

## **Creating Lightbulb Moments: Developing Higher-Order Thinking in Family Law Classrooms Through Court Observations**

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### **ABSTRACT**

This Article fills a critical gap in family law literature by arguing that teaching doctrinal family law in conjunction with the application of established learning theory and pedagogy yields a deeper engagement with the subject matter and leads to more practice-ready lawyers. ABA Standards 301, 303, and 304 do not clearly articulate the distinction between experiential education and experiential learning; doctrinal law classrooms are often bereft of experiential learning activities. By incorporating active learning and inclusive pedagogy in the doctrinal classroom and following recommendations from the MacCrate Report and Family Law Education Reform Project, students will be better prepared to address issues of professionalism and equity in their future practice. In particular, this Article reports on an experiential learning assignment in my Family Law class in which students visited domestic relation court settings to “marry” theory and doctrine with the practice of family law. I describe how incorporating a courtroom observation activity in Family Law stimulates higher-order thinking as categorized by Bloom’s Taxonomy. I discuss trends in learning theory, share the questions students answered in the assignment, and explore some of the students’ observations of and reflections on the family law courtroom. I conclude that courtroom observations and written reflections can better prepare students for their future experiences in legal clinics and initial law practice and can be implemented in other doctrinal courses as well. Providing law students with an opportunity to observe court settings helps them integrate theory and practice in doctrinal classes, supports

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robust learning outcomes, is relatively easy to implement, and is highly rewarding for the student and legal education as a whole.

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## INTRODUCTION

One particular courtroom moment started like a typical family law final exam fact pattern. A biological father had filed a motion seeking a modification of an existing child custody order. In the motion, he requested full-time custody of his children from his former wife. The biological mother did not want to have any changes to the custody arrangement. The judge concluded the hearing with a question for the mother's attorney: *why are the children here?* The mother stated that she did have childcare available, but she chose to have her new husband drop her and the children off at the courthouse while he waited outside of the courthouse for them. The judge explained to the mother why she should never have brought the children into the courthouse because it forced the children to witness the conflict taking place between the mother and the father. In the courtroom sat John Doe, a law student who was attending his first family law court hearing for a class assignment.<sup>1</sup> This moment caused the observing student to have a "flashbulb memory."<sup>2</sup>

At that moment, he was not a law student watching a proceeding, but a person reliving the experience and emotions he felt as a ten-year-old child who witnessed his parents' legal conflict. He was no longer watching four children in a courtroom but was remembering himself sitting in the back of a courtroom during his own parents' divorce proceeding when he was ten-years-old. His mother did not have childcare or any family or friends available to help, so he had to go to court. His parents reconciled and have been together ever since. But he had not realized how much that experience had affected him until he saw these young children living through a very similar emotional moment. Until that moment, he had not realized how deeply his personal experience caused him to want to practice family law. That occurred in an especially consequential moment in time, a moment that has stuck with him and likely will for the rest of his life. In turn, the powerful

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1. The name and some identifying information have been changed to protect the client and student's privacy.

2. Brown and Kulik (1977) introduced the phrase "flashbulb memory" to refer to "memories for the circumstances in which one first learned of a very surprising and consequential (or emotionally arousing) event." Andrew R.A. Conway et al., *Flashbulb Memory for 11 September 2001*, 23 APPLIED COGNITIVE PSYCH. 605, 605-23 (2009).

empathy and insight engendered by that moment will benefit his clients throughout his career.

After visiting court, students enter the subsequent class session bubbling over with excitement to talk about their courtroom visit and compare experiences with classmates. They were excited to have done something other than the typical Socratic Method of a doctrinal class and to have seen the theories and doctrines of family law in practice.

John Doe's experience was not unique. In written reflection papers after their courtroom observations and in conversations throughout the semester, the students reported that their hearts had softened to the practice of family law as a profession. The theories we had discussed and debated made more sense when they saw how they impacted people's lives. Some reflected more deeply on doctrinal topics as they related to systemic barriers built into the practice of family law related to race, class, and privilege. Others noted they were more open to representing people accused of domestic violence, understanding of pro se clients, and aware of how to adjust their arguments and communication styles to more effectively advocate for their client and the best interests of their client's children. And all of this happened within a traditional doctrinal class.

Much of my interest in family law flows from my mentors. During the introductory lecture for Family Law, I tell students how I found my passion, voice, and commitment to Family Law. I introduce the students to two of my mentors, Professor Harry D. Krause<sup>3</sup> and Ms. Betsy Pendleton Wong.<sup>4</sup> This introduction is personal and purposeful. Professor Krause was the Max L. Rowe Professor of Law at the University of Illinois College of Law from 1963 to 1994.<sup>5</sup>

Professor Krause is responsible for changes in the United States law and policy related to child support enforcement, welfare legislation, and treatment of children born outside of marriage.<sup>6</sup> His scholarship led to the recognition that non-marital children cannot be denied the rights that

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3. *Remembering Harry Krause*, FAM. L. & POL'Y PROGRAM, <https://www.familylawprogram.com/remembering-harry-krause>.

4. *Betsy Wong*, THE NEWS-GAZETTE (Jan. 25, 2015), [https://www.news-gazette.com/obituaries/betsy-wong/article\\_a6302150-a5b3-5e65-ba0b-4f1f83961b64.html](https://www.news-gazette.com/obituaries/betsy-wong/article_a6302150-a5b3-5e65-ba0b-4f1f83961b64.html).

