

ASSESSING INSIGHT: GRADING REFLECTIVE JOURNALS IN CLINICAL LEGAL EDUCATION

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Abstract

The article focuses on an analysis of reflective journals in clinical legal education. It proceeds from the premise that reflective journals can be a useful teaching tool in clinical programs and will continue to be used in the future as a part of the clinical legal educative landscape.

It investigates the pedagogical and practical arguments relating to assessment of reflective journals and asks why we should consider assessing such work.

The article also considers the issue that, if we do consider it beneficial to assess journal entries, how this can be done in a useful way, which promotes our educational objectives. The article concludes by making suggestions for future and perhaps better use of reflective journaling in clinical settings.

I INTRODUCTION

'The irony of life is that it is lived forward but understood backward'
Soren Kierkegaard: 1813–1855

Reflective journals or learning diaries are widely used educative tools in clinical legal education settings. In Australia, many university law faculties require the writing of periodic reflective work as a compulsory part of their clinical law courses. The journaling requirement of a clinical unit may be satisfied as a 'hurdle' requirement (that is, a certain number must be written for the student to satisfy this aspect of the unit) or the actual substance of the journal entries may be assessed and a numeric mark given for the work.

This paper proceeds from the premise that reflective journals can be

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a useful pedagogic tool in clinical legal education programs and will continue to be used in the future as part of clinical legal education. For the purposes of this paper, 'clinical' is used to mean live-client 'situational learning environments'.¹ In this regard, I adopt Hewitt's approach of differentiating situational learning environments from other legal education as being the condition where legal learning activities take place within a practice context.² As such, this paper takes the position that reflective journals are at their most potent as a teaching tool when clinical legal education occurs in such situational learning environments. I also acknowledge that there are other ways besides reflective journaling to teach and assess students to develop insight into their lawyering. These other methods, whilst also important, are outside the scope of this paper.

This paper also investigates the opposing points of view for and against providing a numeric mark to students in relation to the actual content of journal entries and discusses the pedagogical and practical arguments relating to assessment of reflective journals. Ultimately, it is my contention that reflective journals can and should be graded. Further, the paper considers the issue that, if grading journal entries is beneficial to students and teachers alike, how this can be done in a useful way which promotes clinicians' educational objectives. Finally, suggestions are made for future and perhaps better use of reflective journaling in clinical settings.

II ESTABLISHING THE RIGHT CONDITIONS FOR REFLECTION

Before discussing how reflection might occur for students in a legal clinic, it is worthwhile to define the term 'reflection' in the context of higher education. In Rogers' view, definitions in the relevant literature³ imply that reflection 'involves examining the manner in which one responds to a given situation',⁴ and includes negative and positive emotions that these experiences trigger.⁵ Further, Rogers provides a succinct statement

¹ Hewitt A, 'Producing Skilled Legal Graduates: Avoiding the Madness in Situational Learning Methodology' (2008) 17(1) *Griffith Law Review* 87.

² *Ibid* 89.

³ See J Loughran, *Developing Reflective Practice: Learning about Teaching and Learning Through Modelling* (Washington D.C, 1996); D Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York, 1983).

⁴ R Rogers, 'Reflection in Higher Education: A Concept Analysis' (2001) 26(1) *Innovative Higher Education* 37, 41.

⁵ *Ibid*.

of the aim of reflection, which can be readily adopted into the context of clinical legal education, when he states that the intention of reflection is to ‘integrate the understanding gained into one’s experience in order to enable better choices or actions in the future as well as to enhance one’s overall effectiveness’.⁶

In order for student reflection to occur, some essential prerequisites must be met. Primarily, students must be put into situations which are outside their normal range of experiences,⁷ so that they find themselves reacting to a situation which will trigger the reflective process. Clinical students find themselves in such situations almost on a daily basis. The environment of the clinic itself is usually outside their life experience and presents challenges to them sometimes before they have even had the opportunity to set eyes upon a client.

Further, students must be disposed to engage in reflection⁸ and prepared to involve themselves in a sincere manner in the exercise. This is, perhaps, not as easy to arrange as the previous precondition. Students come to legal clinics with various motivations and expectations. Many of them will initially resist the requirements of a formal reflective process and balk at having to participate in so-called ‘navel gazing’. Accordingly, it is imperative that, if a legal clinic has a reflective component, students are aware of this prior to participating at the clinic and can mentally prepare themselves to be open to new experiences and be prepared to give thought to how to respond to the novel situations, new personalities and fresh viewpoints that they may encounter.

Another significant issue in creating the right environment for journaling is some students’ desire to hide inadequacies, ignorance or lack of confidence from their supervisors. Students may be fearful that revealing gaps in their knowledge or providing reflections that may be perceived as immature or naïve will result in poor grades. They also may be anxious that the confidential nature of their self-revelations may be breached by the supervisor sharing journal entries with other members of the faculty or others in a position of power, such as potential employers. There is no easy way to resolve these concerns. In many ways, they are similar to the clinic’s clients’ concerns about confidentiality and how much they should reveal of their personal information to student lawyers. It is up to the supervisors to assure students at the commencement of the journaling process and at other times throughout their time at the legal

⁶ Ibid.

