remaining respondents (here, 2%) selected "no opinion."

ethics codes, but nevertheless seem[ed] inappropriate to the supervisor" (36%).[32]

More respondents favored a nondirective approach than a directive approach to decision-making in response to this question:[33]

> Which of the following best describes the proper decision-making relationship between a student and supervisor in a law school clinic?

23% a. the supervisor has the last word on particularly difficult or important decisions

42% b. students and supervisors cooperate naturally and spontaneously in the decision-making process

8% c. students and supervisors negotiate in advance the kinds of decisions that will be made by students and the kinds of decisions that will be made by the supervisor

27% d. students are required to make decisions on their own and all reasonably competent student decisions are final

Choices (b) and (c) are difficult to characterize in terms of directiveness. A slightly larger percentage of respondents favored choice (d), which describes the paradigmatic nondirective approach, than the directive choice (a).

2. Information-sharing

A large majority of respondents expressed the belief that supervisors should refrain from sharing tactical ideas and legal knowledge with students. Seventy-nine percent agreed and nineteen percent disagreed[34] with the following proposition: "In general, even if supervising attorneys know the law, they should make students find it themselves."[35] Sixty-nine percent agreed that supervisors "should not share their ideas on tactics with students until students have developed and articulated their own tactical ideas," while twenty-nine percent disagreed.[36]

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[32] *See infra* App. A, Item 14. Possible explanations for the broader support expressed for a nondirective approach to tactical decisions (63%), as compared with ethical decisions (54%), are considered *infra* in text accompanying notes 86-89.

[33] *See infra* App. A, Item 3.

[34] In all questions that asked respondents whether they agreed or disagreed with a statement, the choices were "strongly agree," "agree," "disagree," or "strongly disagree." For purposes of analysis, we have grouped "strongly agree" and "agree" answers together, and have done the same with "strongly disagree" and "disagree."

[35] *See infra* App. A, Item 9.

[36] *See infra* App. A, Item 12. There was an apparently inconsistent response to Item 11 on the questionnaire, which asked whether "[t]hroughout the supervisory relationship, supervising attorneys should freely share their ideas on tactics with students." 74% of respondents agreed. This would appear to indicate that most supervisors favored a directive approach to information-sharing. However, 64% of those who agreed with Item 11 also agreed with Item 12. When these individuals agreed with

Responses to other survey questions suggest that the reason supervisors withhold ideas and information is to force students to assume more responsibility. Seventy-one percent agreed with the following statement: "When supervising attorneys express their views on tactics, it becomes less likely that students will take responsibility for their cases."[37] Nearly all respondents viewed training students to accept professional responsibility for clients as a primary goal of clinical education.[38]

3. Task-Performance

Questions in this category dealt with the appropriate degree of supervisor involvement in two common lawyering tasks: client interviewing and legal writing. While a large majority of respondents favored nondirective supervision of initial client interviews, only a minority endorsed a nondirective approach towards students' written work.

Eighty-nine percent of respondents favored little or no participation by the supervisor in initial client interviews. Of the eighty-nine percent, thirty-four percent said the supervisor should not be present, nine percent favored the role of "passive observer," and forty-six percent stated that the supervisor should intervene "only in cases of serious student error or oversight." Only eleven percent of respondents said that the supervisor should be a "coequal participant" (4%) or "active intervenor" (7%).[39]

By contrast, a majority favored active involvement by the supervisor in students' written work product. Fifty-four percent disagreed with the proposition that "[a]s long as a student's written work product is legally and tactically sound and reasonably clear, supervisors should not make stylistic changes," while forty-four percent agreed.[40]

The survey responses outlined above suggest that many clinicians share the nondirective ethos.[41] The next section of this article examines the tensions between these widely-shared nondirective beliefs and the responses clinicians

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Item 11, they probably meant that supervisors should freely share ideas with students, *but not until after* students have developed and articulated their own tactical ideas. We believe that Item 12, a narrower and less ambiguous question than Item 11, provides a better measure of whether clinicians favor a directive or nondirective approach to information-sharing.

[37] *See infra* App. A, Item 4.

[38] When asked, in another survey question, to rate the importance of various goals of a clinical program, 99% of respondents rated this goal as "very important" or "important." *See infra* note 49 and accompanying text.

[39] *See infra* App. A, Item 10.

[40] *See infra* App. A, Item 13. The reasons supervisors may tend to intervene more readily in written work than in other lawyering tasks are considered *infra* notes 81-85 and accompanying text.

[41] This generalization depends on a number of assumptions. Appendix C raises some questions about whether the survey data provides an adequate basis for classifying respondents as "directive" or "nondirective."

gave to questions about client service, the goals of clinical education and their own roles as teachers and lawyers.

C. *Education vs. Client Service*

In responses to two survey questions, a surprisingly large majority of clinicians expressed a commitment to providing the "best possible" service to clients of clinical programs. Seventy-four percent of respondents disagreed with the following statement: "When priorities are in conflict, the highest priority of a clinical program is to promote student growth and learning, not to provide the best possible legal service to the client." Only twenty-three percent agreed.[42] A question addressing the quality of service owed to clients elicited a similar response. Seventy-eight percent agreed with the proposition that "the supervising attorney . . . is responsible for ensuring a lawyering product for the client that is the best students and supervisors can reasonably accomplish, utilizing their combined skills and resources to the fullest."[43] Only twenty-two percent endorsed a lawyering product that is "the best that the student(s) can reasonably accomplish, so long as their work is at least minimally competent."[44]

These views about client service are difficult to reconcile with the commitment to nondirective supervision that most respondents also espoused.[45] Clinical students are neophytes, with lawyering skills less developed than the supervisor's. To provide clients with "the best possible" representation, a supervisor would have to tell a student what to do or take over the case whenever the student's decisions or performance fell short of the best the supervisor could do herself.[46] Such frequent intervention would negate student autonomy

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[42] *See infra* App. A, Item 17. This struck us as a remarkable response, given the fact that clinics are established by law schools principally to educate students. It is possible that some clinicians disagreed with the statement not because they feel that client service should take precedence over student learning, but because they disagree with the premise that these goals conflict. At the Boston University workshop, one clinician expressed the view that if the clinic provides the best possible representation, a good learning experience will follow, since "one of the most important things for [students] to see is clients getting top quality service."

[43] *See infra* App. A, Item 2.

[44] *Id.*

[45] When we broke down respondents into "directive" and "nondirective" groups based on their beliefs about supervision, we found that about 60% of *nondirective* respondents endorsed the "best possible" client service standard stating that clients are entitled to the best lawyering product that both supervisor and student can provide. An even larger percentage of directive respondents answered these questions in this way. *See infra* notes 102-104 and accompanying text.

[46] As one clinician at the Boston University workshop stated, "I hope that we are better at [lawyering] than students. . . . [It is strange that so many] self-report that the goal is the best possible service for the client when they're in a setting where they're not doing that because they're not doing the case themselves."

and undermine most students' self-confidence and morale.

The tension between educational objectives and client service is not solely a concern of clinicians who believe in nondirective supervision. Directive as well as nondirective supervisors believe that student performance in the role of practicing lawyer is an important mode of learning.[47] Even clinicians who do not seek to provide the "best possible" representation are committed to providing high quality, competent service. The need to assure at least competent representation inevitably leads all supervisors, at times, to act inconsistently with the premise that students should handle clinic cases independently. Nevertheless, we were struck by the large number of survey respondents who appear to believe both in nondirective supervision and in providing the "best possible" service, two ideals that pull in opposite directions.

Signs of the tension between client service and educational objectives appeared in other survey responses as well. The following chart lists responses to a question asking respondents to rate the importance of eleven possible goals of a clinical program on a scale of one (1) to four (4) (where 1= very important, 2= important, 3= of little significance, 4= not important at all).[48]

Goal	Mean rating	% of respondents who rated goal as important or very important
Train students to accept professional responsibility for clients	1.17	99%
Teach students generalizable lawyering skills	1.32	98%
Teach students to learn from experience	1.37	98%
Provide high quality service to clients	1.39	98%
Explore feelings associated with being a lawyer	1.98	81%
Encourage students to do public interest or pro bono work in their future careers	2.01	77%
Teach efficient work habits	2.05	76%

[47] Clinical programs, by definition, involve student performance in the role of lawyer. *See supra* note 1. "Directive" clinical supervisors are only relatively directive; they do not favor a model in which students only watch, or perform a script written by a supervisor.

[48] *See infra* App. A, Item 18.

Provide a critical perspective on legal institutions	2.05	69%
Teach effective collaboration	2.10	77%
Make legal services available to underrepresented groups	2.22	64%
Train future lawyers in a particular area of practice	2.94	28%

Three of the five top-rated goals — training students to accept professional responsibility for clients, teaching students to learn from experience and exploring feelings associated with being a lawyer — would be best served by a nondirective approach that maximizes students' responsibility for decision-making and performance.[49] At the same time, providing high quality client service was almost universally regarded as an objective of great importance.

The clinicians we surveyed also tended to regard themselves more as teachers than lawyers. When asked to rate themselves in terms of professional self-image, fifty-six percent gave "teacher" a higher rating than "lawyer," thirty-three percent assigned equal values to the two roles, and only eleven percent gave "lawyer" the higher rating.[50] But concerns about client service may often require clinicians to act more like lawyers than teachers, to engage in directive behavior that leaves relatively little space for students to assume the lawyer's role.

D. *Tensions Between Beliefs and Practice*

One of the survey's goals was to explore the extent to which the tension described above is a source of concern to clinicians, and whether it affects their actual supervision practices. Nearly all respondents expressed concern about directiveness issues in their own supervision. Most clinicians also indicated that they behave more directively with students than they think they should, and cited concerns about client welfare as the primary reason.

When asked how often they worry about directiveness issues in their supervision, only eight percent responded "rarely" or "never." Forty-eight percent of the respondents said they "sometimes" worry, and forty-four percent stated that they "often" or "always" do so.[51]

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[49] Not all would agree. At the Boston University workshop, several clinicians expressed the view that the goal of "train[ing] students to accept professional responsibility for clients" may be consistent with a highly directive approach. From this point of view, students learn about professional responsibility by observing and working with supervisors who use their best efforts to provide clients with the highest quality legal services.

[50] *See infra* App. A, Item 20. This question asked respondents to assign a percentage value to their roles as teacher, lawyer and scholar. The mean self-ratings were 49% teacher, 34% lawyer and 12% scholar.

[51] *See infra* App. A, Item 23.

A large majority of respondents reported feeling that their own supervision is at times too directive. Ninety-one percent agreed with the statement that they are "often" (37%) or "sometimes" (54%) "more directive" with students than they think they should be.[52] In contrast, when asked how often they supervise less directively than they believe they should, sixty-one percent responded "never" or "rarely," thirty-eight percent answered "sometimes," while only one percent said "often."[53]

When asked about the importance of various factors causing them to supervise more directively than they felt they should, clinicians identified "concern for client interests" as most important, followed closely by "time pressures."[54] The results of this question, which asked respondents to rate the importance of eight listed factors on a scale of one (1) (very important) to four (4) (not significant at all),[55] are displayed in the following chart.

Factor	Mean rating	% of respondents who rated factor as important or very important
Concern for client interests	1.37	97%
Time pressures	1.53	93%
Desire to relieve student anxieties	2.52	55%
Concern about my reputation or reputation of clinic	2.63	51%
Impatience with students	2.64	38%
Student discomfort with nondirective process	2.68	42%
My discomfort with nondirective process	2.72	46%
Desire to see my ideas implemented	2.97	25%

[52] *See infra* App. A, Item 21.

[53] *See infra* App. A, Item 22.

[54] The time pressures that cause supervisors to act directively may often be related to concern for client interests. For example, a supervisor who thoroughly rewrites a student's brief the night before it is due may be motivated both by the deadline and by concern that relying on students to prepare another draft will not produce work of the requisite quality.

"Time pressures" were also cited by several respondents as an explanation of why they are sometimes *less* directive with students than they would like to be. As one person put it, "Sometimes there just isn't time to get in [students'] way!" *See infra* App. B, Item 34.

[55] *See infra* App. A, Item 33.