5. *Emeriti Faculty*, ILL. COLL. OF L., <https://law.illinois.edu/faculty-research/emeriti-faculty>.

6. Thomas M. Mengler, *A Tribute to Harry D. Krause: Educator, Scholar, Law Reformer*, 1997 U. ILL. L. REV. 693, 693-94 (1997).

are extended to marital children.<sup>7</sup> He served as a U.S. State Department delegate to The Hague Conference on Private International Law regarding the Treaty on International Adoptions, Commissioner on Uniform State Laws, and Reporter for the Uniform Parentage Act and the Uniform Putative Fathers Act. Professor Krause had already been an emeritus professor for seven years when I took his Advanced Family Law course and an independent study in the early 2000s. Under his training, I learned how to delight in the possibilities of legal reform and imagined how I could use my agency and voice to advocate for law to better serve families' well-being, in particular, Black American families.<sup>8</sup>

After Betsy Pendleton Wong practiced with the law firm of Phebus, Tummelson, Bryan & Knox for about twenty years, she opened her own law office and continued practicing law in Champaign County, Illinois for forty years. When I served as her legal intern, she had recently opened her solo practice. She took me under her wing and showed me every component of the practice of family law. She taught me client-centered lawyering firsthand. I learned practical skills such as when to file a motion, how to interview clients, and how to deliver disappointing news. I also learned how to create a work-life balance, to appreciate my clients, and understand my role in the community. I learned to empathize with clients who had restraining orders against them and with clients who worried that their personal lives would not be understood by a judge. She taught me how to walk clients from the devastation of today to the promise of tomorrow.

When I began teaching Family Law in 2019, I hoped to do for my students what my mentors did for me. I wanted to include a low-stakes, high-reward assignment that would purposefully “marry” theory and practice. I found the best way to do this was to create experiences that brought the practice of family law into the classroom. Additionally, having students go to court to observe how doctrinal rules are used to help them learn family law and about how to practice as well. This is not only experiential, but it enhances the classroom experience. While there is much to critique about the pedagogy traditionally used in

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7. *Levy v. Louisiana*, 391 US 68 (1968).

8. See Sonia Gipson Rankin, *Why They Won't Take the Money: Black Grandparents and the Success of Informal Kinship Care*, 10 *ELDER L.J.* 153 (2002).

doctrinal courses, there is value in encouraging students to feel comfortable in critiquing, revalidating, or abandoning long-held legal theories, especially as they consider how evolving family structures, cultural practices, and technology changes the practice of law.

Due to the rapidly evolving nature of family law,<sup>9</sup> the implementation of systemic changes in law school curricula has proven to be a challenging.<sup>10</sup> Inclusive pedagogy is a student-centered approach to teaching that encourages faculty to create an inviting and engaging learning environment for all of the students in a class—not disregarding but instead working with their varied backgrounds, identities, learning styles, and physical and cognitive abilities.<sup>11</sup> Influential scholarship has focused on the nexus of family law and experiential learning,<sup>12</sup> but none has described how courtroom visits can teach students how to explore higher-order thinking.

In this Article I systematically evaluate my courtroom observation assignment and its impact on students and their future clients. My goal is to memorialize and analyze student experiences so that other

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9. *Obergefell v. Hodges*, 576 U.S. 644 (2015) (United States Supreme Court ruled that the fundamental right to marry is guaranteed for same-sex couples); *Fulton v. City of Philadelphia*, No. 19–123 (U.S. 2021) (the Court ruled that the city’s refusal due to the agency’s same-sex couple policy violated the Free Exercise Clause.); *Monasky v. Taglieri*, 140 S. Ct. 719 (2020) (held that a child’s “habitual residence” under the Hague Convention on the Civil Aspects of International Child Abduction should be determined based on the totality of the circumstances specific to the case, and should not be based on categorial requirements (e.g. such as an agreement between the parents); *T.H. v. J.R.*, 61 Mis. 3d 775 (N.Y. 2018) (mother’s partner petition for custody and visitation of child); IAN JENKS, *THREE DADS AND A BABY: ADVENTURES IN MODERN PARENTING* (2021) (describing the first polyamorous family ever named as legal parents of a child).

10. John O. Sonsteng et al., *Legal Education: A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 423 (2007).

11. See Palma Joy Strand, *We Are All on the Journey: Transforming Antagonistic Spaces in Law School Classrooms*, 67 J. LEGAL EDUC. 176 (2017).