⁷ Ibid 42.

⁸ Ibid.

clinic, that their journal entries will only be read by their supervisor and that all discussions with the supervisor in the form of feedback are similarly confidential. Crucially, supervisors need to be aware that these concerns are very real for students and need to be taken into account in encouraging students in the journaling process.

Finally, the environment itself must be favourable to the reflective process.⁹ An atmosphere of willingness to learn must be prevalent, along with trust, responsibility, appropriate feedback and a feeling of being able to take appropriate risks in the student's relationship with the supervisor and their legal clinic colleagues. In their general clinical work, they should feel comfortable to ask wide-ranging questions or offer opinions that are not subject to criticism or derision by fellow students or supervisors. If a form of journaling is undertaken, which is more public (see the discussion of 'team journals' below), they should be able to express insights or make observations knowing that their statements will be responded to in a non-judgmental style by their colleagues and teachers alike. In a learning atmosphere such as a legal clinic where much of the learning takes place informally, students must feel secure when required to participate in a reflective process which may evoke feelings or contemplations which they find uncomfortable or confronting. Much of the responsibility for creating a secure and non-judgmental learning environment rests with the supervisor and other staff working at the legal clinic. This responsibility will be discussed later in the context of assessment of the journaling process.

III WHAT ARE REFLECTIVE JOURNALS?

Reflective journaling takes various forms. Despite the fact that there are many variations being used by educators, the literature in the area indicates five key types: learning journals,¹⁰ case logs,¹¹ team journals,¹²

⁹ Ibid.

¹⁰ J Moon, *Learning Journals: A Handbook for Academics, Students and Professional Development* (Kogan Page Ltd, 1999).

¹¹ J Ogilvy, 'The Use of Journals in Legal Education: A Tool for Reflection' (1996) (3) Fall *Clinical Law Review* 55, 74.

¹² S Goldsmith, *Journal Reflection: A Resource Guide for Community Service Leaders and Educators Engaged in Service Learning* (The American Alliance for Rights & Responsibilities, Washington DC, 1996).

oral presentation journals,¹³ and ‘chat room’ journals.¹⁴ The common features amongst these various types of journaling are that the students are expected to engage in reflection and are required to assemble their insights into some form of written record in order to share them. There is also the expectation that they will receive feedback, which may come from their clinical supervisor or their colleagues, or from both.

It is of some value to describe these various journaling activities in order to move into a broader discussion of the potential pedagogical value of assessment. The most basic form of reflective journal is a written diary or log of activities, sometimes described as a ‘learning journal’,¹⁵ providing insights that the student draws from the clinical experience. A student will write a journal entry on a periodic basis (weekly or fortnightly) and submit that work to the clinical supervisor for comment, feedback, and, if considered appropriate, assessment. The content of the entry is kept confidential between the student and the supervisor and thus is a private chronicle. Hubbs and Brand describe this as a ‘dialogue journal’¹⁶ in that it provides a private dialogue between the student and the supervisor, with the supervisor either responding in writing or in private discussion with the student journal writer. However, if the entry shows particular insights, the supervisor may sometimes request permission from the student to share the entry (or its insights) with other students to form the basis of a general discussion.

Case logs¹⁷ are a form of journaling which is quite impersonal and thus generally less threatening to students who are not familiar with the reflective process. This requires students to record details of their clients’ cases and make entries of tactics and processes adopted in their attempts to resolve the matters. Students are encouraged to record their personal insights into the way the matter is proceeding, but the emphasis in this technique is on the journal being a learning log of skills and procedures, rather than on the reflective process itself. This mode of journaling lends itself quite readily to formal assessment processes, based as it is on more easily set criteria as to what is expected to be

¹³ C Sparrow, ‘Reflective Student Practitioner — An Example Integrating Clinical Experience into the Curriculum’ (2009) 14 *IJCLE* 70, 72.

¹⁴ K Hinett, *Developing Reflective Practice in Legal Education* (U.K Centre for Legal Education, Coventry, 2002) 26.

¹⁵ Moon, above n 10.

¹⁶ D Hubbs and C Brand, ‘The Paper Mirror: Understanding Reflective Journaling’ (2005) 28(1) *Journal of Experiential Education* 60, 66.

¹⁷ Ogilvy, above n 11.

included in each entry. The supervisor can require entries on a periodic basis, or a summary log to be handed in upon the completion of the client matter. A minimum requirement can be made as to a set number of cases to be written about or a set number of case log entries to be handed in.

Team journals¹⁸ are a style of interactive journal writing in which students write a public journal entry that is provided to their clinical colleagues for comment and feedback. The input from the other team members is combined into the entry and provided to the supervisor for group discussion and feedback. Members of the student team may take turns in writing the initial entry and seeking feedback on a periodic basis. The discussion that takes place with the supervisor is then a form of public de-briefing within the clinical team and can provide a fertile basis for discussion.