Responses to questions concerning actual supervision practices[56] also suggest that when clinicians act inconsistently with their ideals, it is usually in the direction of greater directiveness. Nearly a third of respondents reported that they rarely (27%) or never (3%) "allow students to make decisions [they] personally disagree with." This struck us as a remarkably high percentage, considering the large number of decisions involved in any case, and the indeterminate nature of many of those decisions. Fifty-nine percent reported "sometimes" allowing students to make decisions they disagree with. Only eleven percent stated that they "often" allow students to make such decisions.[57]

Many respondents who favored a nondirective approach to certain issues in theory admitted to behaving directively in practice with respect to the same issues. For example, of those respondents who expressed the belief that supervisors should not make stylistic changes in otherwise sound student writing,[58] sixty-eight percent reported that they "often" (40%) or "sometimes" (28%) made minor editorial changes, such as stylistic changes in wording or punctuation.[59] Of those who stated that supervisors should be a "passive observer" or "not present" at client interviews,[60] nearly half said that in actual client interviews they are "sometimes" (44%) or "often" (12%) active participants.[61] Among those who endorsed the idea that students should be required to look up the law,[62] fifty-two percent reported that they "sometimes" (44%) or "often" (8%) "tell students what the law is, even if there is time for students to find the law themselves."[63]

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[56] The questionnaire included five questions about supervision practices, including one relating to decision-making (Item 28), one concerning information-sharing (Item 24), and three on lawyering tasks (Items 25, 26, 27). Responses to these questions, of course, indicate only what respondents *believe* they do in practice. What supervisors actually do may not be consistent with their self-reported behavior, especially on items having some answers that are recognized as socially more desirable or acceptable than others. *See* ANNE ANASTASI, PSYCHOLOGICAL TESTING (6th ed. 1988) at 549-553. Field research methods may provide more valid information about actual supervision practices. *Cf.* Condlin, *supra* note 3, at 248-74 (analysis of several "instructional dialogues" selected from supervision sessions of eleven clinical teachers). On the other hand, studies based on direct observation often suffer from problems of reliability and generalizability. *See generally* EARL R. BABBIE, THE PRACTICE OF SOCIAL RESEARCH (5th ed. 1989) at 285-288.

[57] Even among respondents whom we classified as nondirective in their beliefs about supervision, only 20% reported that they "often" allow students to make decisions they personally disagree with. *See infra* note 120 and accompanying text.

[58] Respondents who answered "agree" or "strongly agree" to Item 13.

[59] *See infra* App. A, Item 27.

[60] *See infra* App. A, Item 10.

[61] *See infra* App. A, Item 26.

[62] *See infra* App. A, Item 9.

[63] *See infra* App. A, Item 24. These three pairs of questions were the only "theory" and "practice" questions sufficiently similar in form to permit such comparisons.

Thus, concern about directiveness issues is widespread among clinicians, and many report supervising more directively than they believe they should. Solicitude for client interests is the most important explanation.

E. *Variables Affecting Directiveness*

The survey also sought to identify the variables that influence clinicians' directiveness, in theory and in practice. This section examines how clinicians responded to questions about how their directiveness varied depending on the student,[64] the case[65] and the type of decision involved,[66] and considers possible explanations for these variations.[67] Concern for client interests again emerged as an explanatory theme for the survey data. Other factors such as reputational concerns and clinicians' commitment to certain values also help to explain some of the variations.

Most respondents agreed that directiveness should vary based on a student's ability,[68] the length of time a student has been in the clinic,[69] the complexity of the case,[70] and whether the case is new or ongoing.[71] Concern for client interests helps explain each of these responses. Student ability and experience often determine the scope of student authority because weak or inexperienced students, acting without direction, will not provide competent representation. Case complexity also affects the scope of student authority because there is normally some correlation between the complexity of a case and the experi-

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[64] *See infra* App. A, Items 5, 6, 7 & 30.

[65] *See infra* App. A, Items 8 & 29.

[66] *See infra* App. A, Item 31.

[67] *See supra* notes 31-32 & 39-40 and accompanying text.

[68] A large majority of respondents (87%) agreed that "[t]he relative decision-making responsibilities of supervisor and student should vary according to the supervisor's assessment of the particular student's abilities." App. A, Item 5. Although Item 5 did not make explicit *what* effect differences in student ability should have on directiveness, most clinicians presumably believe that supervisors should be more directive with less able students, to ensure high quality representation for clients. As one survey respondent put it, "[t]he more knowledgeable and thoughtful a student seems, the more I let him/her make decisions unhindered." *See infra* App. B, Item 31, Survey no. 47.

[69] 71% of respondents agreed that "[s]upervisors should generally assume greater responsibility for decision-making when students are new to the clinic and less as time goes on." *See infra* App. A, Item 6. One respondent described the ideal relationship between a supervisor and a student as a "weaning away process." *See infra* App. B, Item 32, Survey no. 42. *Cf.* Hoffman, *supra* note 7, at 302 and *passim*.

[70] 64% of respondents agreed that "the more complex the case, the greater the supervisor's role should be in the decision-making process." *See infra* App. A, Item 8. *Cf.* Frank S. Bloch et al., *Big Cases v. Small Cases: Does it Matter?* (speech given at the Clinical Teachers' Workshop, *AALS Midyear Conference*, Cincinnati, Ohio, Jan., 1983).

[71] 56% of respondents agreed that they "tend to assume more responsibility for decision-making in cases where students step into an ongoing case than in cases where students start from the beginning with a new case." *See infra* App. A, Item 29.

ence required to handle it well.[72] Similarly, when students step into an ongoing case, their lack of familiarity with the facts and procedural history may hamper their ability to provide adequate representation.[73]

Concern for client interests also helps to account for attitudes about student passivity. Fifty-eight percent of the respondents disagreed with the statement, "[s]upervisors should withhold information and advice from passive students to force them to become more active," while thirty-eight percent agreed.[74] Even though pedagogical objectives might be served by withholding advice from a passive student, clients may receive subpar service unless and until that strategy succeeds in forcing that student to assume greater responsibility. The service goals of a clinical program thus create pressure for greater supervisory intervention when students fail to take an active role in their cases.[75]

The vast majority (92%) of respondents reported at least sometimes "vary[ing] [their] directiveness with particular students depending on [the students'] own preferences and learning styles,"[76] and fifty-five percent of respondents reported that they always or often do so.[77] Student preferences, to the extent supervisors heed them, may tend to pull supervisors in the direction of greater directiveness. Fifty-five percent of respondents rated "desire to relieve student anxieties" and forty-two percent of respondents rated "student discomfort with nondirective process" as factors causing them to act more directively than they feel they should.[78]

In response to a narrative question that asked respondents to describe their criteria for allowing students to make decisions, many clinicians stated that they are reluctant to let students make decisions that are important, outcome-determinative or involve great risk for the client. One respondent stated:

> If the decision has substantial consequences for the client's representation, I feel I must have the last word — I want students to understand *client*

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[72] Several respondents noted that they are less likely to leave to students those decisions which require a substantial experience base. *See infra* App. B, Item 31, Survey nos. 18, 83 & 96.

[73] Supervisors may be more prone to directiveness in ongoing cases for other reasons as well. Clients, having formed relationships with supervisors, may try to influence them to remain involved in cases rather than turning over responsibility to new and (to the client) unknown students. Supervisors may also feel greater personal investment in longstanding cases than new ones.

[74] *See infra* App. A, Item 7.

[75] Because of the wording of the question, we do not know whether the 58% of respondents who expressed disagreement did so because they believed that greater directiveness is appropriate with passive students, or because they felt that supervisors should not vary their supervision based on whether a student is active or passive.

[76] *See infra* App. A, Item 30.

[77] The validity of this self-reported practice is subject to question. Clinicians presumably would like to believe that they individualize their supervision depending on the needs, abilities and preferences of each student and thus may have unconsciously overstated the extent to which they actually do so. *See supra* note 56.

[78] *See infra* App. A. Item 33 and *supra* chart in text accompanying note 55.

> comes first, and don't want that subverted even to the educational purposes.[79]

Other respondents expressed a willingness to allow students to make decisions that have "more than one right answer," or "judgment calls" about which "reasonable lawyers could differ."[80] In such cases, clinicians can be relatively confident that student decisions will not threaten client interests, even if the student decisions would differ from those the clinician would make alone.

As already noted,[81] survey respondents' views about how directively they should supervise differed for two common lawyering tasks: initial client interviewing and legal writing. Most clinicians appear to favor nondirective supervision of initial client interviews, while supporting a more directive approach to written work.[82] This distinction also reflects a concern for client interests. Legal errors and interpersonal gaffes committed during an initial client interview normally can be remedied later.[83] By contrast, writing often represents the final work product of the office. If errors are made, there may be no opportunity to correct them and undo potential harm to the client. Hence, the supervisor may feel considerable pressure to "get it right."

In addition, the visibility of written work to judges and other lawyers — as compared to the relative privacy of client interviews — may help explain why clinicians supervise writing more directively than interviewing.[84] Indeed, a majority of respondents cited "concern about my reputation or reputation of the clinic" as an important factor causing them to behave more directly than they think they should.[85]

Finally, as noted earlier, we found broader support for a directive approach

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[79] *See infra* App. B, Item 31, Survey no. 55.

[80] *See infra* App. B, Item 31, Survey nos. 63, 18 & 64.

[81] *See supra* text accompanying notes 39-40.

[82] *Id.*

[83] As one respondent put it, "I always let students make decisions that can be changed." *See infra* App. B, Item 31, Survey no. 40.

[84] Despite reputational concerns, clinicians did report behaving nondirectively in one public setting: while supervising witness examinations at hearings and trials. Eighty-three percent of respondents reported that they never or rarely "ask the witness questions of [their] own" when a student is examining a witness. App. A, Item 25. This response, however, does not necessarily evidence a deliberately nondirective approach. There are strong practical constraints on questioning by supervisors at hearings: most tribunals will not permit much of it. Moreover, our question focused only on one type of hearing-related directive behavior. Supervisors may be directive when planning the examination or by conferring with the student or passing notes during the hearing.

Fewer practical constraints restrain supervision of student writing. At the Boston University workshop, a commenter aptly noted that "[w]riting is about the easiest thing for us to be interventionist in because it just sits there and you can do it when you want to."

[85] *See infra* App. A, Item 33. In a similar vein, one respondent commented, "I am most likely to get my way on case issues that have repercussions for the clinic itself (as an institution)." *See infra* App. B, Item 31, Survey no. 71.

to ethical as opposed to tactical decision-making.[86] The following table shows the relationship between clinicians' responses to these two questions:

	ITEM 16 (Tactical Decisions)			
Item 14 (Ethical Decisions)	Directive (choices c/d)	Nondirective (choices a/b)	TOTAL	n
Directive (choices c/d)	53.5%	46.5%	100%	43
Nondirective (choices a/b)	21.4%	78.6%	100%	56

Chi-square (Pearson) = 10.94, df = 2, p = .001

A large majority of respondents (79%) who answered the ethical question nondirectively also answered the tactical question nondirectively. However, a much smaller percentage (54%) of those who answered the ethical question directively also answered the tactical question directively. These results were statistically significant,[87] suggesting that many clinicians approach ethical decision-making more directively than tactical decision-making.

This distinction cannot be explained by a theory that ethical decisions are more important or outcome-determinative than tactical ones. Indeed, our question on tactics stated that we were concerned with "important" tactical questions; the question on ethics had no such limitation.

Nor does it appear that ethical decisions necessarily implicate clinic reputational interests to any greater degree than tactical decisions. The respondents who answered the ethical decision-making question directively indicated that they favor making ethical decisions themselves even where no possible violation of professional codes is involved.

We infer from these responses that clinicians tend to act directively with students when confronting discretionary issues involving personal values.[88] Presumably, many clinical teachers would agree that personal value decisions should be made by students, not supervisors. Yet a clinician's commitment to his or her personal values is likely to be stronger than the commitment to any particular tactical decision. For this reason, clinicians may be reluctant to give

[86] *See supra* text accompanying notes 31-32. Sixty-three percent of respondents favored a nondirective approach to making important tactical decisions, while only 54% favored a nondirective approach to ethical decision-making.

[87] *See infra* note 94, for an explanation of the concept of statistical significance and of the notations that appear below the table.