12. There has not been explicit scholarship that looks at the intersection of courses (in particular) and family law doctrinal courses (in general) and the experiential learning practice of watching/visiting observing attending courts, courtrooms, hearings, and judicial proceedings. As it relates to family law, there was a reference in Roy Stuckey’s work, *Best Practices for Legal Education: A Vision and a Roadmap*, a reference to a family law course in which professors may have students visit a family court to understand a component of the course. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 121–22 (2007). The Family Law Education Reform Final Report outlines the benefits of experiential education and examples of models, though their efficacy is not analyzed. See *infra* Section II.B. This topic has been explored in other fields such as criminal law. See generally Romie Griesmer, *Inside-Out: Bringing Law Students Face-To-Face with Injustice*, 21 RRG 23 (2021). See also Emily Hughes, *New Directions in Clinical Legal Education: Taking First-Year Students to Court: Disorienting Moments as Catalysts for Change*, 28 WASH. U. J.L. & POL’Y 11 (2008).

colleagues – not just in family law but other areas as well – can consider the value of this kind of exercise for their classrooms. This Article proceeds as follows: Part I describes the importance of experiential learning in doctrinal courses and how incorporating active learning, inclusive pedagogy, and cognitive process and knowledge dimensions from Bloom’s Taxonomy can help assess student progress; Part II outlines how the courtroom watching assignment was developed and implemented; Part III reports the major themes discovered in student submissions and presents evidence of students using each level of Bloom’s Taxonomy; Part IV presents lessons learned and how this assignment can be modified in the future, to improve its efficacy; and Part V concludes by noting how courtroom observations in doctrinal courses can serve as a preparation for the realities in the practice of law.

## I. EXPERIENTIAL LEARNING ASSIGNMENTS IN DOCTRINAL COURSES FACILITATE HIGHER-ORDER THINKING

There is a substantial body of scholarship on active learning and inclusive pedagogy, the benefits of experiential learning in doctrinal courses, and how Bloom’s Taxonomy can structure valid assessments of student learning outcomes.

### A. Active Learning and Inclusive Pedagogy Support Doctrinal Learning Outcomes

A student reported, “I was able to observe concepts in the courtroom that we have discussed in class. For example, this case was illustrative of the idea of many American families having more debt to distribute than assets.”<sup>13</sup> Learning by doing is essential for legal education and must happen from the first moment students enter their 1L classes until they pass the bar exam. Active learning and inclusive pedagogy form the foundation for improving student learning outcomes in doctrinal courses.<sup>14</sup> And observations with written analysis are experiential

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13. Student Response #41.

14. For more on active learning, see Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U.L.J. 87, 92 (2013), and for inclusive pedagogy, see Paula Lustbader, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice*, 4 SEATTLE J. FOR SOC. JUST. 613, 628 (2006).

because students can develop cognitive links between previous knowledge and seeing the law in practice. The usual criteria for teaching law school are “superior academic grades from top rank law schools, law review experience, prestigious judicial clerkships, scholarly publications, and having most of the current faculty believe you will fit in,” but these categories do not require a preface that law professors know classroom management, how to present material, creating learning objectives, and assessing student learning.<sup>15</sup> Law faculty must understand that to develop lawyers, you must first educate law students, and this requires an understanding of educational theory and pedagogy.<sup>16</sup>

Active learning refers to deeper student involvement in the learning process than what normally occurs when students passively listen to a lecture. The approach is based on the fact that students need to use their own existing skills to encode new information in order to remember it easily.<sup>17</sup> By reading aloud or discussing the material with classmates, students take a leading role in their own learning and are more likely to confront their own pre-conceived notions and values.<sup>18</sup> The definition of “active learning” is purposefully broad as it allows for a wide variety of activities that support the different needs of students and skills of the professor.<sup>19</sup> Active learning includes assignments that involve opportunities for students to do tasks, think about what they are doing,<sup>20</sup> and engage in their own learning by participating in group activities.<sup>21</sup> Active learning helps students develop their own cognitive structures to organize what they learn, to implement recall.<sup>22</sup>

Active learning is typically defined as activities that enable students to construct knowledge and understanding, as it has students actively work with the content presented. Observation may

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15. Sonsteng et al., *supra* note 10, at 353.

16. *Id.* at 354.

17. See Rory Bahadur & Liyun Zhang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 HASTINGS RACE & POVERTY L.J. 114, 125 (2021).

18. *Id.*

19. Cynthia J. Brame, *Active Learning*, VANDERBILT CTR. FOR TEACHING (2016), <https://cft.vanderbilt.edu/guides-sub-pages/active-learning/>.

20. CHARLES C. BONWELL & JAMES A. EISON, ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM 29 (Bryan Hollister ed., 1991).

21. JO HANDELSMAN ET AL., SCIENTIFIC TEACHING (2007).

22. Rodney Carr, et al., *Active Learning: The Importance of Developing a Comprehensive Measure*, 16 ACTIVE LEARNING IN HIGHER EDUC. 173, 173-186 (2015).



seem passive, but it is complex as it becomes transferable skills that they will take to their clinical work. Developing these active skills leads to metacognition.<sup>23</sup> Thinking about one's own thinking—metacognition—is the critical element that connects activity and learning.<sup>24</sup> Active engagement in course content helps students to take information from theoretical to practical and gives them a sense of agency in their learning. For students who are newly exposed to the practice of law and the learning of law, involving them in active observation can help give the concepts context. For instance, “Best Interest of the Child” is just a legal policy, but it receives context when a parent explains how hard he or she has been working to conquer alcoholism. “Termination of parental rights” means something differently when a student's clinical experience involves an incarcerated parent. Even classroom hypotheticals are insufficient until students see them in practice. Understanding race, class, and privilege best come to light when highlighted through experiential learning. Ultimately, active learning produces higher-order thinking, metacognition.<sup>25</sup>

Inclusive pedagogy is defined as a “method of teaching in which instructors and classmates work together to create a supportive environment that gives each student equal access to learning.”<sup>26</sup> This focused pedagogy improves student progress towards proficiency in the learning outcomes.<sup>27</sup> This pedagogy is supported in a growing body of

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23. Brame, *supra* note 19.