Some reflective journaling practices include an oral presentation requirement, which is itself assessable.¹⁹ In this form of journaling, the actual content of the student journal remains private and non-assessable. The supervisor requires an oral presentation by each student which presents a 'summary' of insights, chosen by the student, which may enlighten and educate his or her team members. This is a way of introducing a formal assessment requirement into the journaling process which focuses on the presentation itself, rather than assessing the actual quality of the reflective process. It allows the student to choose which insights, self-doubts or revelations to make public and, in this way, may lead to a more open and honest style of journal writing — as the students know that only the parts they choose will be revealed to others.

Finally, the use of technology allows a form of journal writing which is akin to virtual 'chat rooms'.²⁰ In this method, students log in to an on-line discussion, which happens in real time. The clinical supervisor is also part of the dialogue. Students can share their insights and observations with their peers and the supervisor. The supervisor can set a particular time and day of the week for this to take place and require students in the particular clinical team to contribute — not unlike holding a tutorial in which students are expected to participate. The students have the benefit of each other's (and the supervisor's) reflections, in the non-threatening environment of being in their own home or office in front of a computer screen.

¹⁸ Goldsmith, above n 12.

¹⁹ Sparrow, above n 13.

²⁰ Hinett, above n 14.

IV WHAT IS THE PEDAGOGICAL BASIS FOR JOURNALING?

Clinical legal education provides the perfect laboratory for action and reflection.²¹ The reflective process can be encouraged in various ways and will often happen as a by-product of clinical work — by informal peer discussion or by the more formal supervisor led dialogue. However, the use of reflective journals provides a structured format for the development and nurturing of meaningful and considered student reflection.

Journal entries can give a clinical supervisor early and profound understandings of their students' progress and educational growth within the clinical unit. It can provide insight to the supervisor of how the student views both their professional and educational role within the clinic. It can signal early warnings of a student who lacks insight, compassion, empathy or simply legal knowledge. It can also provide an early indication to the supervisor of students who need to be further intellectually challenged.

However, the pedagogical value of journaling transcends the immediate 'here and now' of the clinical experience for both the student and supervisor. Reflection is a tool which will assist students to develop their future professional skills. In order to become autonomous, conscientious and ethical legal practitioners, students must learn the skill of self-evaluation. Adult learners must discover the tools of self-direction — that is, each learner needs to become an expert in the way that he or she learns. This is a skill which can be developed during students' university education, but it is also a life-long skill which is essential for the well rounded professional. As Ogilvy states:

By encouraging and valuing reflective behaviour, we increase the likelihood that students will internalise the activity and carry it forward into their personal and professional lives after formal legal education ends.²²

In clinical legal education, we can adopt Schön's concept of the 'reflective practitioner'²³ to describe legal professionals who are adult learners engaged in activities which enable them to reflect on their

²¹ J St. Joan, 'The Clinic as Laboratory: Lessons from the First Year of Conducting Social Research in an Interdisciplinary Domestic Violence Clinic' (2001) 47 *Loy. L Rev* 317.

²² Ogilvy, above n 11, 79.

²³ Schön, above n 3.

strengths, weaknesses and areas for development.²⁴ Clinical teachers cannot expect students to engage in reflection by chance or by simply modelling reflective practice, although this, too, is important. A device such as reflective journal writing provides a structured method to expose students to the skill of self-reflection.

Further, it needs to be kept in mind that clients not only rely on their lawyers' technical skills of drafting, advocacy and the like, but put trust in lawyers' abilities to provide judgment, reasoning and discrimination in an ethically and socially responsible manner.²⁵ It is these 'professional' skills that can be better developed by encouraging personal reflection through a structured process. In this regard, perhaps we can amend Schön's concept to that of the 'ethically reflective' legal practitioner — an approach to lawyering that clinicians can nurture and develop by exposing law students to the skills of reflection and self-evaluation. In the course of most law degrees, there is little or no instruction regarding the skills inherent in developing ethical judgment. However, one of the major challenges (and benefits) of clinical practice is that it often puts students in situations which demand that they come to grips with issues of appropriate ethical behaviour within their role of legal professional.

Parker and Evans²⁶ propose four paradigms of lawyering, which may help students engage with this debate. The first is the traditional paradigm of the 'adversarial advocate'²⁷ — the conventional view of lawyering which involves compliance with rules of professional conduct, but does not require the lawyer to consider issues of social duty or responsibility. The other three approaches suggested by Parker and Evans take a much wider view of the lawyer's role and include the notion of 'the responsible lawyer' (focussing on the ethics inherent in a lawyer's role as an officer of the court and in the legal system itself), and the role of the lawyer as moral activist.²⁸ The 'moral activist' notion posits that lawyers should follow their own ethical standards about what 'lawyering' entails and what it means to do justice.

²⁴ Ogilvy, above n 11.

²⁵ A Olivia Burton, 'Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences into the Clinical Setting' (2004) 11 *Clinical Law Review* 15, 17.