[88] At the Boston University workshop, one clinician gave the example of obtaining the client's informed consent for various case-related decisions. The clinician conceded that this was a highly discretionary area under the Model Rules of Professional Conduct. Nevertheless, he stated that obtaining client consent was a sufficiently important value to him that he might overrule a student's decision not to do so, even if that decision were permissible under the Rules.

students autonomy when confronting value decisions about which they feel strongly.[89]

II. Characteristics of Directive and Nondirective Supervisors

A second major objective of our study was to compare the backgrounds, opinions and practices of clinicians holding directive and nondirective beliefs. We examined the demographics (e.g., gender, experience, caseload) of the two groups, their views about client service and the goals of clinical programs, their self-image as lawyers and teachers, their attitudes towards client-centered decision-making, their beliefs about learning theory, tensions between their beliefs and practices, and variables affecting their directiveness. We also examined how each group responded to narrative questions in the survey.

A. *How We Classified Respondents*

To classify survey respondents, we formulated a "directiveness scale" based on the three questionnaire items that examined beliefs about directiveness in decision-making. Two of these questions addressed supervisor intervention in students' tactical and ethical decision-making, while the third asked respondents to choose a description of the ideal decision-making relationship between student and supervisor.[90] We explain our reasons for basing the scale on these particular questions in Appendix C.

For each of the three questions included in the directiveness scale, we assigned a value of +1 to responses reflecting a directive approach, a value of -1 to responses reflecting a nondirective approach and a value of 0 to answers falling into neither category.[91] Each respondent's score on the scale was determined by summing the values for the three questions. The following table presents the directiveness scale scores for 94 respondents,[92] with (n) signifying the number of respondents obtaining each score:

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[89] Another clinician at the Boston University workshop commented, "Clinicians feel very strongly that they want to pass on what they believe. . . . The tactical stuff, while it's important for students to learn a skill, it doesn't seem as important. . . ." A response to one of the survey's narrative questions struck the same theme: "It's possible that I express my views on ethical matters pretty strongly and don't go through the same process of student decision-making as for other issues, so that students don't have room to disagree." *See infra* App. B, Item 31, Survey nos. 84 & 93.

[90] *See infra* App. A, Items 14, 16 & 3. *See supra* text accompanying notes 31-33.

[91] On Items 14 and 16, responses (a) and (b) were deemed nondirective and assigned a -1 value, while responses (c) and (d) were deemed directive and given a value of +1. On Item 3, response (a) was scored as +1, response (d) as -1, and responses (b) and (c) as 0.

[92] Only respondents who answered all three items, and did not choose "no opinion" as an answer to any of them, were included in the analysis. Thirteen respondents were excluded.

Score	-3	-2	-1	0	+1	+2	+3
n =	14	22	14	15	10	13	6

Respondents who scored +1 or greater on the scale were classified as directive, while respondents who scored -1 or less were classified as nondirective. As measured by this scale, our study identified fifty nondirective respondents and twenty-nine directive respondents. Fifteen respondents did not fall into either category.

B. *Comparing "Nondirectives" and "Directives"*

1. Demographics

In terms of gender, experience, caseload, student-teacher ratio and clinic duration, no significant differences existed between the "directive" and "nondirective" groups.

Gender. Overall, fifty-nine men and forty-seven women responded to the survey (56% of respondents were male, 44% female).[93] The small difference between male and female respondents, shown in the table below, was not statistically significant.[94]

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[93] There were 107 respondents; the name and gender of one respondent are unknown.

[94] Tests of statistical significance are used to determine the probability that an observed difference actually exists; i.e., that it was not produced by chance. In this instance, a test of statistical significance showed that there is a greater than 75% likelihood that the differences displayed in this table resulted from random factors. (This is signified at the bottom of the table by the notation "p>.75.") To put this another way, assuming that there is in fact *no* difference between the percentages of males and females in the larger universe of *all* directive and nondirective supervisors, the chances would still be better than 75% that in a sample of this size, one would observe a difference as large as that displayed in this table.

To say that a difference is "statistically significant" requires a value judgment that a certain level of probability exists before an observed difference in the sample will be accepted as evidence of an actual difference. Social scientists conventionally use a probability level of .05 (i.e., a 5% or less likelihood of random occurrence) as the threshold of statistical significance. Accordingly, in this article, when we describe results as statistically significant, we mean that the probability level is .05 or less. One should bear in mind, however, that significance is a continuum, not a dichotomy. A finding that p exceeds .05 does not render the results meaningless; it merely signifies a relatively greater likelihood that the observed difference resulted from chance. *See* DAVID C. BALDUS & JAMES W.L. COLE, STATISTICAL PROOF OF DISCRIMINATION 308-10 (1980).

Tests of statistical significance do not directly produce a p value; they yield a "test statistic" (t) from which, in turn, a probability level can be calculated or determined from tables. The technique we used when comparing percentages is known as a "chi-square" test; two variants of this test, the Pearson and Yates Corrected chi-square, were used depending on the number of variables being compared. Another test of sig-

	Male	Female	Total	n
Directive	64.3%	35.7%	100%	28
Nondirective	58.0%	42.0%	100%	50

Chi-square (Yates) = .092, df = 1, $p > .75$

Experience. On average, survey respondents had eight years of clinical teaching experience, and were fourteen years out of law school.[95] No significant differences existed between directive and nondirective respondents in either clinical or legal experience.[96]

Caseload. On average, our survey respondents personally supervised sixty-four cases per year, but individual caseloads varied a great deal. Twenty respondents reported supervising 100 or more cases each year, while ten respondents reported supervising ten or fewer cases. The average annual caseloads for the directive and nondirective groups were virtually identical.[97]

Student-teacher ratio. Among all survey respondents, the average student-teacher ratio was slightly more than 8:1. The range also varied widely, from 2:1 to 25:1. Again, there was little difference in student-teacher ratios between the directive and nondirective groups.[98]

The absence of any difference in caseloads or student-teacher ratio was surprising to us; we expected nondirective clinicians to supervise fewer students and cases, to make it easier to give students broad case authority without endangering client interests.[99] These findings suggest that caseloads and supervisory ratios may be determined less by instructor preference than by external

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nificance, the "pooled variables" test, was used in comparisons involving mean ratings. Notations beneath each table indicate the test statistic (t), degrees of freedom (df) and the probability level (p).

Detailed information on these statistical methods and concepts may be found in BABBIE, *supra* note 56; WILLIAM L. HAYS, STATISTICS FOR THE SOCIAL SCIENCES (1973); and GEORGE W. SNEDECOR & WILLIAM G. COCHRAN, STATISTICAL METHODS (7th ed. 1980).

[95] The most experienced teacher in our sample had 19 years of clinical teaching experience; the least experienced less than one year. For years out of law school, the range was 4 to 34 years. We suspect that the clinicians responding to our survey were, on average, more experienced than the national norm.

[96] The mean number of years since graduating from law school was 14.5 for directive respondents, 14.3 for nondirective respondents. The mean number of years teaching was 8.9 for directives, 8.2 for nondirectives.

[97] The average for directives was 68; the average for nondirectives was 69.

[98] 55% of directives and 56% of nondirectives reported having a student-teacher ratio of 8:1 or more, while 45% of directives and 44% of nondirectives reported a ratio of 7:1 or less. The mean student-teacher ratios were 7.8:1 for directives, 8.4:1 for nondirectives.

[99] *See Boulder Conference*, comments of David Koplow (suggesting that smaller caseloads and simpler cases facilitate nondirective supervision).

factors, such as law school or grant requirements and student demand.[100]

Duration of Program. Thirty-nine percent of nondirective supervisors reported working in year-long programs, as compared with nineteen percent of directives. This difference, while suggestive of a possible relationship, was not statistically significant.[101]

2. Views about Education and Client Service

Directive respondents, not surprisingly, showed a relatively greater commitment to providing clients with the best possible service, and were less willing to compromise this goal for the sake of educational objectives. Conversely, nondirectives placed relatively more emphasis on experiential learning by students, and stressed the clinician's role as teacher over the role of lawyer.

The following table shows how directives and nondirectives responded to the statement, "When priorities are in conflict, the highest priority of a clinical program is to promote student growth and learning, not to provide the best possible legal service to the client:"[102]

	Agree	Disagree	Total	n
Directive	10.7%	89.3%	100%	28
Nondirective	39.6%	60.4%	100%	48

Chi-square (Yates) = 5.83, df = 1, $p < .02$

While a majority in both groups disagreed, a much larger proportion of nondirective than directive respondents (39.6% as compared to 10.7%) gave priority to student growth and learning, even if clients receive less than the "best possible" service as a result.

These differences appeared even more dramatically in response to the question that asked respondents to describe the kind of lawyering product that a supervisor is obliged to ensure.[103] Respondents were offered two choices: (a) "the best that students can reasonably accomplish, utilizing their own skills and resources to the fullest, as long as their work is at least minimally competent," or (b) "the best that students and supervisors can reasonably accomplish, utilizing their combined skills and resources to the fullest." The following table shows how directive and nondirective respondents answered.

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[100] *See Final Report of the Committee on the Future of the In-House Clinic supra* note 1, at II-18-22 and III-4-5.

[101] There was a 19% likelihood that the disparity does not represent a real difference between directive and nondirective supervisors. (Chi-square (Pearson) = 3.42, df = 2, $p < .19$.)

[102] *See infra* App. A, Item 17 and *supra* text accompanying notes 42-46.

[103] *See infra* App. A, Item 2 and *supra* text accompanying notes 43-46.

	a	b	Total	n
Directive	3.4%	96.6%	100%	29
Nondirective	40.4%	59.6%	100%	47

Chi-square (Yates) = 10.81, df = 1, p = .001

While nearly all of the directive respondents expressed the view that clients are entitled to the supervisor's own best lawyering, more than forty percent of nondirective respondents indicated a willingness to sacrifice some quality of representation for the sake of student autonomy.

Responses to questions about professional self-image[104] suggest that nondirective respondents placed relatively greater emphasis on their teaching role than directive respondents.[105] Nearly seventy percent of nondirective respondents characterized themselves more as teachers than lawyers; only forty-six percent of directive respondents did so. Although only a minority of directive respondents (18%) viewed themselves more as lawyers than teachers, nondirectives were even less likely to see themselves in this way (4%). These differences, which approached statistical significance, are shown in the following table:

	T < L	T = L	T > L	Total	n
Directive	17.9%	35.7%	46.4%	100%	28
Nondirective	4.1%	26.5%	69.4%	100%	49

Chi-square (Pearson) = 5.76, df = 2, p < .06

On another survey item that asked respondents to rate the importance of various goals of a clinical program,[106] there were statistically significant differences between the directive and non-directive groups with respect to three objectives. Directive respondents assigned greater importance to "provid[ing] high quality service to clients" and "teach[ing] students generalizable lawyering skills," while nondirective respondents accorded more importance to "teach[ing] students to learn from experience."[107] (It should be noted, how-

[104] *See infra* App. A, Item 20 and *supra* note 50 and accompanying text.

[105] These survey results are consistent with George Critchlow's suggestion that nondirective supervisors "implicitly see themselves more as teachers than lawyers," while the directive clinician "identifies more with his or her role as lawyer than teacher." Critchlow, *supra* note 6, at 428.

[106] *See infra* App. A, Item 18 and *supra* text accompanying notes 47-48. Ratings were on a scale of 1 to 4, with 1 = very important, 2 = important, 3 = of little significance and 4 = not important at all.

[107] Directives assigned a mean rating of 1.26 to the goal of providing high quality service to clients; nondirectives gave it a mean rating of 1.54. For the goal of teaching generalizable lawyering skills, the mean ratings were 1.15 for directives and 1.42 for nondirectives. For the goal of teaching students to learn from experience, the mean ratings were 1.23 for nondirectives, 1.46 for directives. For all three of these goals, the

ever, that the differences in mean ratings were relatively small; both directive and nondirective respondents regarded all three of these goals to be among the top four objectives of a clinical program.)[108]

Differences in the mean ratings for two other goals also approached statistical significance. Nondirective respondents assigned greater importance to the goal of "explor[ing] feelings associated with being a lawyer" than directive respondents.[109] For nondirective respondents, this objective ranked fifth in importance, while for directives it ranked tenth. The goal that ranked lowest in importance for both groups — "train[ing] future lawyers in a particular area of practice" — was rated as more important by directives than by nondirectives.[110]

Thus, the question about goals confirms the observation that providing high quality client service is a more important objective for directive than nondirective respondents. It also suggests that in terms of teaching goals, directives are more likely than nondirectives to emphasize concrete lawyering skills, while nondirectives put relatively more emphasis on experiential learning and affective issues.