24. *Id.*

25. Scott Freeman et al., *Active Learning Increases Student Performance in Science, Engineering, and Mathematics*, 111 *PROC. OF THE NAT'L ACAD. OF SCI. OF THE U.S.* 8410 (2014); *Pedagogy of Experiential Education*, BROCK UNIVERSITY, <https://brocku.ca/pedagogical-innovation/resources/experiential-education/pedagogy-of-experiential-education/#1540493435961-9a8a1350-fd8c> (last visited Jul. 26, 2021).

26. *Inclusive Pedagogy*, GEORGETOWN UNIVERSITY, <https://commons.georgetown.edu/teaching/design/inclusive-pedagogy/>.

27. Lani Florian, *Conceptualizing Inclusive Pedagogy: The Inclusive Pedagogical Approach in Action*, in *INCLUSIVE PEDAGOGY ACROSS THE CURRICULUM*, 7, 11-24 (2015); Jennifer Spratt & Lani Florian, *Inclusive Pedagogy: From Learning to Action. Supporting Each Individual in the Context of Everybody*, 49 *TEACHING AND TEACHER EDUC.* 89 (2015) (The principles of inclusive pedagogy invite faculty to be flexible, equitable, collaborative with students and stakeholders, support personalization of the learning experience, and embrace student diversity). *Inclusive Pedagogy*, IOWA STATE UNIVERSITY, <https://www.celt.iastate.edu/teaching/creating-an-inclusive-classroom/inclusive-teaching-resources/inclusive-pedagogy> (last visited Jul. 27, 2021) [hereinafter *Inclusive Pedagogy at Iowa State*] (This can be achieved by faculty diversifying course materials).

work and makes sense. When students feel that they are incorporated into their learning community and seen by the curriculum, it leads to an improvement in academic success.<sup>28</sup> Students have reported, particularly those from historically excluded populations, that issues such as race, class, gender, and sexuality are muted in the classroom.<sup>29</sup> This flattens the classroom experience, as students can then find it difficult to see themselves in the content. The separation of personal experience from the curriculum is a common issue in why legal education is complex for historically excluded and marginalized student populations. Additionally, the alienation of student experience can lead to a recursive loop of poor performance, negative psychological problems and negative health effects.<sup>30</sup>

Inclusive pedagogy leads faculty to adjust curriculum, modes of delivery, media, and other teaching experiences to best reach their diverse students.<sup>31</sup> If done carefully, inclusive pedagogy can create an enriched learning environment that reaches students with different learning preferences, appreciates the lived experiences of older students, working students, and caregivers, and carefully folds in cultural values.

Active learning, in turn, supports inclusive pedagogy, and experiential education is one of the strongest ways to create an active learning environment.<sup>32</sup> Inclusive pedagogy is critical in the teaching of law, particularly family law.

## **B. Active Learning is an Effective and Evidence Based Way to Support Learning Outcomes in Doctrinal Courses**

The American Bar Association (“ABA”) requires law schools to establish student learning outcomes that carefully identify the knowledge and skills that students should develop during their law

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28. See Isabel Moallem, *A Meta-Analysis of School Belonging and Academic Success and Persistence*, 726 (Dec. 2013) (Ph.D. dissertation, Loyola University Chicago) (on file with Loyola eCommons).

29. *Inclusive Pedagogy*, *supra* note 26.

30. *Id.*

31. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (Powell, J., concurring) (citing *Sweatt v. Painter*, 339 U.S. 634 (1950)) (outlining the importance of cognitive and social diversity in higher education).

32. “In addition to the evidence that active learning approaches promote learning for all students, there is some evidence that active learning approaches are an effective tool in making classrooms more inclusive.” Bahadur & Zhang, *supra* note 17, at 177 (citing Brame, *supra* note 19)).

school education.<sup>33</sup> The Standards are presented as distinctive for doctrinal classrooms and experiential education, but understanding the delineation between experiential education and educational learning can encourage more creative implementations of experiential activities in doctrinal classrooms.<sup>34</sup> This Section describes the importance of experiential learning in promoting learning outcomes in doctrinal courses.

Experiential education has traditionally been centered in clinic and externships, but doctrinal classes have as many opportunities as possible to incorporate experiential education. Doctrinal courses can include simulations, document drafting, and court observations. These activities have proven methods for assessment and provide low-stakes active learning opportunities that can produce high rewards<sup>35</sup> for the students. They also offer opportunities for students to practice problem-solving under supervision in an academic environment. These methods are one of the most effective and efficient ways to develop professional competence.<sup>36</sup>

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33. See Anthony Niedwiecki, *Prepared for Practice? Developing A Comprehensive Assessment Plan for A Law School Professional Skills Program*, 50 U.S.F.L. REV. 245, 249 (2016).

34. See Erickson, *supra* note 14; see Joni Larson, *Getting Up to Speed: Understanding the Connection Between Learning Outcomes and Assessments in a Doctrinal Course*, 62 N.Y.L. SCH. L. REV. 11, 19 (2018).