²⁶ C Parker and A Evans, *Inside Lawyers' Ethics*, (Cambridge University Press, 2007) Port Melbourne. See also C Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30 *MULR* 49.

²⁷ Parker and Evans, above n 26, 23.

²⁸ *Ibid.*

Finally, Parker and Evans propose a lawyering paradigm which they describe as the ‘ethics of care’.²⁹ This approach is concerned with emphasising and focusing upon notions of personal and relational ethics. Arguably, it is this ‘ethic of care’ or ‘relational lawyering’³⁰ approach which best reflects the values of clinical practice. Reflective journaling provides one way to promote thought and discussion on these lawyering categories proposed by Parker and Evans that can challenge students, as future practitioners, to contemplate their approach to law and their responsibilities to lawyering.

Finally, journaling may assist in the development of ‘narrative intelligence’³¹ in law students. Olivia Burton provides an interesting insight into this concept in the context of journal writing.³² Her observation is that legal problems habitually form a narrative and that lawyers must learn to problem solve in the context of a sequence or flow of events, rather than in a strictly logical or mathematical mode.³³ She points out that legal problems in practice are not solved in a vacuum — they are highly contextualised and are always part of a larger picture of relationships, experiences and events in the lives of the protagonists.³⁴ Indeed, clients almost always provide their instructions in a narrative flow — not always logically or chronologically, but there is usually a ‘story’ which the lawyer must comprehend. The process of a legal dispute is never static — issues emerge, instructions develop and the entire process forms a narrative flow towards an ultimate resolution. As, Olivia Burton reminds us: if students are to spend their professional lives working within a narrative milieu, they must learn how to advance their own narrative thinking and develop narrative intelligence.³⁵ Accordingly, a journal requiring students to reflect on their experiences, marshal their thoughts, and record their insights in a narrative manner is a valuable way to cultivate this narrative thinking and will assist them to develop narrative skills which will be essential to their practice as legal professionals.

²⁹ Ibid.

³⁰ C Parker, ‘A Critical Morality for Lawyers: Four Approaches to Lawyers’ Ethics’ (2004) 30 *MULR* 49.

³¹ A Amsterdam and J Bruner, *Minding the Law* (First Harvard University Press 2000).

³² Olivia Burton, above n 25.

³³ Ibid 24.

³⁴ Ibid.

³⁵ Ibid 25.

V WHY ASSESS REFLECTIVE JOURNALS?

It is one thing to accept the pedagogical rationale for reflective journals, but quite another to presume that a fair, transparent and defensible assessment tool can be created for journaling.

Rice, a staunch opponent of grading in any clinical environment, notes that many authors struggle with the uncertainties and problematic consequences of measuring students' performance in clinic.³⁶ He resiles from such a grading task on the basis of 'good sense and an unconscious pragmatism'.³⁷ With respect, this is an evasion of our duty to our students. Journaling as a teaching tool loses much of its pedagogical value if not assessed. As Stefani notes,³⁸ academics are becoming increasingly aware that assessment of a student's learning should not be based solely on the student's ability to create a 'product', but on the learning process itself. Students should be assessed on their ability to learn, as well as the outcomes of what has been learnt. In a clinical environment, they are not just being assessed on their ability to write a document or to create a winning piece of advocacy. They are also being assessed on their ability to learn legal and administrative processes, to be creative, to make decisions and a myriad of other skills which cannot be simply measured as a 'product'. Accordingly, reflective journaling can and should be assessed on the journey itself, not on the end result or product.

The feedback provided to the student when assessing their developing self-evaluation skills is itself a valuable pedagogical tool. Students will pay much more attention to work that is being graded.³⁹ They will treat it more seriously and, in this increasingly competitive era, will strive to better their marks if only for the pragmatic reason of ensuring their academic transcript will be read favourably by potential employers. The motivation for wanting to achieve better results is arguably irrelevant. Marks equate to incentive and motivation.⁴⁰ Educators can utilise that motivation to their students' advantage by insisting that reflective work

³⁶ S Rice, 'Assessing — but not Grading — Clinical Legal Education' (2007) *Macquarie Law WP* 16, 1; See also A Ziegler, 'Developing a System of Evaluation in Clinical Legal Teaching' (1992) 42 *JLE* 575.

³⁷ Rice, above n 36, 9.

³⁸ L Stefani, 'Assessment in Partnership with Learners' (1998) 23(4) *Assessment and Evaluation in Higher Education* 339, 344.

³⁹ S Brustin and D Chavkin, 'Testing the Grades: Evaluating Grading Models in Clinical Legal Education' (1997) 3 *Clinical Law Review* 299, 320.

⁴⁰ *Ibid.*

is assessable and by providing feedback on the process to students in order to increase their skills as insightful learners.