3. Views about Client-Centered Decisionmaking

To determine whether clinicians' attitudes about the student-teacher relationship correspond to their beliefs about the lawyer-client relationship,[111] the survey asked respondents how strongly they are committed to a model of client-centered decisionmaking.[112] Both groups expressed an equally strong commitment to a client-centered approach. Seventy-six percent of directive respondents and seventy-four percent of nondirective respondents stated that they were "wholeheartedly" or "strongly" committed to such an approach.

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difference in ratings was statistically significant.

[108] The other goal that ranked in the top four for both directive and nondirective respondents was "train[ing] students to accept professional responsibility for clients." Nondirectives gave this goal a mean rating of 1.13, directives 1.26. This difference was not statistically significant.

[109] Mean ratings were 1.81 for nondirectives, 2.12 for directives. The probability that this difference occurred by chance is 6.5%.

[110] Mean ratings were 2.62 for directives, 3.04 for nondirectives. The likelihood that this difference occurred by chance is 5.5%.

[111] A manual for clinical instructors at one law school makes this connection: "We don't have any right to teach a client-centered interviewing and counseling model while we are not prepared to teach our students [with] the same approach . . . ." Boston University Legal Aid Program, Clinical Instructor's Notebook (1982) sec. II(A)(6) (on file with authors). One survey respondent also perceived such a correspondence: "[My] experience of client-centered decision-making has led me to have more confidence in student centered decision-making." *See infra* App. B, Item 35, Survey no. 99.

[112] *See infra* App. A, Item 19. The attributes of a "client-centered" approach are described in DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991) at 16-24.

Thus, nondirectiveness towards clients did not translate into nondirectiveness towards students. In retrospect, we think that the analogy between these two types of "directiveness" is flawed. Clinicians favor client-centered decision-making because they believe in the inherent value of client autonomy and/or because they believe that case decisions involving clients — which have personal as well as legal consequences — can best be made by clients. But client autonomy can be equally well served by a directive or nondirective student-teacher relationship. Also, supervisors may be as well or better suited than students to make the tactical and legal decisions that are not reserved for the client.

4. Beliefs About How People Learn

We had also wondered whether clinicians' beliefs about directiveness are related to their views of how students learn.[113] Our survey therefore included two questions about learning theory. We found no relationship.

One question asked how "[m]ost people learn to perform tasks best," offering the following choices:[114]

a. they receive clear instruction on how to perform the task in question before doing it.
b. they emulate successful role models.
c. they perform the task in question and then reflect on the success or failure of their performance.
d. people's learning styles vary so much that there is no one best way for most people to learn.

Overall, nearly half of the survey respondents (49%) rejected the notion that there is any "one best way for most people to learn." Thirty-one percent selected choice (c), while nineteen percent selected choice (a). Only one percent chose (b).

We had hypothesized that nondirective respondents would favor a model of performance followed by critical reflection (choice (c)), while directive respondents would favor a model that emphasized clear instruction or emulating role-models (choices (a) or (b)). However, the responses showed no significant differences between the groups in their answers to this question. Both directive and nondirective respondents selected each choice in similar percentages to the overall percentage responses reported above.[115]

The other question about learning theory asked whether "[m]ore often than not, anxiety is conducive to effective learning."[116] Overall, seventy-three percent of survey respondents disagreed with this proposition. Because nondirec-

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[113] *See supra* note 19.

[114] *See infra* App. A, Item 1.

[115] The largest difference was for choice (a), which was selected by 25% of directive respondents but only 12.2% of nondirective respondents. This disparity, however, was not statistically significant.

[116] *See infra* App. A, Item 15.

tive supervision is likely to induce greater student anxiety than a directive approach,[117] we had wondered whether nondirectives would be more likely to agree with this statement. However, similarly large majorities of both groups rejected the proposition (75% of directives and 73.8% of nondirectives). Nondirective supervisors would seem to regard student anxiety as an undesirable byproduct of their supervision, rather than as a teaching tool.

5. Directiveness in Practice

The degree of automony in decision-making that supervisors reported giving to students in practice closely corresponded to their directive or nondirective beliefs.[118] The following table shows how the two groups responded when asked how often they "allow students to make decisions [they] personally disagree with."[119]

	Rarely	Sometimes	Often	Total	n
Directive	58.6%	34.5%	6.9%	100%	29
Nondirective	12.0%	68.0%	20.0%	100%	50

Chi-square (Pearson) = 19.48, df = 2, $p < .001$

What is interesting is that even among nondirective supervisors, only twenty percent said that they "often" allow students to make decisions that go against their views. Considering the large number of decisions in any case that have no one "right answer," there should be many occasions when a course of action proposed by students, although competent and carefully thought through, differs from the decision the supervisor would make if handling the case herself.[120] The survey response suggests that, in practice, many nondirective supervisors give students less autonomy than would seem appropriate

[117] In response to another question, 55% of survey respondents indicated that "desire to relieve student anxieties" was an important or very important factor causing them to be more directive with their students than they would like to be. *See infra* App. A, Item 33(h).

[118] Because our classification of respondents as directive or nondirective was based solely on the decision-making strand of directiveness, the only practice question that we analyze here is the one relating to decision-making. The other questions about how supervisors behave in practice focused on information-sharing and task-allocation. *See supra* note 56 and text accompanying note 90.

[119] *See infra* App. A, Item 28. In this table and tables that follow, the responses "never" or "rarely" are combined and coded as "rarely," and the responses "often" and "always" are combined and coded as "always."

[120] *See supra* text accompanying notes 56-57. One participant in the Columbia workshop disagreed with this idea: "Lots of decisions (small ones) I haven't spent a lot of time trying to resolve. Lots of times I come to meetings without set ideas. Lots of times I'm persuaded by student ideas, even if it's not the way I necessarily would do it. Once I'm persuaded in this way, then it's not necessarily a 'decision that I disagree with.' "

under the nondirective model.[121]

6. Tensions Between Beliefs and Practice

As previously discussed, we believe that directiveness is a problematic issue for all clinicians.[122] The survey results confirm this hypothesis: both directive and nondirective respondents reported worrying a great deal about directiveness, and both groups shared a perception of being too directive. We had also anticipated that the tension between educational objectives and the demands of client service would be felt most acutely by clinicians who believe in nondirective supervision. On this point the survey results are ambiguous: nondirective supervisors did worry more about directiveness, but were not much more likely than directive clinicians to regard their own supervision as being overly directive. Both groups identified the same two factors — concern for client interests and time pressures — as the main reasons they behave more directively than they feel they should.

A much higher percentage of nondirective than directive respondents (59% compared with 17%) said that they often worry about directiveness issues in their supervision.[123] The difference, shown below, was statistically significant.

	Rarely	Sometimes	Often	Total	n
Directive	6.9%	75.9%	17.2%	100%	29
Nondirective	8.2%	32.6%	59.2%	100%	49

Chi-square (Pearson) = 14.37, df = 2, p = .001

Nonetheless, as the table shows, a large majority of directive supervisors "sometimes" worry about directiveness, and few in either group said that they rarely worry about it.

When asked how often they are more directive with students than they think they should be,[124] an equal proportion of directive and nondirective respondents — about a third of both groups — responded "often" or "always." (See table below.) A comparison of the "rarely" and "sometimes" responses suggests that nondirective supervisors might be somewhat more prone to regard themselves as behaving too directively, although the differences were not statistically significant.

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[121] As one participant in the Columbia workshop commented, "If even nondirective teachers [do not often] let students make decisions they disagree with, they must be good at talking students into agreeing with them!"

[122] *See supra* note 47 and accompanying text.

[123] *See infra* App. A, Item 23 and *supra* text accompanying note 51.

[124] *See infra* App. A, Item 21 and *supra* text accompanying note 52.

	Rarely	Sometimes	Often	Total	n
Directive	13.8%	51.7%	34.5%	100%	29
Nondirective	4.0%	62.0%	34.0%	100%	50

Chi-square (Pearson) = 2.65, df = 2, p = .27

When asked to rate the importance of various influences that cause them to act too directively,[125] both groups regarded the same two factors, "concern for client interests" and "time pressures," as by far the most important.[126]

7. Variables Affecting Directiveness

The responses of directive and nondirective respondents to questions about supervision variables did not differ significantly.[127] Most respondents in both groups recognized the need to take into account student ability, experience and learning styles, and the complexity and duration of cases, in deciding how directively to supervise students.[128]

The two groups did differ in their responses to one question about variables. Fifty percent of nondirective respondents, as compared with only twenty-five percent of directive respondents, agreed with the statement, "[s]upervisors should withhold information and advice from passive students to force them to

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[125] *See infra* App. A, Item 33, and *supra* text accompanying notes 54-55. Ratings were on a scale of 1 to 4, with 1 signifying "very important," 2 = "important," 3 = "of little significance" and 4 = "not significant at all."

[126] The mean ratings given to "concern for client interests" were 1.35 by directive respondents, 1.36 by nondirective respondents. The mean ratings given to "time pressures" were 1.42 by directive respondents, 1.55 by nondirective respondents. The differences were not statistically significant (respectively, p = .90 and p = .42).

The two groups did place somewhat different emphasis on two other factors. Nondirective respondents assigned more importance to "student discomfort with nondirective process" than did directive respondents. (Nondirective respondents gave this factor a mean rating of 2.55, directive respondents 2.85, with p = .07, close to statistical significance.) Directive respondents placed more importance on "my own discomfort with nondirective process" than did nondirective respondents. (Directive respondents gave this factor a mean rating of 2.46, nondirective respondents 2.86, with p = .08, again close to statistical significance.)

The two groups gave similar ratings to the other six factors listed in the question. For these, the differences in mean ratings did not exceed 0.2 for any factor and were not statistically significant.

[127] Although the differences were not statistically significant, more directive than nondirective respondents believed that directiveness should vary according to student ability (96.4% compared to 80.8%, p = .12), how long students have been in the clinic (82.8% compared to 66.7%, p = .20) and the complexity of the case (82.1% compared to 68.2%, p =.30). *See infra* App. A, Items 5, 6 & 8.

[128] *See infra* App. A, Items 5, 6, 8, 29 & 30 and *supra* text accompanying notes 68-71, 76-77.

become more active."[129] These results are consistent with the nondirective group's stronger commitment to self-directed student learning, and the directive group's greater concern about possible risks to clients.

C. *Narrative Questions*

Our survey posed several open-ended questions about supervision. One question asked respondents to describe the "ideal decision-making relationship between a student and a supervisor in a law school clinic."[130] Another question asked respondents to describe their "criteria for allowing students to make decisions" and indicate "what kinds of decisions [they are] more likely or less likely to allow students to make."[131] Respondents were also asked to describe experiences that have "influenced [their] thinking about directiveness in supervision."[132]

Appendix B contains selected responses to these questions. We group the responses according to whether respondents were classified as "directive," "nondirective" or "neutral." The comments did not always fit our classifications,[133] but some general trends did emerge.

Many directive supervisors described the ideal student-teacher decision-making relationship as "cooperative"[134] "collegial"[135] or "collaborative."[136] Nondirective supervisors tended to emphasize student decision-making with limited supervisor intervention. As one nondirective respondent put it, "[i]deally, the student should be encouraged to make all decisions, with supervisory intervention only when absolutely necessary to ensure competent representation (more than minimally competent representation)."[137]

When describing their criteria for intervention, directive supervisors tended to stress the supervisor's responsibility for deciding what is best for the client. According to one directive respondent, the ideal student-teacher decision-making relationship is one in which the "[s]tudent decides [and the] supervisor 'persuades' otherwise, if possible, where [a] less effective alternative is chosen."[138] Nondirective supervisors certainly recognized a need to intervene to safeguard client interests, but were more likely to articulate a standard for intervention that allows students to make decisions that the supervisor views as

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[129] *See infra* App. A, Item 7, and *supra* text accompanying notes 74-75. This disparity approached statistical significance ($p = .06$).

[130] *See infra* App. A, Item 32.

[131] *See infra* App. A, Item 31.

[132] *See infra* App. A, Item 35.

[133] *See, e.g., infra* App. B, Item 32, Survey nos. 54 & 107.

[134] *See infra* App. B, Item 32, Survey no. 43.

[135] *See infra* App. B, Item 31, Survey no. 95.

[136] *See infra* App. B, Item 32, Survey no. 47. Another directive respondent characterized the relationship as one involving "[o]pen discussion to come to mutually agreed upon decisions." *See infra* App. B, Item 32, Survey no. 67.