35. “Low-stakes assignments are forms of evaluation that do not heavily impact students’ final grades or other educational outcomes. The purpose of low-stakes assignments is to provide students with an indication of their performance while taking a course and give students an opportunity to improve their performance prior to receiving a final grade, either on an assignment or in a course.” *Low-Stakes Assignments*, DEPAUL, <https://resources.depaul.edu/teaching-commons/teaching-guides/feedback-grading/Pages/low-stakes-assignments.aspx> (last visited Jul. 27, 2021). Though low-stakes assessments are increasingly used to hold schools accountable for student achievement, they can prove to be a useful mechanism for law students to get a sense of how they are progressing in an invaluable way. Steven L. Wise & Christine E. DeMars, *Low Examinee Effort in Low-Stakes Assessment: Problems and Potential Solutions*, 10 EDUCATIONAL ASSESSMENT 1 (2005).

36. ROY STUCKET ET AL., BEST PRACTICES FOR LEGAL EDUCATION (1st ed. 2007) (Based on A COMMITTEE OF COLLEGE AND UNIVERSITY EXAMINERS, *TAXONOMY OF EDUCATIONAL OBJECTIVES: COGNITIVE AND AFFECTIVE DOMAINS* 77-78 (Benjamin S. Bloom ed., 1956)).

### *1. The Distinctions Between Experiential Education and Experiential Learning*

To understand why experiential learning is so important, one must first comprehend the distinction between experiential education and experiential learning. Though the terms are often used synonymously, knowing the difference can facilitate a better understanding of how it can be used in classroom settings. The Association of Experiential Education defines experiential education as both a philosophy and methodology where educators engage learners in experiences and focus reflection to develop skills, increase knowledge, and clarify values.<sup>37</sup> Experiential education is described as “the philosophical process that guides the development of structural and functional learning experiences.”<sup>38</sup> As educational scholars Linda Lewis and Carol Williams explain, “experiential education first immerses learners in an experience and then encourages reflection about the experience to develop new skills, new attitudes, or new ways of thinking.”<sup>39</sup>

In comparison, experiential learning is described “as a method or technique that any teacher might employ to meet certain instructional objectives.”<sup>40</sup> “In its simplest form, experiential learning means learning from experience or learning by doing[.]”<sup>41</sup> There are four stages to the experiential learning cycle: concrete experience, reflective observation, abstract conceptualization, and active experimentation.<sup>42</sup> First, students engage in the experience.<sup>43</sup> Next, they reflect on the experience, noting

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37. Mary C. Breunin, *Teaching Dewey’s Experience and Education Experientially*, in *TEACHING ADVENTURE EDUCATION THEORY BEST PRACTICES* 122, 122 (Bob Stremba & Christian A. Bisson eds., 2009).

38. *A Practical Guide for Work-Integrated Learning*, Higher Education Quality Council of Ontario 18 (2016), [https://heqco.ca/wpcontent/uploads/2020/03/HEQCO\\_WIL\\_Guide\\_ENG\\_ACC.pdf](https://heqco.ca/wpcontent/uploads/2020/03/HEQCO_WIL_Guide_ENG_ACC.pdf) (quoting JAY W. ROBERTS, *BEYOND LEARNING BY DOING: THEORETICAL CURRENTS IN EXPERIENTIAL EDUCATION* 18 (2012)).

39. Linda H. Lewis & Carol J. Williams, *Experiential Learning: Past and Present*, 62 *NEW DIRECTIONS FOR ADULT AND CONTINUING EDUC.* 5, 5 (1994).

40. JAY W. ROBERTS, *BEYOND LEARNING BY DOING: THEORETICAL CURRENTS IN EXPERIENTIAL EDUCATION* 4 (2012).; *see also* Freeman et al., *supra* note 25 (One way to think of it is that “experiential education” is used to describe the broader philosophical perspective and “experiential learning” refers to learning-specific categories of the experience types.).

41. Lewis & Williams, *supra* note 39 at 5.

42. Freeman et al., *supra* note 25. *See also* CLIFFORD E. KNAPP, *LASTING LESSONS: A TEACHER’S GUIDE TO REFLECTING ON EXPERIENCE* 37 (1992) (where the author describes the four stages and how they connect the learning process of a generation of scholars).

43. Knapp, *supra* note 42.

any connections, discrepancies, and connections between their prior knowledge and the experience.<sup>44</sup> In the third stage, they generate new understandings and ideas and adjust their existing perceptions in order to form conclusions using reflection.<sup>45</sup> Finally, they plan and use their conclusions by applying their new knowledge to new experiences.<sup>46</sup> Students can enter the experience from any stage, but they must experience all stages to meaningfully learn from the experience.<sup>47</sup> The reflective process provides the clearest way for faculty to assess to what degree students are exercising higher-orders of thinking (i.e., to determine if students are truly comprehending the course material and advancing toward the course learning outcomes.) In addition, the reflective process helps students to determine whether a particular type of legal practice feels right for them.

The cycle outlined demonstrates how experience, reflection, new knowledge, and application can be used as a way of teaching experientially. Experiential education uses both methodology (experiential way of teaching) and philosophy as part of the education of process.<sup>48</sup> Experiential education as philosophy implies that there is an intended aim toward which the experiential learning process is directed.<sup>49</sup> In summation, experiential education (methodology and philosophy) is the *how* and *why* related to experiences in learning, and experiential learning is the *particulars* of executing experiences in learning,<sup>50</sup> such as a Privilege Walk,<sup>51</sup> negotiation simulations,<sup>52</sup> or courtroom observations. Students who experience self-guided experiential learning, which connects substantive course material with skills, begin to recognize that these connections also occur in other learning experiences.<sup>53</sup>

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44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Breunin, *supra* note 37, at 122.