There is a further argument in favour of assessing reflective journals. It is not based on educational ideology at all, but acknowledges the politics of pedagogy. It is this: the academic faculty and the students themselves simply put much more store in a learning process which can be measured and provides quantitative outcomes. It is difficult to justify a learning process which has no measurable outcomes to a university committee or to the student body. Accordingly, it is well nigh impossible to convince both students and other law school academics that the reflective journaling process is pedagogically sound if it cannot be supported by pointing to a reliable measurement of its outcomes.⁴¹ The use of journaling without supporting it by an assessment tool makes the process look ‘flaky’ or experimental and therefore of no educational value.

Arguably, it is possible to mark reflective journals as a ‘pass/fail’ only⁴², or by way of a ‘hurdle’ requirement — that is, if a certain amount of journal entries are submitted, the student passes this aspect of the unit, regardless of the quality of the work. Such a methodology decreases the pedagogical value of journaling and provides very little by way of feedback to the student and thus does not enable them to improve the quality of their journal writing. As Levine pointed out many years ago, a pass/fail system does not provide a student with feedback about their strengths or weaknesses or where to direct their efforts for improvement.⁴³ It also weakens the value of the exercise from the students’ perspective. In a 1994–95 study carried out by the Catholic University of America, when students were given a choice between a pass/fail or a fully graded option in the Catholic University’s clinical courses, 84 per cent of students chose the fully graded option.⁴⁴ Put simply, students prefer to strive for a grade — it provides the activity with academic credibility and makes the exercise worthwhile for the students’ efforts.

Graded assessment provides a feedback structure — an essential ingredient in the journaling process. The use of grading means that the supervisor can relate feedback comments directly to the grading criteria. This provides a format for the supervisor and provides the students with

⁴¹ Ibid 321.

⁴² Rice, above n 36.

⁴³ M Levine, ‘Toward Descriptive Grading’ (1970–71) 44 *Cal LR* 696.

⁴⁴ Brustin and Chavkin above n 39, 302.

a way of measuring their progress in the journaling exercise, which deals with the concerns raised by Levine. Students should be able to relate their supervisor's responses directly to a set of unambiguous criteria, provided to them at the commencement of the journaling exercise. They can use the feedback to further comprehend what is required of the task and to better their work in future journal entries. Undoubtedly, some clinicians have discovered the benefit of making the learning goals of journaling obvious:

Encouraging students to write is certainly important, but in the future, I plan to be even more explicit with students about what learning goals their journal entries seem to implicate and what they can do with the journal exercise to further these goals.⁴⁵

Without grading criteria and feedback to which it relates, the task of writing journal entries becomes a 'stab in the dark' for students: they cannot know what is required of them and what they need to focus on in order for the process to provide them with pedagogical value.

The reflective journal process is one of the tools which enables clinical students to be provided with a thorough 'skill set'. Most clinicians do not have any pedagogical argument against grading students' research, writing or advocacy abilities. Similarly, skills such as interviewing techniques and negotiation are the subject of grading in both clinical and non-clinical courses. If these highly practical and essential legal processes can be graded, so too can the practical abilities to self-reflect and evaluate one's actions and processes. If the skills of insight and self-evaluation are valuable and perceived as important graduate abilities, then the appropriate tools need to be created to teach them well and to measure whether these skills have been attained.

VI HOW DO WE MEASURE 'CONTEMPLATION'?

An appropriate measuring tool for insight or contemplation must be clear, consistent, fair and above all else, reliable. It must exactly reflect the published learning goals and provide students with unambiguous signposts as to how to direct their efforts.

This presents a unique challenge. Legal educators rely almost exclusively on the quantifiable and standard methods of assessment. Olivia Burton complains that 'conventional law school pedagogy focuses almost exclusively on linguistic, categorisation, and de-contextualised logical

⁴⁵ Ogilvy, above n 11, 96.

reasoning abilities'.⁴⁶ She believes that this dependence on such criteria does our students a disservice and does not prepare them for the reality of the legal profession. She states:

This neglects interpersonal, intrapersonal, strategic and narrative ways of knowing and reasoning that tend to feature prominently in lawyer functions such as advocate, planner, negotiator, mediator and counsellor.⁴⁷

It is the very fact that reflective journaling focuses on these 'ways of knowing',⁴⁸ which should indicate that journaling cannot be assessed in a simple standardised fashion. Because it is a creative way of teaching, the assessment methodology must also be creative and requires a significant investment of thought and time. This is where this author disagrees with Ogilvy, who states that the *modest benefit* achieved in increased student motivation from grading reflective journals is not worth the investment of time in creating an appropriate measuring tool and in implementing it on an individual student.⁴⁹ On the contrary, clinical legal educators have a distinct duty to invest that time and effort. If clinicians demand that students invest significant time, thought and effort in writing journal entries, then there is a duty to also invest significant time and care to create and implement a viable and appropriate reflective journal assessment methodology.