[137] *See infra* App. B, Item 32, Survey no. 34.

[138] *See infra* App. B, Item 32, Survey no. 4.

less than optimal. The "[b]urden is on the student to be responsible for the lawyering," said one such respondent, "and on the supervisor to prevent malpractice."[139]

A number of respondents wrote candidly about using the supervisory dialogue to steer students toward decisions favored by the supervisor, while trying to give students the impression that the decisions are the students' own. Nondirective respondents tended to regard this as a form of manipulation to be avoided.[140] Some directive respondents, however, viewed such behavior nonpejoratively, as an inherent and necessary aspect of supervision.[141] One directive respondent even questioned the existence of a meaningful distinction between student decisions and supervisor decisions:

> In practice, students make scores of interstitial decisions, because we are so highly leveraged that *nearly all* client contact, and many telephonic communications . . . occur without a supervisor present. But in theory — and whenever I am involved in practice, too — students "make" *NO* decisions (I think). Ideally, they propose/recommend all actions, but take/make none without consultation and collaborative agreement with their supervisor. (Our/my model is *heavily* collegial, so many of the choices posed by your questionnaire are too "stark.")[142]

We believe that this last comment may capture an important truth about self-described "collegial" or "collaborative" relationships between clinic supervisors and students. It is sometimes possible for a supervisor to have genuinely collaborative relationships with stronger students, who are willing and able to disagree and defend their position when the supervisor suggests a course of action the students think undesirable. More often, however, because of differences in experience and power, students will defer to the supervisor and a rela-

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[139] *See infra* App. B, Item 32, Survey no. 91. Another nondirective respondent wrote: "I intervene only if [there is an] ethical violation including a *clearly* wrong tactical choice (and those are rarely clear). *Infra* App. B, Item 31, Survey no. 15 (emphasis in original).

[140] *See, e.g.*, App. B, Item 32, Survey no. 78: "The largest problem in this process is avoiding a 'decision' which I make and inadvertently communicate to the student. I try to avoid this by empowering the students with their superior knowledge of the client and with my expectation that they can and should make decisions."

[141] *See, e.g.*, App. B, Item 32, Survey no. 24: "Ideally, the student should *believe* he/she is making decisions because of intensive guidance in advance of the [decision]. In reality, a lot of their independence is illusory [because] the supervisor has probably manipulated the process all along." (Emphasis in the original.)

A similar observation was made by a participant at the Columbia workshop: "Isn't the real distinction here between 'overtly directive' and 'manipulatively directive'? I very rarely tell students what to do. But if a student says, 'We are thinking about getting information from the defendant by impersonating someone else,' I say, 'Oh, that's interesting. Have you thought about DR 7-101 or whatever?' Is that directive or nondirective? Isn't that a lot of what we mean when we identify ourselves as nondirective?"

[142] *Infra* App. B, Item 31, Survey no. 95 (emphasis in the original).

tionship that appears collegial to the supervisor may seem quite directive to the students.

Clinicians also described a variety of experiences that have shaped their thinking about directiveness. Some said they have been influenced by students losing cases that could have been won.[143] Others cited the contrary experience of discovering that students sometimes make better decisions than the supervisors would have made themselves.[144]

The most poignant comment, in our view, came from a respondent who wrote:

> I was a practicing lawyer for several years before coming to the clinic. I am used to handling cases myself, in my own way and in a timely fashion. It is very difficult for me to sit back and wait while a student does basic research, makes false starts, writes incomprehensible drafts . . . if the client's case is suffering (even slightly) due to the delay. I am leaving the clinic, primarily for family reasons, but also because I am uncomfortable with the tension I feel between serving the client's best interest and giving the students a learning experience.[145]

Few clinicians have resolved the tension between teaching and lawyering in the way this respondent did, but most clinicians struggle to find ways to accommodate it.

III. CONCLUSION

The literature of the clinical legal education movement tends to emphasize its pedagogical goals: teaching students how to deal with unstructured situations, how to engage in "ends-means" thinking, how to come to terms with questions of professional responsibility and the role of a lawyer.[146] The literature has tended to downplay the service goals of clinical education.[147]

As much as we have been influenced and guided by this literature, it tells only part of the story. In fact, most clinical teachers are deeply committed to client service. Most clinicians believe that where there is a conflict client service must take priority over student learning. Most feel constrained about the types of decisions they may leave to students. Almost all clinicians feel substantial conflict about their competing obligations to students and clients.

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[143] *See, e.g.*, App. B, Item 35, Survey no. 89.

[144] *See, e.g.*, App. B, Item 35, Survey no. 91: "Learning from students how to do things better than what I was proposing always gets me to step back into a less directive role."

[145] *Infra* App. B, Item 35, Survey no. 47.

[146] *See, e.g., Final Report of the Committee on the Future of the In-House Clinic, supra* note 1, at I-5-6; Anthony G. Amsterdam, *Clinical Legal Education - A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); Michael Meltsner & Philip G. Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581, 584-586 (1976).

[147] *See Final Report of the Committee on the Future of the In-House Clinic, supra* note 1, at I-9-10. *But see* Gary H. Palm, *Message From The Chair*, AALS SECTION ON CLINICAL LEGAL EDUCATION NEWSLETTER 2 (Nov., 1986).

The results of our survey suggest that most clinicians favor a nondirective model of supervision. But to the extent that this nondirective ideology fails to take into account the constraints of client service, it runs the risk of creating expectations that cannot be met in practice. When clinicians communicate to students that they are to act as lawyers and be fully responsible for their cases, several dangers may arise. If the clinician takes over aspects of the case, the student may feel that she has "failed."[148] Alternatively, if the clinician wishes to control aspects of the case without appearing to do so, to avoid undermining the student's sense of autonomy, the clinician may have to engage in manipulative behavior. One challenge for clinicians, then, is to find ways to be more open with students about the limits of nondirective supervision — about the need at times to intervene to safeguard client interests — without undermining students' motivation to assume maximum responsibility for clients and for their own learning.

Our survey also provides evidence that many clinicians act directively with students because of a committment to providing a level of service — the "best possible" service — that even the most able students cannot provide without significant direction. Clinicians' professed commitment to providing clients with the "best possible" service is laudable. We doubt, however, that it is a realistic benchmark to set in a law school clinic, where, by definition, students must be given significant responsibility for direct client representation. Clinicians cannot supervise in a way that simultaneously gives students broad responsibility and clients the best possible representation.[149] We may have difficulty admitting to each other, and to ourselves, that clinical programs can provide highly competent, even excellent, service, but not the "best possible."[150] There should be no shame in this admission. Clinicians who worry that they supervise too directively should consider whether their intervention is driven by an unrealistically high standard of client service.

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[148] *See* Kotkin, *supra* note 6, at 194 (noting when students have difficulty performing in role, supervisors "fall back on more directive feedback, which . . . undermines self-confidence and further inhibits experiential learning.").

[149] *See supra* text accompanying notes 45-46.

[150] A clinician at the Boston University workshop observed, "It is very difficult [for clinicians] to ever publicly say, 'I'm not giving the client the best possible service,' . . . and therefore the need to synthesize becomes very strong . . . I wouldn't be surprised that 74% of the group of people that you surveyed would never put on paper anything that is going to get in the way of giving their client the best possible service."

APPENDIX A
Questionnaire On Clinical Case Supervision (Annotated with Results)

n = number of respondents who answered question
c = number of respondents who wrote comments pertaining to question

For each question, please circle only one answer. Circle the best answer even if you agree with none of, or more than one of, the choices. Comments in the margin are welcome.

1. Most people learn to perform tasks best when:

19% a. they receive clear instruction on how to perform the task in question before doing it

1% b. they emulate successful role models

31% c. they perform the task in question and then reflect on the success or failure of their performance

49% d. people's learning styles vary so much that there is no one best way for most people to learn
n = 103 c = 15

2. The supervising attorney in a law school clinic is responsible for ensuring a lawyering product for the client that is:

22% a. the best that the student(s) can reasonably accomplish, utilizing their own skills and resources to the fullest, as long as their work is at least minimally competent

78% b. the best that students *and* supervisors can reasonably accomplish, utilizing their combined skills and resources to the fullest
n = 104 c = 12

3. Which of the following best describes the proper decision-making relationship between a student and a supervisor in a law school clinic?

23% a. the supervisor has the last word on particularly difficult or important decisions

42% b. students and supervisors cooperate naturally and spontaneously in the decision-making process

8% c. students and supervisors negotiate in advance the kinds of decisions that will be made by students and the kinds of decisions that will be made by the supervisor

27% d. students are required to make decisions on their own and all reasonably competent student decisions are final

n = 101 c = 18

4. When supervising attorneys express their views on tactics, it becomes less likely that students will take responsibility for making decisions in cases.

71% { 12% a. strongly agree
59% b. agree

28% { 24% c. disagree
4% d. strongly disagree

1% e. no opinion

n = 105 c = 6

5. The relative decision-making responsibilities of supervisor and student should vary according to the supervisor's assessment of the particular student's abilities.

87% { 22% a. strongly agree
65% b. agree

11% { 11% c. disagree
0% d. strongly disagree

2% e. no opinion

n = 105 c = 6

6. Supervisors should generally assume greater responsibility for decision-making when students are new to the clinic and less responsibility as time goes on.

71% { 15% a. strongly agree
56% b. agree

26% { 24% c. disagree
2% d. strongly disagree

3% e. no opinion

n = 106 c = 5

7. Supervisors should withhold information and advice from passive students to force them to become more active.

38% { 2% a. strongly agree
36% b. agree

58% { 48% c. disagree
10% d. strongly disagree

4% e. no opinion

n = 101 c = 17

8. In general, the more complex the case, the greater the supervisor's role should be in the decision-making process.

64% { 7% a. strongly agree
57% b. agree

29% { 28% c. disagree
1% d. strongly disagree

7% e. no opinion

n = 106 c = 12

9. In general, even if supervising attorneys know the law, they should make students find it themselves.

76% { 22% a. strongly agree
54% b. agree

19% { 19% c. disagree
0% d. strongly disagree

5% e. no opinion

n = 104 c = 12

10. The ideal role for a clinical supervisor in an initial client interview is:

4% a. coequal participant
7% b. active intervenor to ensure major interview goals met
46% c. intervenor only in cases of serious student error or oversight
9% d. passive observer

34% e. not present

n = 106 c = 13

11. Throughout the supervisory relationship, supervising attorneys should freely share their ideas on tactics with students.

74% { 14% a. strongly agree; 60% b. agree

26% { 25% c. disagree; 1% d. strongly disagree

0% e. no opinion

n = 105 c = 14

12. In general, supervising attorneys should not share their ideas on tactics with students until students have developed and articulated their own tactical ideas.

69% { 15% a. strongly agree; 54% b. agree

29% { 28% c. disagree; 1% d. strongly disagree

2% e. no opinion

n = 105 c = 10

13. As long as a student's written work product is legally and tactically sound and reasonably clear, supervisors should not make stylistic changes.

44% { 3% a. strongly agree; 41% b. agree

54% { 47% c. disagree; 7% d. strongly disagree

2% e. no opinion

n = 105 c = 15

14. In general, decisions on ethical matters should be made by students, except when those decisions

14% a. clearly violate ethics codes
40% b. possibly violate ethics codes
36% c. do not violate ethics codes, but nevertheless seem inappropriate to the supervisor
7% d. in general, decisions on ethical matters should be made by the supervisor
3% e. no opinion

n = 106 c = 8

15. More often than not, anxiety is conducive to effective learning.

22% { 2% a. strongly agree; 20% b. agree }
73% { 53% c. disagree; 20% d. strongly disagree }
5% e. no opinion

n = 100 c = 12

16. In general, important tactical decisions should be made by students, except when those decisions are

12% a. positively harmful to the client
51% b. clearly less effective than other available choices
13% c. somewhat less effective than other available choices
22% d. not optimal for the client
2% e. no opinion

n = 103 c = 7

17. When priorities are in conflict, the highest priority of a clinical program is to promote student growth and learning, not to provide the best possible legal service to the client.