49. *Id.*

50. *Id.*

51. Laura Hilliger, *Taking Steps Toward Greater Inclusivity* (Nov. 9, 2017), <https://opensource.com/open-organization/17/11/privilege-walk-exercise>; Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, in *MULTICULTURISM* 11, 30-36 (Ann M. Filor ed., 1998). <https://files.eric.ed.gov/fulltext/ED355141.pdf#page=43>.

52. Sonsteng et al., *supra* note 10, at 402.

53. *Id.* at 400

## 2. Evolution of ABA Standards Towards Active Learning and Inclusive Pedagogy

Legal education has come a long way since the casebook method was used at the first law school at William and Mary in 1779.<sup>54</sup> There has been progress in the last thirty years to assess and improve legal education and incorporate inclusive pedagogy and active learning. Noting a gap between law school preparation of graduates for the actual practice of law, the ABA established a task force to study the gap between legal education and law practice.<sup>55</sup> In 1992, *The Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap*, also known as the MacCrate Report, led the charge to reform legal education with a focus on skills and values.<sup>56</sup> In 2008, the Carnegie Report<sup>57</sup> designated three “apprenticeships” for educating lawyers: 1) the “cognitive apprenticeship,” which focuses on expert knowledge and modes of thinking; 2) the “apprenticeship of practice,” which educates students in “the forms of expert practice shared by competent practitioners”; and 3) the “apprenticeship of identity and purpose,” which “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”<sup>58</sup> The Carnegie Report argued that traditional legal education did a respectable job teaching the first apprenticeship, but not the other two.<sup>59</sup>

The ABA outlines standards of legal education. The standards read in part:

### Standard 302. LEARNING OUTCOMES

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54. Margaret Barry, *Alliance for Experiential Learning in Law: Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?*, 62 N.Y.L. Sch. L. Rev. 131, 137 (2018).

55. Sonsteng et al., *supra* note 10, at 368.

56. See Wallace Loh, *Introduction: The MacCrate Report—Heuristic or Prescriptive*, 69 WASH. L. REV. 505, 505 (1994). In 2013, Prof. Michael Schwartz best captured these concerns in *What the Best Law Teachers Do*, where he outlined how the best law professors “(1) consciously structure their class sessions to achieve their learning goals, (2) show they care about students, (3) make classes relevant, and (4) are extremely effective with their chosen teaching methods.” MICHAEL HUNTER SCHWARTZ, ET. AL, *WHAT THE BEST LAW TEACHERS DO*, 177 (2013).

57. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYER: PREPARATION FOR THE PROFESSION OF LAW* (2007); Nancy H. Rogers, *The Carnegie Report: A Role for the Legal Profession*, 22 OHIO LAW. 16-19 (2008).

58. SULLIVAN ET AL., *supra* note 57, at 28.

59. *Id.* at 79.

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.<sup>60</sup>

Standard 303 Curriculum reads,

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
  - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
  - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
  - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a

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60. A.B.A. STANDARDS & RULES PROC. FOR APPROVAL L. SCH. § 301(a)—(d) (2021) [hereinafter A.B.A. Standard].

simulation course, a law clinic, or a field placement, as defined in Standard 304.<sup>61</sup>

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s); and
- (2) student participation in pro bono legal services, including law-related public service activities.

ABA Standard 304 Experiential Courses: Simulation Courses, Law Clinics, and Field Placements states in part,

(a) Experiential courses satisfying Standard 303(a) are simulation courses, law clinics, and field placements that must be primarily experiential in nature and must:

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor;
- (5) provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and

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61. A.B.A. Standard § 303 (2021).



(6) provide direct supervision of the student's performance by the faculty member; or, for a field placement, provide direct supervision of the student's performance by a faculty member or a site supervisor.<sup>62</sup>

Professor Margaret Martin Barry shares in *Alliance for Experiential Learning in Law: Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?* that until 2014, ABA Standard 302 provided shape but not texture to the outcomes law students should achieve through their legal education.<sup>63</sup> In 2008, the ABA Section of Legal Education Admissions to the Bar's Standards Review Committee outlined a series of responses related to the standards for legal education, encouraging law schools to more clearly delineate what students should learn and whether students were in fact learning what the school intended.<sup>64</sup> Schools were permitted to simply list the outcomes identified in the ABA Standard 302, fundamentally meeting the minimum requirement for identifying student learning outcomes. Some institutions chose to draw from the MacCrate Report, *Best Practices for Legal Education*, and Carnegie publications to study and provide direction regarding what law students should be learning.<sup>65</sup> ABA Standards 303 and 304 have gone through significant changes as it relates to clinical faculty. Before the 1980s, ABA standards required general competence for all members of the faculty, but there were no standards specifically directed at clinical faculty. In 1984, the ABA adopted Standard 405(e) and Interpretations, which outlined the need to develop full time faculty focused on clinical experiences.<sup>66</sup> The interpretation of Standard 405(e) outlined a need for these positions to be tenure track to contribute at law schools. Some clinicians also note that law schools still differentiate broadly across the

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62. A.B.A. Standard § 304 (2021).