In creating appropriate assessment tools, attention must be focussed on the possible pitfalls which can beleaguer attempts to measure such difficult and personal concepts as insight, reflection and self-appraisal. For example, what if students are writing comments in their journals which the clinician totally disagrees with on a personal basis? Is it then appropriate to 'correct' the student and deduct marks for writings which the clinician finds personally repugnant? Should a measuring tool assess 'attitude' or is this beyond its scope? Arguably, clinicians have a responsibility to deal with student attitudes insofar as they impinge upon appropriate client service. In taking this position, it can be acknowledged that it is almost impossible to alter a student's perception of the world in one unit of law studies, and it is not a clinician's brief to do so. However, it is appropriate to challenge students' preconceived opinions and to ensure that any student bias or prejudice does not impinge on their sense of professional responsibility. If a student's attitude, as revealed in their

⁴⁶ Olivia Burton, above n 25, 18.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Ogilvy, above n 11.

reflective journals, impinges on their professional client relationships, it is a clinician's responsibility, as ethical and reflective practitioners,⁵⁰ to ensure the student is aware that such behaviour is not condoned and that ultimately marks may be lost as a result.

In larger clinics where there are a number of student sessions operating and a team of clinical supervisors, the issue of assessing 'attitude' has the potential to be very divisive. A team of supervisors must be in fundamental agreement as to what constitutes 'inappropriate' insights or attitudes in students' interactions with their clients. The clinical teaching team must be united in this position. Further, this must be communicated to students as part of the marking regime. Students must be advised that, as part of the reflective journaling process, their supervisors will be marking them on, for example: 'Insight into appropriate client/solicitor relationship'. Students are thus put on notice that, as part of their clinical legal education, they may be challenged as to any preconceptions they may have as to appropriate client interactions. The assessment tool needs to be clear and specific in its requirements if it intends to tackle (and mark) this issue of attitude. For example, the reflective journal assessment regime may contain categories which specify, for example:

- Ability to show understanding of and insight into 'client centred' practice.
- Ability to demonstrate client empathy.
- Ability to comprehend and discuss the significance of moral neutrality in relation to dealings with clients.

In such an assessment regime, students are being notified explicitly that any pre-conceived notions relating to their clients' race, gender, poverty, ignorance, world view or level of education will come under the assessment microscope and may be challenged as part of the feedback of the reflective process.

An appropriate measuring tool also needs to deal with the fact that students come to clinical legal education with various degrees of personal skills and life experiences. A student's age, gender and life experiences will have varying effects on their journaling abilities. There will be infinite variables which affect students' innate ability to write in a reflective fashion, or to develop that skill. This should be no barrier to the task of assessing students in their journaling work. Legal educators require students to write examinations and never even consider that their

⁵⁰ Schön, above n 3.

diverse backgrounds will impinge on this mode of assessment. Many clinicians also assess students in their clinical casework, well knowing that some have had previous legal and/or professional experiences and others have not. In this regard, it may be useful for clinicians to eschew the standard assumption of comparative grading — that is, that students' marks are compared against each other in order to create norm referencing.⁵¹ Comparative grading in reflective journaling does not suit formative assessment methodology very well. Formative assessment is designed to provide a feedback loop for students and is put in place in order to be a vehicle for further and more sophisticated insights. Making comparisons between students in this context lacks utility and is therefore inappropriate.

Although the assessment of reflective journaling is focussed on students' insights and learning experiences, it is also appropriate to measure communication skills in the assessment process. This is why marks should also be awarded for clarity of writing, coherence, structure, appropriateness to purpose, as well as spelling, punctuation and grammar. There is no doubt that these fundamental written communication skills are an essential aspect of any student's clinical experience. As in any piece of written work during law school, students should be advised that their written communication skills will be taken into account in the assessment process.

VII REQUIREMENTS OF AN APPROPRIATE ASSESSMENT TOOL

Stefani describes three important qualities of any assessment tool as being reliability, validity and manageability.⁵² The final quality — manageability — is particularly apposite in the assessment of reflective journal entries. Clinical teaching has the benefit of small numbers of students⁵³ and a maximum ratio of eight students per supervisor has been the established wisdom in many clinical settings.⁵⁴ However, even with this ratio, a supervisor may be required to read, absorb and assess eight journal entries of, say, 500 words on a weekly basis — a total of 4000

⁵¹ J Goldring, 'Student Assessment and "Quality" in Legal Education' (1997) *MacArthur Law Review* 1 (1), 41, 49.

⁵² Stefani, above n 38, 346.

⁵³ The *Model Standards for Live Client Clinics* recommends a maximum of 12 students to each supervisor — see UKCLE, <<http://www.ukcle.ac.uk/research/projects/clinic.html>>.

⁵⁴ S Rice et al, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (Centre for Legal Education, Sydney, 1996).

words per week. This is the equivalent of marking a major research essay every week for the duration of the entire clinical teaching period. Time must also be taken to provide oral or written feedback to each individual student. These time demands bring into question the manageability of a complex mode of assessment for reflective journals.