23% { 7% a. strongly agree; 16% b. agree }
74% { 50% c. disagree; 24% d. strongly disagree }
3% e. no opinion

n = 105 c = 13

18. Of the following possible goals of a law school clinic, rate the following in terms of their importance in your program (1 = very important; 2 = important; 3 = of little significance; 4 = not significant at all)

	Mean Rating	% *
a. teach students generalizable lawyering skills	1.32	97%
b. provide high quality service to clients	1.39	98%
c. teach efficient work habits	2.05	76%
d. train students to accept professional responsibility for clients	1.17	99%
e. make legal services available to underrepresented groups	2.22	64%
f. teach effective collaboration	2.10	77%
g. provide a critical perspective on legal institutions	2.05	69%
h. train future lawyers in a particular area of practice	2.94	28%
i. explore feelings associated with being a lawyer	1.98	81%
j. teach students to learn from experience	1.37	98%
k. encourage students to do public interest or pro bono work in their future careers	2.01	77%
n ranged from 96 to 103		

* *percentage of respondents who rated goal as being important or very important*

19. In your relationship with clients, describe the extent to which you regard yourself as committed to the goal of client-centered decision-making.

23% a. wholeheartedly committed
53% b. strongly committed, with minor reservations
18% c. somewhat committed
6% d. significant reservations
0% e. not committed at all

n = 107 c = 103

20. In terms of professional self-image, indicate, in percentage terms, the extent you see yourself as a:

	Mean Response:
a. teacher _____	
b. lawyer _____	34%
c. scholar _____	12%

d. other (specify) _____%
(total should equal 100%)

21. In my clinical supervision, I am more directive with students than I think I should be.

9% { 0% a. never
9% b. rarely
54% c. sometimes
37% { 37% d. often
0% e. always

n = 107 c = 0

22. In my clinical supervision, I am less directive with students than I think I should be.

61% { 4% a. never
57% b. rarely
38% c. sometimes
1% { 1% d. often
0% e. always

n = 106 c = 0

23. I worry about directiveness issues in my clinical supervision.

8% { 0% a. never
8% b. rarely
48% c. sometimes
44% { 40% d. often
4% e. always

n = 106 c = 1

24. In my clinical supervision, I tell students what the law is, even if there is time for students to find the law themselves.

44% { 3% a. never
41% b. rarely

48% c. sometimes

8% { 8% d. often
0% e. always

n = 106 c = 5

25. When a student is examining a witness at a hearing or trial, I ask the witness questions of my own.

83% { 32% a. never
51% b. rarely

12% c. sometimes
2% d. often
3% e. not applicable in my clinic

n = 105 c = 14

26. When sitting in with students on client interviews, I am an active participant.

46% { 5% a. never
41% b. rarely

29% c. sometimes
12% d. often
13% e. not applicable in my clinic

n = 106 c = 10

27. When reviewing students' written work product, I make minor editorial changes (such as stylistic changes in wording or punctuation).

15% { 0% a. never
15% b. rarely

28% c. sometimes

57% { 40% d. often
17% e. always

n = 107 c = 5

28. In my clinical supervision, I allow students to make decisions I personally disagree with.

30% { 3% a. never
27% b. rarely
59% c. sometimes
11% { 9% d. often
2% e. always

n = 105 c = 8

29. I tend to assume more responsibility for decision-making in cases where students step into an ongoing case, than in cases where students start from the beginning with a new client.

56% { 5% a. strongly agree
51% b. agree
40% { 36% c. disagree
4% d. strongly disagree
4% e. not applicable in my clinic

n = 102 c = 6

30. I vary my directiveness with particular students depending on their own preferences or learning styles.

8% { 1% a. never
7% b. rarely
37% c. sometimes
55% { 48% d. often
7% e. always

n = 106 c = 8

31. What kinds of decisions are you more likely or less likely to allow students to make? What are your criteria for allowing students to make decisions?

n, c = 70

32. How would you describe the ideal decision-making relationship between a student and a supervisor in a law school clinic?

n, c = 70

33. If you are more directive with your students in practice than you would like to be, *rate*, in terms of importance, all the factors that influence you (1 = very important; 2 = important; 3 = of little significance; 4 = not significant at all).

		Mean Ratings	% *
a.	time pressures	1.53	93%
b.	student discomfort with nondirective process	2.68	42%
c.	my discomfort with nondirective process	2.72	46%
d.	concern for client interests	1.37	97%
e.	desire to see my ideas implemented	2.97	25%
f.	impatience with students	2.64	38%
g.	concern about my reputation or reputation of clinic	2.63	51%
h.	desire to relieve student anxieties	2.52	55%
i.	others? _____	_____	
	_____	_____	
	_____	_____	

n ranged from 87 to 90

* *percentage of respondents who rated factor as important or very important*

34. If you are less directive with your students in practice than you would like to be, please state why.

n, c = 22

35. If you have been influenced in your thinking about directiveness in clinical teaching by any particular experiences you have had, please describe them.

n, c = 40

*Biographical Information**

1. Name _____
2. School _____
3. List all types of cases clinic handles _____
4. How many cases on average do you personally supervise each year? _____
5. What is the average student teacher ratio in your clinic? _____
6. Estimated average duration of cases _____
7. Duration of clinic (full year or semester program) _____
8. Do students work singly on cases or in teams of 2 or more? _____
9. Number of years since graduation from law school _____
10. Number of years teaching clinic _____
11. Number of years handling present type caseload _____
12. Would you be willing to talk to us further about your reactions and responses to this questionnaire?
    a. interested _____
    b. willing if necessary _____
    c. leave me the hell alone _____

* No personally identifying information will be disclosed to anyone but the authors. If this questionnaire leads to publication of an article, all data will be presented without identifying any of the respondents.

Thank you for your cooperation.

APPENDIX B

SELECTED COMMENTS FROM QUESTIONNAIRES

ITEM 32: How would you describe the ideal decision-making relationship between a student and a supervisor in a law school clinic?

A. Comments by Respondents Holding "Directive" Beliefs

Survey #4: "Student decides, supervisor 'persuades' otherwise, if possible, where less effective alternative is chosen."

Survey #24: "Ideally, the student should *believe* he/she is making decisions because of intensive guidance in advance of the decision-making moment. In reality, a lot of their independence is illusory once the supervisor has probably manipulated the process all along."

Survey #43: "Cooperative, after full discussion."

Survey #47: "A collaborative effort between a lawyer and an intelligent, thoughtful, hard-working student who really cares about the client and puts time and energy into the case."

Survey #51: "Student has initial ideas. Discusses with supervisor and forms final plans which supervisor permits unless unethical or harmful."

Survey #54: "Student initially makes the decision. Instructor questions, probes, and forces student to reflect on decision—ultimately student either confirm[s] decision or choos[es] an alternative course."

Survey #56: "One in which student takes an increasing responsibility as semester progresses."

Survey #63: "Ideally students should be able to make decision with guidance and feedback. Free and open discussion seems to be the best way. Because we deal in family law and there are very real consequences for families based on our decisions, the supervisor's decision prevails in case of conflict. The individual student's ability determines the relationship."

Survey #67: "Open discussion to come to mutually agreed upon decisions."

B. Comments by Respondents Holding "Nondirective" Beliefs

Survey #1: "I believe the ideal relationship includes a teacher's constant support for the student, but support comes in many forms. I believe that modeling behavior is worthwhile and justifies more directiveness than is commonly recognized by clinical teachers. The relationship should be student-centered the way the relationship with the client should be client-centered—but student competence and willingness to participate in the ideal relationship varies widely."

Survey #9: "Student develops alternatives on own initiative and has thoughtful reasons for choice s/he wants to make. I can criticize or question, and

student will change direction only if persuaded. I would intervene only if decision is plainly wrong."

Survey #13: "This is hard to do since it varies by case and student. But . . . one where the student bears primary responsibility, with free give and take of pros and cons with faculty, and faculty intervenes only where client's well-being likely to be threatened."

Survey #19: "Students led through a systematic and articulated decision-making process by teacher. The study of strategic-decision-making process is the *stuff* of clinical education."

Survey #34: "Ideally, the student should be encouraged to make all decisions, with supervisory intervention only when absolutely necessary to ensure competent representation (more than minimally competent). The student should be encouraged to present arguments for the decision made and the supervisor should be prepared to accept them if they conform with ethical standards."

Survey #37: "One which accommodates the student's learning style and personality and which is client centered."

Survey #44: "Students take the initiative in planning and decision-making; the supervisor makes sure decisions are well-thought-through and beneficial to the client, but lets the students run with their ideas to a large extent. But I also think there's room for collaboration, especially with students who are not overwhelmed by a supervisor's brainstorming."

Survey #49: "Joint participants in all aspects of case with student taking active role and supervisor only intervening in rare instances. Supervisor plays role of devil's advocate constantly requiring student to reflect upon the critique each choice made and serving as a quality control guide."

Survey #57: "Fostering a relationship of mutual respect where student and supervisor can share their opinions, strategies, comments candidly, but with ultimate responsibility for decision making on student's shoulders (absent malpractice where supervisor must step in)."

Survey #68: "A relationship where student and supervisor each feels free to express her/his own ideas, strategies, thoughts, etc., but where the student makes the final choices."

Survey #69: "Growing competence matching growing responsibility."

Survey #72: "It varies with the experience and personality of the student. By the end of 2 years in the clinical program, students should be given nearly all the decision making responsibility. By then they should have learned the value of seeking help."

Survey #78: "I see the role of a supervisor as helping the student think about the decisions to be made in a case. Helping includes: helping the student focus

on what's at issue and the process questions involved; providing information about how opponents/judges, etc. (who the student doesn't know) are likely to act in response to a given approach, providing a 'map' to the relevant substantive law (where to start, what might be), etc., aiding the student in evaluating the pros and cons of various approaches, etc. The largest problem in this process is avoiding a 'decision' which I make and inadvertently communicate to the student. I try to avoid this by empowering the students with their superior knowledge of the client and with my expectation that they can and should make decisions. If the process is unsuccessful I am usually satisfied with the student's decision, even though I might do it differently, since it is well analyzed and the student usually has a superior understanding of the client's needs."

Survey #84: "Self-directed students generate ideas and choose effectively from among them. Supervisor acts as rooting section."

Survey #91: "Burden is on the student to be responsible for the lawyering, and on the supervisor to prevent malpractice."

Survey #102: "One of mutual trust and respect, where ideas are freely and openly discussed, but students realize that they should strive to be able to exert as much decision-making as would an attorney within the attorney-client relationship."

Survey #103: "I believe the decision-making responsibilities between student and supervisor shift over the course of the semester."

Survey #106: "The student, having researched the problem, both legally and factually, and having studied and analyzed what to do, comes to the professor with a suggested course and discusses this. The supervisor will evaluate, will guide and suggest but leave the decision to the student. (See question 16.)"

Survey #107: "The student has the obligation to think of *everything* that must be done, and to think of it creatively and comprehensively. The supervisor owes a full, respectful 'hearing' on all of this to the student. Each owes the other the obligation that professional colleagues in law always owe each other—candor, completeness and full devotion to the client's case. The supervisor needs to have the final decision-making power in all matters, and should exercise it freely when the client's best interests so require."

C. Comments by Respondents Holding "Neutral" Beliefs

Survey #21: "Decision making role of supervisor should be varied with the needs of particular student and situation. *No rules. Think and be sensitive.*"

Survey #42: "A weaning-away process, but one in which the supervisor always has the right to override if necessary for the client's best interests (and/or competent practice of law)."

Survey #80: "Partner-associate; mentor-protege. With expectations that lat-

ter will exercise initiative and creativity and will discuss judgments and strategies with supervisor. Supervisor and student will attempt to reach consensus on strategy-judgment. If consensus cannot be reached, it is supervisor's call."

Survey #83: "The ideal situation allows such a free flow of information that *all* decisions are discussed fully and that joint decisions are made by the supervisor with the student. Of course, this assumes the supervisor is committed to this process and does not use this process as a way of coercing the decision the supervisor prefers. I view the student-supervisor relationship as collaborative at all levels."

ITEM 31: What kinds of decisions are you more likely or less likely to allow students to make? What are your criteria for allowing students to make decisions?

A. Comments by Respondents Holding "Directive" Beliefs

Survey #12: "Generally, I allow students to try to make decisions. If they present a proposed decision to me, I question them as to their bases of decision, the extent of their underlying research, their consideration of alternatives, and (most importantly) the client's position. If they convince me that their conclusions are sound, I go along with the decision. Criteria for decision-making:

(1) Can the client make this decision? (If so, client makes it.)
(2) How much time do we have before a court-imposed or client-imposed deadline?
(3) If external deadline is not a problem, for how long have students been spinning their wheels and not reaching decision?
(4) Is student's decision contrary to client's interest?"