63. Barry, *supra* note 54, at 132.

64. *Id.* at 138.

65. *Id.* at 141.

66. Bryan L. Adamson et. al, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 371 (2012). The interpretation of Standard 405(e) outlined a need for these positions to be tenure track to contribute at law schools. *See generally Id.* at 373-76.

nation as it relates to the integration of clinical faculty into the law school community.<sup>67</sup> Additionally, due to the mission of some law school clinical programs to promote social justice, their work can focus on law reform through test case litigation or legislative advocacy, achieving through community or collaborative lawyering.<sup>68</sup> Clinical programs with a strong social justice mission will direct efforts to provide legal representation to clients from historically excluded populations, align efforts closely with local community legal services, and work to connect client representation with social reform agendas or larger efforts to reform the law.<sup>69</sup> Clinical faculty noted that this core social justice mission of clinical legal education will often be “higher and more intensive than the service responsibilities of a typical doctrinal classroom teacher.”<sup>70</sup>

The three standards appear to work in harmony on the surface. Standard 302 defines the types of knowledge that we would like a student to acquire in their legal education. Standard 303 gives harmony in terms of clear distinctions of some minimum learning experiences we want to happen in discreet credit hour components. Standard 304 outlines experiential education by means of three different experiential learning types. The bifurcation of Standard 302 from Standards 303 and 304 provides an unnecessary delineation that does not encourage creative integration of experiential learning into Standard 302 outcomes.

The ABA studied the findings of the Carnegie Report and concluded that the disconnect was a matter of perception rather than reality, as many arguments were made based on anecdotal information and not empirical evidence.<sup>71</sup> The ABA Committee on the Professional

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67. *Id.* at 372

68. *Id.*

69. See Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012). Additionally, Professors Peter Joy and Robert Kuehn marked the evolution of the standards in their 2008 scholarship, *The Evolution of ABA Standards for Clinical Faculty. Evolution of ABA Standards for Clinical Faculty*, 75 TENN L. REV. 183 (2008).

70. *Id.* at 368.

71. COMM. ON PRO. EDUC. CONTINUUM, SECTION ON LEGAL EDUC. & ADMISSIONS TO BAR, *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, A.B.A. 1, 1 (2013), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admission\\_s\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e)

Educational Continuum Section on Legal Education and Admissions to the Bar also noted a seismic shift in doctrinal courses away from Socratic method to incorporate discussion, lecture, and in upper division classes, problem-based teaching methods.<sup>72</sup> Over the years, scholarship on legal education has repeatedly circled back to the same conclusion: clinical legal education is one of the strongest proven methods to prepare law students to practice law,<sup>73</sup> while also identifying that cost and allocation of resources are considered the largest barriers to the implementation of clinical experiences at law schools across the board.<sup>74</sup> The Family Law legal education space has seen some of the most robust explorations of how to actually do this in doctrinal classrooms. The ABA can now go a step further and articulate through interpretation of Standard 302 that types of experiential learning can be considered and should be included when reaching learning outcomes.

### 3. *FLER Project Response to Experiential Education and Inclusive Pedagogy*

In 2005, legal educators and practitioners collaborated to address the gap between family law education and the practice, crafting the Family

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report\_prof\_educ\_continuum\_committee.authcheckdam.pdf. [hereinafter *After the MacCrate Report*].

72. *Id.* at 8.

73. Jason M. Dolin & Michael Distelhorst, *Clinical Experience Essential Part of Legal Education*, 22 OHIO LAW. 10 (2008); *See generally*, DEBORAH A. MARANVILLE ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 162-188 (2015) (discussing how experiential education can be incorporated through the legal curriculum). In 2015, Prof. Barbara Babb outlined three recommendations presented by the Institute for the Advancement of the American Legal System to create meaningful change in family law education: “(1) “establish robust and interdisciplinary continuing legal education programs for family law attorneys and increase client-centric training programs,” (2) “develop specialized and inter-disciplinary law school curricula tailored to the unique skill set of a family law attorney,” and (3) “incorporate clinical and experiential components into the legal education of future family law practitioners.” Barbara A. Babb, *Another Look at the Need for Family Law Education Reform: One Law School’s Innovations*, 55 FAM. CT. REV. 59, 60 (citing Natalie Anne Knowlton, *The Family Law Bar: Stewards of the System, Leaders of Change* 1 (2016), [https://iaals.du.edu/sites/default/files/documents/publications/the\\_family\\_law\\_bar\\_stewards\\_of\\_the\\_system\\_leaders\\_of\\_change.pdf](https://iaals.du.edu/sites/default/files/documents/publications/the_family_law_bar_stewards_of_the_system_leaders_of_change.pdf)), 2016). These three recommendations are supported by scholarship and experiences by law schools across the nation.

74. *See After the MacCrate Report*, *supra* note 71.