This is where the benefit of a flexible assessment methodology becomes of great importance. Perhaps fortnightly, rather than weekly, journal entries are more manageable for students and supervisor alike and may provide more time for students' insights to develop. A mixture of 'tick the box' assessment and oral comment could also make the feedback process manageable. If a supervisor uses a standardised marking sheet which exactly matches the broadcasted learning goals of assessment and combines this with a 10–15 minutes oral feedback session with each individual student on a fortnightly basis, this will more than satisfy Stefani's manageability requirement without diluting the essential learning experience for the student.

There are other prerequisites for making the assessment methodology of reflective journals fair and valid. One of the most essential is providing students with some instruction as to what is expected, apart from a list of learning goals. The need for exemplars or models is essential in situations where students are required to embark on a learning experience that may be quite foreign to them. It should be made very clear what it is expected from students. As Stefani points out:

It has to be said though that academics and university teachers are in general terms extremely poor at modeling a learning process for students. There is always a general level of upset at poor essays and regurgitated exam answers, but if academics would stop to think about it, this upset stems from the assumptions we make that all students inherently know how to construct, for example, a good essay. Teachers/tutors very rarely guide students through or model the process of structuring an essay. This issue requires serious consideration if we truly hope to enable our students to become autonomous, independent and reflective learners.⁵⁵

A further prerequisite in the fair assessment of journal entries is the necessity for the supervisor to create a supportive mentor relationship. Oral feedback and criticism (or, indeed, praise) of journal entries is an intensely personal experience for students. It requires supervisors to demonstrate their own insight and sensitivity and to be acutely aware of how the student is dealing with the feedback session. The supervisor

⁵⁵ Stefani, above n 38, 348.

must make their evaluations clear and honest. Students may remember a supervisor's dismissive or negative comments for years afterwards and harbour negative feelings about their clinical experience based on a simple miscommunication. This is not to say that students' writing and insights should be left unchallenged. In order to provide an atmosphere conducive to reflection and learning, there should be a mixture of support, stimulation (both by the clinical experiences themselves and assisted by the supervisor's interactions with students), autonomy, feedback, and substantial demands on the students' performances.⁵⁶ Thus, clinical supervisors must walk a fine line between supporting the students' endeavours and challenging them to achieve more — a balance that all educators try to accomplish, but one which is most essential in the clinical and reflective journaling context. In practical terms, it means that oral feedback sessions with students about their journal entries need to be well prepared by the supervisor beforehand, words chosen carefully, both criticisms and praise dealt with even-handedly, and expectations for improvement made clear.

In order for an assessment tool to be valid, it must apply to all students being assessed. At its most basic, this means that what is being measured must exactly match promulgated learning goals. These goals must be agreed upon and be applied consistently by all supervisors for the assessment methodology to be valid. This requires complete agreement by all supervisors as to the foci of reflective journal assessment. What is being measured is not a final 'product' only (that is, an insightful and reflective number of journal entries), but also the learning process itself. The reflective journaling process should enable students to write with insight about their learning experiences and to develop further and deeper reflective skills. As Rogers points out, in the context of higher education generally:

Each new experience with reflection should lead the individual to broadened and deepened understanding, an enhanced array of choices, and a more sophisticated capacity to choose among these choices and implement them effectively.⁵⁷

Rogers' comments are exceedingly pertinent to the education of future lawyers. To enhance law students' range of decision making choices in a client advice context is essential, and to improve their capacity to both *choose and implement their choices* will ultimately lead to them becoming sophisticated and insightful legal practitioners — a worthy

⁵⁶ Rogers, above n 4, 43.

⁵⁷ Ibid.

product of any law school.

Feedback is an essential aspect of the reflective journal process. There are many approaches which can be established in clinical legal education that maximise the use of feedback in order to develop deeper learning.⁵⁸ These involve procedures such as providing praise in public and criticism in private,⁵⁹ always ending feedback sessions on a positive note,⁶⁰ asking students for feedback on themselves before the supervisor makes comments,⁶¹ being forthright and transparent,⁶² and using the same structure in the provision of feedback for all students.⁶³

The learning goals of reflective journaling need to reflect that legal educators are not only assessing students' written work as a product, but also their progress in the reflective learning process, based on students' active and considered responses to feedback. This has a certain subtlety, which will not be obvious to most students, many of whom will merely give the learning goals a quick perusal before launching themselves into their clinical work. Accordingly, clinicians may need to spend some time individually with each student explaining this methodology prior to submission of the first journal entry. This is certainly a time-consuming process, but will ultimately benefit both student and clinician.

VIII MOVING FORWARD — EMPIRICAL RESEARCH

In order to make the best use of reflective journaling, legal educators must comprehend and be fully convinced of the value of the process. Fundamentally, there needs to be agreement with both the *what* and *how* of reflective journal assessment.⁶⁴ This leads to a larger issue — how can clinicians be certain that they have the pedagogy and assessment regime right? Mere faith and some anecdotal evidence simply do not provide the justification. Clinicians may *think* they are on to a 'good thing' but simply cannot prove it. In these days of tight budgets and increasingly sophisticated student needs, it may not be enough for legal educators to

⁵⁸ R Hyams, 'Student Assessment in the Clinical Environment — what can we learn from the U.S. experience?' (2006) *10 International Journal of Clinical Legal Education* 77–96.