Survey #25: "I am more likely to allow students to make decisions when there is more than one equally appropriate decision. Whether or not the decision is legally and ethically proper."

Survey #47: "More likely to let them make decisions that are not critical to the outcome of the case. I usually have the last word on tactical decisions, witnesses, discovery, etc., but I make a decision only after listening carefully to the student's ideas. Often I go along with them.

The more knowledgeable and thoughtful a student seems, the more I let him/her make decisions unhindered."

Survey #54: "The students' willingness to assume responsibility is the primary factor. For take-charge students, I will let them run the ball. I draw the line at something I am convinced is detrimental to client's interests."

Survey #61: "Criteria when I am more directive: (1) Case with classwide import; (2) Point decision in a case (important strategic decision); (3) Time restraints (we don't have time for full upside/downside analysis); (4) Student has shown weakness in prior decision-making."

Survey #63: "If there is more than one right answer, I generally let the student decide. If there is clearly a right answer and also a wrong answer, then the right answer must be the one chosen. I feel supervisors have a responsibility to do things the right way and to teach the students to do them that way. I try very hard to remember that there is very often more than one right answer."

Survey #64: "Where reasonable lawyers could differ or the decision is not potentially outcome determinative, the student decides. I attempt to make other decisions collaboratively. If a conflict arises, I decide."

Survey #87: "The main criterion is the relative experience and ability of the students. If students continue into subsequent semesters, as they have the option of doing, most of the day-to-day tactical decisions are left to them."

Survey #95: "In practice, students make scores of interstitial decisions, because we are so highly leveraged that *nearly all* client contact, and many telephonic communications (with witnesses or opposing counsel) occur without a supervisor present. But in theory— and, whenever I am involved in practice, too—students 'make' *NO* decisions (I think). Ideally, they propose/recommend all actions, but take/make none without consultation and collaborative agreement with their supervisor. (Our/my model is *heavily* collegial, so many of the choices posed by your questionnaire are too 'stark'). (Sorry.)"

B. Comments by Respondents Holding "Nondirective" Beliefs

Survey #1: "The greater the risk to the client, the more I am likely to become involved. The reverse is also true. Risk to the client and the student's apparent competence to protect the client are the main criteria I believe I use."

Survey #3: "Factors include: (1) certainty of my judgment; (2) ability (time) for students to explore issues more fully; (3) import of client's case; (4) who will have to live with the decisions (i.e., long term decisions whose effect the student will never see may call for increased intervention); (5) reversibility; (6) institutional constraints and needs.

Does not depend on 'kind' of decision— factors will apply to trial tactics and interviewing decisions."

Survey #15: "I intervene only if ethical violation including a *clearly* wrong tactical choice (and those are rarely clear). Do I influence decisions? Often in the course of discussion because students try to guess what I'd do. My influence usually comes in the form of inviting students to consider choices/alternatives which they missed. Often students miss these alternatives because they lack the experience to know the alternatives exist. Students make *all* decisions but do so only after conversations with me."

Survey #26: "Will decision create certain and real harm to client? In choice of strategy, I try to leave decision-making to students—usually there is no

right or wrong answer."

Survey #36: "I try to allow students wide authority on decision-making—but I see my role as to probe their decisions and their decision-making processes. If they articulate good reasons—reasons that are consistent rationally, take all of the law, the facts, and the personal considerations of client into account, then I will feel very satisfied. If I think a student has failed to consider something adequately, we will discuss it; if student sticks to their decision, I won't overrule it."

Survey #37: "I am [more] likely to make decisions if I believe the ramifications for the client or the perceptions by the client may be *very* negative. Generally, I am less likely to let students make decisions in emotionally charged cases (e.g., custody, divorce, etc.)."

Survey #44: "I think students should be responsible for making all case decisions of importance *in the first instance*. In meetings between supervisor and student, students' decisions should be subjected to critical scrutiny (Did you consider this? that?) and students should be given an opportunity to rethink, modify or defend their decisions before the supervisor offers explicit suggestions. I try not to overrule student decisions (or overrule them implicitly by trying to *persuade* the students that they want to change their decision) unless I'm pretty sure that what I want to do is clearly better for the client—rather than merely reflecting my personal style and preferences. I find this line hard to draw in practice."

Survey #68: "I almost always let the student ultimately decide, but if I'm uncertain I sometimes force them to weigh the pros and cons a few million times. I'm more likely to intervene if I think the student is about to do something affirmatively harmful (e.g., submitting into evidence a document that could be used against us); I'm less likely to intervene if I don't think it will have much effect on the overall outcome of the case."

Survey #69: "Matters of personal ethics where calls can go either way; tactical decisions in similar circumstances. Careful thought and research."

Survey #71: "I am most likely to get my way on case issues that have repercussions for the clinic itself (as an institution). If we have strong disagreements on strategy decisions I am likely to bring the issue to a larger group for debate. In our clinic we try to make the cases the students', with faculty there for back-up. We try to collaborate and work through our *differences*, the same way I do with any co-counsel. There *is* a tension (even in this paragraph) between the alleged goal of second-chairing and the creeping 'collaboration' that looks like intervention or interference."

Survey #72: "Important cases with issues that I know or feel strongly that students are wrong about will lead me to make the decision."

Survey #78: "I try to allow students to make all decisions. I am less likely to not try to influence a decision (either consciously or subconsciously) if I agree

with the decision (or at least don't strongly disagree) and the decision is of small significance."

Survey #91: "I try to allow the students to make any decision that the lawyer (rather than the client) should make. If the decision is of the type that would be acceptable in practice, I'll approve it after as full a discussion of alternatives as is possible in the circumstances."

Survey #93: "Since I generally believe in a client-centered model of lawyering, my first goal is to get students to let the client make the decisions, so I suppose I'm least likely to let students make decisions that belong to clients in my opinion. I can't think of an occasion where a student and I have disagreed on ethical matters, but if we did, I think I'd intervene (it's also possible that I express my views on ethical matters pretty strongly and don't go through the same process of student decision making as for other issues, so that students don't have room to disagree. I'll have to try to pay more attention to that). As to other decisions, my criteria are whether the student has obtained adequate information for making the decision (factual or legal); whether they've thought it through; and then if I disagree, I try to struggle with whether it's just a question of my style or preference or whether I can honestly say it (the student's decision) will hurt the client. In sum, I guess my 3 criteria are professional responsibility, preparation, and thoughtfulness."

Survey #96: "More likely to allow students to make decisions on negotiation strategy than trial strategy; in areas requiring creativity (possible legal claims, fact investigation tactics), e.g., areas where I don't see myself as having greater knowledge or experience."

Survey #105: "Students make decisions unless: (1) they are totally off base and time requires that they move quickly; (2) decisions are unethical; (3) decision is against client's best interest; (4) there is a very high likelihood that their decision will be adverse to the case.

I always attempt to Socratically allow them to play out the consequences of their decisions with the result that they usually decide another approach is better."

C. Comments by Respondents Holding "Neutral" Beliefs

Survey #6: "Students make their own decisions on how/when they will do their work; how they organize their representation. On substantive matters, all decisions are shared — with the students leading the way in most instances. Our rules in testing and arguing about a decision varies, based on the complexity of the case, student maturity and understanding, etc."

Survey #18: "More likely: (1) judgment calls; (2) order of tasks; (3) most decisions where client won't be hurt even if student's work load will be increased by living with consequences of decision.

Less likely: (1) time too limited to allow full explanation of options; (2) decisions where lack of experience mean student doesn't have sufficient data;

(3) in active discussions (e.g. hallway negotiations) where unanticipated issues come up."

Survey #40: "(1) Always let students make decisions that can still be changed.

(2) Actually, have not ever (in one semester of teaching) overruled a student—dialogue usually achieves consensus."

Survey #42: "[More likely to allow students to make] unimportant ones. [Less likely to allow students to make] important ones.

Criteria: Intelligence of the student and the degree of probability that the decision will produce an optimal result for the client."

Survey #52: "My stated criterion is not doing irreparable harm to the client's cause. I think that in actuality I probably have a much more pedagogical impetus, i.e., for the more competent students I give more freedom (I wonder if that is sound learning theory?)."

Survey #55: "Causes of action to plead, extent of discovery requests, are decisions I would *not* leave to students. Tactical decisions re: settlement negotiations or examination of witnesses, I would not allow without much discussion. I try to allow students to make any decision, whether "big," "critical," or pro forma— but I insist on exposing their thought process and if necessary forcing them to deal with my doubts and questions. If the decision has substantial consequences for the client's representation, I feel I must have the last word— I want students to understand *client* comes first, and don't want that subverted even to the educational purposes."

Survey #70: "(a) As long as decision is one that a reasonable lawyer would make I do not intervene, other than to insure that the student has explored all alternatives.

(b) I demand that students be fully prepared in fact development and legal analysis. If they are not, I tell them as much, make the decision, and tell them what I expect at the next juncture."

Survey #74: "It's hard to think of one I wouldn't let them make.

Have all options been considered? Have all ramifications of each been predicted and answered? Is the decision within the realm of effective lawyering?"

Survey #83: "(A) One thesis I hold is that, with sufficient time and discussion, students will eventually be able to make all legal/counselling decisions except tactical decisions based on experience. I have never used an absolute veto but rather have reached agreement with the student.

(B) 1. If there is a tactical decision in which we (student(s) and I) both agree that the student does not/could not have sufficient experience to make the decision, I will make the decision; or

2. If a case is complex, I may handle a clearly defined piece of the case (for example, conducting a direct exam of an expert).

(C) Every type of decision is discussed; agreement is always achieved on a

decision-by-decision basis."

Survey #84: "I'm more likely to allow students to make decisions that don't matter or that I don't feel strongly about."

Survey #99: "I encourage students not to think of themselves as my clerks, waiting for me to tell them what to do next, but rather that the clients are their clients and I am here to give advice and guidance. Students are, therefore, encouraged and expected to make decisions at all stages of case preparation. I am not prepared, however, to let a case or client suffer if a student, for whatever reasons, is unwilling or unable to manage the case."

ITEM 35: If you have been influenced in your thinking about directiveness in clinical teaching by any particular experiences you have had, please describe them.

A. Comments by Respondents Holding "Directive" Beliefs

Survey #12: "One of my students, in writing a brief on a Social Security case in federal district court, made an argument which I found extremely weak. I suggested a much stronger—and different— argument on the same issue. The student asked if he could keep his argument in the brief along with mine; and since two arguments were not contradictory, I agreed. The judge decided in the client's favor, but rejected my brilliant argument, while adopting the student's weaker one. The experience taught me to allow students more freedom in making decisions because, obviously, law professors are smarter than students but they're apparently also smarter than judges."

Survey #47: "I was a practicing lawyer for several years before coming to the clinic. I am used to handling cases myself, in my own way and in a timely fashion. It is very difficult for me to sit back and wait while a student does basic research, makes false starts, writes incomprehensible drafts of documents, etc., if the client's case is suffering (even slightly) due to the delay. I am leaving the clinic, primarily for family reasons, but also because I am uncomfortable with the tension I feel between serving the client's best interests and giving the students a learning experience."

Survey #87: "In my first semester of teaching as a writing instructor in 1987-88, many of my students absolutely floundered on one particularly difficult assignment. The resulting anxiety and low quality of work did not, to me, seem to constitute any kind of productive learning experience. While I don't believe in 'spoon-feeding', I do try to give students enough direction to make it likely that they will be successful in producing work of good quality."

Survey #95: "_____'s motto, shared with (or learned from) _____: 'Look it up!' pulls me back from my natural tendency to be excessively directive. When I *pause* before launching supervision, and remember where I am, and who pays my salary, I become much less directive."

Survey #106: "It just bugs the living shit out of me when someone gives me

a job to do, with some direction and then interferes constantly with my doing it. I learn best when the supervisor is a supportive, trusting resource not a dictatorial, arrogant asshole. I have this feeling that others feel this way also. P.S. No I have not sought therapy!"

B. Comments by Respondents Holding "Nondirective" Beliefs

Survey #13: "On a rare occasion, I have students whose judgment I have found to be very suspect. I decided to heighten my involvement to protect client's interest. More frequently, students handle something very well or in a manner I hadn't thought of (or thought was not the best approach). Shows that giving students leeway is good educational tool for both of us."

Survey #34: "I think that some students need a certain amount of role modeling before they become comfortable with decision making. For that reason, with some students, I become more directive."

Survey #36: "When I first started to teach I often had students give me a proposed course of action on cases [where] that was not the course of action I would have chosen. Fortunately, I was taught (mostly by _____ and writings of Gary Bellow) to ask students for their reasons before suggesting or conceding. Almost always the students had sound reasons for their choices and this persuaded me that students can and should have a lot of latitude."

Survey #44: "My responses to two supervisors in a law school clinic when I was a student. One required students to come up with ideas and offered few of her own. I learned a lot by doing, but felt a lot of anxiety—I never knew if I was on the right track. The other supervisor threw out loads of ideas—bad ones as well as good ones—for discussion. The process was collaborative and creative—but only for students who were assertive enough to challenge the supervisor's ideas. This supervisor made it too easy for students to be passive and not think through their own strategies.

Where does this leave me? I'm not entirely sure, but I try to be flexible, and offer my own ideas more freely when students are willing to take initiative and respond critically to what I suggest rather than being overwhelmed by it. I also try to remember, when I'm trying to be 'non-directive', that students need feedback and reinforcement along the way."

Survey #57: "Whether to let student proceed with client counseling session where we'd missed our preparation session and I had belatedly found out student was about to counsel client with wrong conclusion due to inadequate research. After much soul searching, I let her go forward since she professed her readiness and balked at rescheduling. She ultimately had to eat crow and redo it but I think she learned from experience without jeopardizing client in long run."

Survey #89: "Losing one case I should have won by following a student's tactical decision which I thought was not best for the client, but I *did not* stop.

Too many nights at the clinic until late hour based on last minute prepara-

tion when I let things go too long based on student's planning."

Survey #91: "Learning from students how to do things better than what I was proposing always gets me to step back into a less directive role."

Survey #96: "Like most of us, I've been burned in the past by students who haven't been honest in their representations or who overestimate their abilities. These experiences have led me to be more directive with some students early in the year, and then, as my confidence in them grows, to loosen up and give them more room."

Survey #100: "Many times students have asked questions of witnesses in hearings which I think are absolute mistakes only to have the responses become very helpful. Thus, I never stop students when they deviate from our strategy although I might ask for a sidebar if the tack seems extreme."

Survey #105: "Need to respond quickly to Housing-Rent cases—students do not have much time to explore and flounder."

C. Comments by Respondents Holding "Neutral" Belief

Survey #17: "One time I brought a tape of a supervisory discussion with an extern to a clinical conference—the Boulder conference. The critique of my small group was unanimous: that I had talked too much and not allowed the student a chance to get a word in."

Survey #18: "Work with the MBTI has convinced me that non-directive approach is not the best vehicle for effective teaching/learning for some students."

Survey #22: "Because my own clinical experiences as a law student and early legal services experience was with supervisors who seemed impatient and harassed, I try to be especially patient with students and encourage their own decision making, though I exercise veto in client's best interest (I like to think!)."

Survey #32: "I am fascinated by the fact that I often feel too directive, but then students evaluate me as giving them a great deal of freedom."

Survey #55: "Experiences have run both extremes; too directive and found students taking *no* responsibility for case, and nondirective to extent students are taking actions on case without consulting me.

My concern mostly comes down to the *success* of the method with different students (some just don't respond, and the case has to be done) and to a concern for my relationships with students—that they not think I'm just playing a 'game' with them. To that end, I often end up telling student why I think it's important for *them* to go through process, even if I know shortcuts—and especially if I *don't*."

Survey #74: "I got older and less interested in being a service provider and more interested in teaching. This was probably impacted by the experiences

regarding the acceptance of clinical education at _____."

Survey #79: "A student called me on the carpet for 'taking over' her case. She was right."

Survey #80: "Sense that outcomes in individual cases were affected by inexperience of students."

Survey #83: "All but one of the students I have had have increased their own self-directedness during the course; the only exception to this has been a student with serious personal concerns. This suggests to me that virtually all students are capable of achieving their own maximum degree of self-direction if I can find the ways to foster this capacity."

Survey #99: "The Binder-Price model has most influenced me in teaching my students how to interview and counsel clients. The experience of client-centered decision making has led me to have more confidence in student centered decision making. However, I still feel the client is the most important element in the process and if the student is lazy or inept, I will become proportionately more directive."

Survey #102: "My many years of teaching in high school and college have influenced me to be a nondirective 'facilitator' of learning."

ITEM 34: If you are less directive with your students in practice than you would like to be, please state why.

A. Comments by Respondents Holding "Directive" Beliefs

Survey #7: "I am less directive with my talented and inspired students than with those who simply seem to be 'along for the ride'. Also, we handle cases in which liberty is at stake. When liberty is at stake, cannot sit back and let the student err. I thus intervene more than I perhaps should. I simply find that students are not generally able to spot and frame all of the issues in a criminal or habeas corpus appeal. My directiveness is a function of the difficulty of the case and the talent of the particular student."

Survey #23: "Sometimes I don't know enough about the case to be directive."

Survey #51: "Sometimes a student slips through the cracks—especially at my last job when we had 20 students for 2 supervisors—I was in court twice a week."

Survey #63: "Generally because I don't realize I need to be; I think the student has a better grasp of the case than he actually does."

Survey #87: "Generally this has happened inadvertently and has been brought to my attention when a student has later come to me with a request for additional direction."

B. Comments by Respondents Holding "Nondirective" Beliefs

Survey #3: "At times, time pressure leads to delegating no adequate oversight, but that seems to be a different issue."

Survey #36: "Some students have said that they learn better once they have gained some confidence by doing things with direction. I tend to be quite nondirective and some students find this disturbing. I would like to match my directiveness to students' needs—real needs—sometimes student self-perceptions are not clear or correct."

Survey #68: "Sometimes I forget they haven't been practicing law for a couple of years and I don't remember to explore everything I would or should."

Survey #71: "Also time pressures—neglect. Sometimes misjudgment of the students' needs/abilities."

Survey #91: "Sometimes there just isn't *time* to get in their way!"

Survey #93: "I think it's rare and is attributable to time pressures—when things are especially busy, I think I either neglect supervision or am very directive (which I think is a form of neglect)."

C. Comments by Respondents Holding "Neutral" Beliefs

Survey #107: "That's never been my problem. If there has been under-supervision, or under-direction, it has been due almost always to lack of time."

APPENDIX C

In the first section of this Appendix, we raise some questions concerning a major contention of this Article — that most clinicians believe in nondirective supervision.[1] Does the survey data actually support this conclusion? In the second section, we explain why, in formulating a "directiveness scale," we relied only on questions involving only one dimension of directiveness — decision-making.[2]

1. *Does the survey data provide an adequate basis for concluding that most clinicians believe in a nondirective approach?*

The validity of this conclusion depends, first of all, on whether we correctly categorized as directive or nondirective the answers to each of the survey questions about how clinical supervisors should behave. The dividing lines were not always clear.[3] Nevertheless, we think we have drawn the lines in a way that is consistent with a broad consensus in the clinical community about what constitutes directive and nondirective supervision.

Second, the conclusion that most respondents favor nondirective supervision depends on an assumption that the survey questions we looked at make up a representative sample of the supervisory issues that define directiveness. We think this is a valid assumption. Since most important case decisions involve tactical or ethical issues, the two questions on these subjects encompass much of the decision-making strand of directiveness. The two questions about communicating tactical ideas and legal knowledge touch on the major issues in the information-sharing strand. The questions on task-allocation deal with two of the most common kinds of clinic lawyering tasks: client interviews and legal writing.[4] We failed to address other important activities such as counseling, negotiation, and trial advocacy.[5]

Finally, our conclusions may be suspect if the views of the survey respon-

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[1] *See supra* text accompanying notes 29-41.

[2] *See supra* text accompanying note 90.

[3] Compare, for example, in Item 16, reprinted in Appendix A, choice (b), which we considered nondirective, with choice (c), which we considered directive.

[4] Case planning is the most common and perhaps the most important lawyering task of all. *See* AMERICAN BAR ASSOCIATION TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, NARROWING THE GAP, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES (Tentative Draft, 1991) at 5, 9-15, identifying "problem solving," defined to include planning, and legal analysis as the "two analytical skills that are conceptual foundations for virtually all aspects of legal practice." While we did not inquire directly about task-allocation in case planning, the questions we asked about decision-making and information-sharing relate to directiveness issues in the case planning process.

[5] While we did not ask supervisors about their beliefs concerning how they *should* supervise students in trial-type settings, one of the survey questions asked supervisors to report what they actually do when supervising students at trials and hearings. Most respondents reported that they rarely intervene in a student's examination of a witness. App. A, Item 25. Possible reasons for this are discussed in note 84, *supra*.

dents are not representative of the larger community of clinicians. It is possible that the people to whom the survey was distributed (members of the AALS Section on Clinical Education, through its newsletter, and acquaintances of the authors),[6] are a disproportionately nondirective group. Perhaps supervisors holding nondirective views were more inclined to fill out a questionnaire of this sort.[7]

2. *Why the "directiveness scale" was based only on questions concerning decision-making.*

Although our concept of directiveness encompasses information-sharing and task-allocation as well as decision-making,[8] we used only decision-making as the basis for our "directiveness scale." We did this for several reasons.

We regard the allocation of responsibility for decision-making as the most significant indicator of directiveness in the student-teacher relationship, for it is by making decisions that the student truly assumes the role and exercises the power of a lawyer.[9]

Our questions about decision-making addressed the most common decision-making issues in clinical supervision. By contrast, the two questions we asked concerning task-allocation and performance did not cover a sufficiently representative sample of the lawyering tasks that supervisors and students engage in,[10] making generalizations based on these questions potentially suspect.[11] In addition, the two survey questions about information-sharing were insufficiently controversial[12] to be helpful in distinguishing relatively directive from relatively nondirective supervisors.

Finally, we did not find a strong relationship between respondents' views about decision-making and their opinions regarding other aspects of directiveness.[13] To put these three, somewhat independent, strands of directiveness

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[6] *See supra* text at notes 8-9 and note 10.

[7] Some support for this hypothesis may be found in the responses to one survey question. A much larger percentage of nondirective than directive respondents described themselves as "often" or "always" worrying about directiveness issues in their supervision. *See supra* text accompanying note 123. If nondirectives worry about the issue more, they may have been more likely to fill out a questionnaire on the subject.

[8] *See supra* text accompanying note 17.

[9] *See supra* text accompanying notes 19 & 1-3. Task-performance is also important. Information-sharing seems less important because it does not necessarily impair the authority of the student to "call the shots." Indeed, sharing information with students may enhance student autonomy in decision-making and task-performance.

[10] Items 10 & 13, App. A; *see supra* text accompanying notes 39-40.

[11] In addition, the overwhelmingly nondirective response to the question about task-allocation in initial client interviews made it difficult to use this question as a basis for distinguishing directive from nondirective supervisors.

[12] Items 9 & 12, App. A. Large majorities answered these questions in a nondirective way. *See supra* text accompanying notes 34-36.

[13] To assess the degree of consistency between respondents' views about decision-

together in a single scale, we would have needed to determine how much weight should be given to each. For example, should a supervisor with directive beliefs about decision-making but nondirective views about information-sharing and task-performance be classified, overall, as directive or nondirective? Our uncertainty about the relative weight to assign each aspect of directiveness in a combined scale led us to base our scale on a single dimension of directiveness.[14]

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making and their beliefs concerning other aspects of directiveness, we analyzed how respondents classified as directive or nondirective on our decision-making scale responded to each question about information-sharing and task-allocation. These comparisons suggested that respondents with directive (or nondirective) beliefs about decision-making might be somewhat more likely to express similar views about sharing tactical ideas and intervening in student writing (Items 12 and 13). The results, however, were not statistically significant. There was no relationship between directiveness in decision-making and responses to the questions about task-allocation (Items 9 and 10).

[14] We also considered and rejected the idea of constructing separate scales for the information-sharing and task-allocation aspects of directiveness. In a scale based on responses to the two information-sharing questions, a large majority of respondents would have been classified as nondirective. Because of the small sample size for directive respondents, analyses utilizing such a scale would not have yielded statistically meaningful results.

The same problem would have arisen in a scale based on the two task-performance questions. Because nearly all respondents favored a nondirective approach to client interviews, the scale would have classified many respondents as nondirective or neutral, but very few as directive.