⁵⁹ *Ibid* 90.

⁶⁰ *Ibid* 91.

⁶¹ *Ibid*.

⁶² *Ibid*.

⁶³ *Ibid* 92.

⁶⁴ Hinett, above n 14, 40.

believe that this is ‘good medicine’ for law students, without being able to provide the evidence to support this contention.

Thus, further work is required — not mere justification of the benefit of assessing reflective journaling, but hard empirical data. Proper empirical qualitative research needs to be conducted in Australian law schools in order to discover whether the data supports the ‘faith’. Such research has not yet been conducted in Australia, despite the wide use of reflective journals in Australian law school clinical programs. It need not be over complicated. Semi-structured interviews could be conducted amongst students and supervisors regarding their perceptions of the value of assessing reflective journals. An analysis of the result would be made by identification of common themes arising out of semi-structured interviews, both in relation to learning outcomes and the perceived value of assessment (by both supervisors and students). A comparison could be made by reference to a control group, which would be a sample of students and supervisors from law clinics in which the reflective journal requirement is not assessed. The essential objective would be to discover whether students’ clinical learning was enhanced by the assessment of reflective journals. It can currently be hypothesised that the answer will be in the positive — but this supposition is on the basis of anecdotal evidence only. Real empirical research is required to support this position.

Once hard data is obtained, the next stage is to construct a complete pedagogical theory for the assessment of reflective journaling and the development of appropriate macro measurement criteria. Such assessment criteria must be relevant and functional in any clinical legal education program in which reflective journaling is required. In order to do this, educators in clinical programs can build on Bloom’s *Taxonomy of Education Objectives*.⁶⁵ Bloom sets out the following arrangement of skills as a basis for assessment in hierarchical order: know, comprehend, apply, analyse, synthesise, evaluate. In order to evaluate, there must be space to reflect and develop appropriate insights. The limitation of Bloom’s taxonomy for clinical teaching generally and reflective journaling specifically is that his categorisation does not include ‘experience’ as a pre-cursor to evaluation.⁶⁶ Clinical students must be confronted by challenges and new experiences in order to

⁶⁵ B Bloom et al, *Taxonomy of Educational Objectives: The Classification of Educational Goals: Handbook 1 — The Cognitive Domain* (New York, 1956).

⁶⁶ Hinett, above n 14, 41.

develop appropriate insights which will lead to reflective and considered evaluation. Arguably, for clinical students the ‘experience’ requirement is at the very beginning of the process, for they cannot ‘know’ in a clinical environment without the experience to prompt that knowledge. Accordingly, Bloom’s work, with some adjustments necessary to take into account the clinical learning environment, could form the basis of an all encompassing pedagogical and assessment theory for reflective journaling.

A comprehensive pedagogical theory for reflective journaling is necessary because the current pedagogy is indistinct and unfocussed. Goal-setting and grading processes in reflective journaling need to be put under the microscope by way of empirical research because of the steady growth and acceptance in the use of journals in legal clinics around Australia. The requirements for journaling are varied and inventive and provide extraordinary learning opportunities for law students. While the use of journaling was experimental or best described as pilot programs, clinical educators could afford to devote time and energy to immediate practical issues inherent in any new educational regime. However, clinicians who use the reflective journaling process now need to direct time and effort to developing a long term and pedagogically sound vision for the function assessment in reflective journaling.

IX CONCLUSION

The literature of legal education does not appear to provide one overarching pedagogical theory for clinical education,⁶⁷ and similarly there is some lack of clarity in the pedagogy relating to the assessment of student reflection. Teaching and assessing reflection remains very challenging for supervisors and is often confronting for students. Students are often unfamiliar with its requirements because of the focus in much of their legal education on logical and analytical thinking. However, as Rogers points out,⁶⁸ reflective processes (being experiential) are inductive, whereas students are much more used to a deductive approach — that is, commencing with theories and attempting to apply them to a set of facts. The challenge for supervisors and students alike is for them to integrate both types of thinking in order to progress student learning.

⁶⁷ L Morton, J Weinstein, and M Weinstein, ‘Pedagogy: Not Quite Grown Up: The Difficulty of Applying Education Model to Legal Externs’ (1999) 5 *Clinical Law Review* 469, 493.

⁶⁸ Rogers, above n 4, 50.

In order to make the best use of the assessment of reflective journals, clinical supervisors need to be clear in their understanding of the pedagogic rationale for imposing such assessment upon students as part of the clinical experience. Legal educators involved in clinical legal education need to have a fundamental conviction that assessing reflective journaling will add pedagogical value to the students' clinical experience. That conviction needs to be supported by empirical data. An assessment paradigm can then be created that builds on and enhances Bloom's taxonomy. Within that supporting paradigm, there can be diverse, creative, exciting and imaginative ways of making the journaling process interesting and its assessment educationally valuable for both supervisor and student alike.