Law Education Reform Project (FLER Project).<sup>75</sup> This project was created by a group of professionals who noted alarming gaps in the professionalism of novice attorneys in the courtroom.<sup>76</sup> Three goals were outlined in the FLER Report. These goals closely aligned with the American Law Institute's (ALI) *Principles of the Law of Family Dissolution*. The goals related to family law education stated,

(1) [i]t would teach law students that the family court of the early twenty-first century is often an interdisciplinary enterprise, where psychologists, social workers, non-lawyer mediators, and others may wield extraordinary power. . . . (2) It would emphasize the multiplicity of dispute resolution processes and treat litigation as but one alternative, useful only in a small minority of cases. . . . (3) It would continue to emphasize strong grounding in the law and analytic rigor, but would add a focus on competence and skills, and teach budding lawyers to be reflective and self-aware in the practice of law.<sup>77</sup>

The FLER Report also noted that law professors reported that “the curriculum needs to recognize that wealthy clients and poor clients, female clients and male clients, immigrants and citizens, may all present different issues and be subjected to different treatment by the legal system.”<sup>78</sup> Law professors noted that many family law textbooks muted parties’ race, immigration status, ages, and incomes in cases, and that by not highlighting these factors, students would not automatically have an opportunity to see how one’s lived journey impacts access to legal services and courts; ability to purchase therapy, a private psychologist, and private mediation services; and how the court regards them.<sup>79</sup> They also reported that the materials did not provide enough focus on blended families, single parent households, stepparents, economically disadvantaged parents, or parents of different sexual orientations or

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75. Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524 (2006).

76. *Id.* at 525.

77. *Id.*

78. *Id.* at 535.

79. *Id.*

identities.<sup>80</sup> Law professors also noted that intimate partner violence is often taught in separate curriculum or pushed aside due to time pressure to cover central topics covered by bar exams.<sup>81</sup>

The FLER Final Report focused on the failure of law schools to keep pace with the ever-evolving nature and requirements of family law practice.<sup>82</sup> While some law schools had begun to improve their doctrinal family law classes, the FLER Final Report documented that the family law curriculum at most law schools does not adequately prepare students for modern practice.<sup>83</sup> Thus, the FLER Final Report recommended that law schools shift from the study of cases and instead study the legal system's effects on families.<sup>84</sup> It also recommended integrating the study of alternative dispute resolution and interdisciplinary knowledge.<sup>85</sup> Since then, family law educators across the nation have been documenting their efforts to infuse experiential learning into doctrinal family law courses.

For example, faculty at two law schools documented their efforts to redesign family law courses to include an experiential/pre-clinical experience. Professor Susan Apel, director of Vermont Law School's General Practice Program, developed an integrative family law course that included substantive law, practice skills, and ethical and professionalism issues.<sup>86</sup> Also, Hofstra Law School comprehensively implemented the FLER Project's curricular recommendations. One of the major innovations implemented at Hofstra was the "Family Law with Skills" course.<sup>87</sup> Family Law with Skills is now the basic family law course in Hofstra's revised curriculum and is designed to integrate

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80. *Id.*

81. *Id.* at 536.

82. *Id.* at 538.

83. *See id.* at 527. "In the 191 law schools accredited by the American Bar Association, there are likely more than 191 different approaches to the subject. The participants in the FLER Project agreed, however, that certain contents and methodologies dominate, but fail to capture the reality of contemporary family law." *Id.*

84. *Id.* at 547; *see also* Andrew Shepard & J. Herbie DiFonzo, *Hofstra's Family Law with Skills Course: Implementing FLER (The Family Law Education Reform Project)*, 49 FAM. CT. REV. 685 (2011).

85. O'Connell & DiFonzo, *supra* note 75, at 525.

86. Susan B. Apel, *No More Casebooks: Using Simulation Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700 (2011).

87. Shepard & DiFonzo, *supra* note 84, at 685.

doctrinal teaching with professional skills development.<sup>88</sup> In the Hofstra model, students completed structured field observations of family court proceedings; completed interviewing, counseling, negotiation, and mediation representation exercises in a divorce; practiced direct and cross-examination of a social worker in a child protection dispute; and drafted a surrogacy agreement.<sup>89</sup>

Another method of implementing the FLER Project's recommendations is to add new course offerings. For example, Cornell Law School added a clinical component to its established Family Law course.<sup>90</sup> Students who were either co-registered for or had previously taken Family Law were eligible to enroll in two credits of clinical work under the instructor's supervision. To complete the work in one semester, the students handle simple divorces that would result in a default judgment.<sup>91</sup> Students also staffed a desk at a local family court, assisting self-help clients by showing them how to fill out petitions related to support and enforcement of support orders.<sup>92</sup>

The University of Wisconsin Law School created more robust clinical experiences by moving their doctrinal curriculum into the clinical experience. Its family law clinic now offers an experiential learning program that pairs substantive family law doctrine and theory with supervised experiences in handling family law matters.<sup>93</sup> The students managed a walk-in clinic at the local courthouse and a community law office located near communities in need.<sup>94</sup>

The University of Denver School of Law has augmented its family law clinical program with an interdisciplinary team that comprises the

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88. *Id.*

89. *Id.*

90. Cynthia Grant Bowman, *Learning by Doing: Adding a Clinical Component to a Traditional Family Law Course*, 29 WIS. J.L. GENDER & SOC'Y 129 (2014).

91. *Id.* at 129 ("Each student . . . represent[ed] at least one client, . . . referred from Neighborhood Legal Services, from the initial client interview through drafting, filing, and service of the many documents required to obtain a final judgment for dissolution of marriage in New York State.").

92. *See id.*

93. Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389, 1398 (2016).

94. *Id.* ("They provide information, forms, and guidance to self-represented litigants who seek assistance in all areas of family law, from a simple divorce to a jurisdictional problem or a paternity matter.").

Resource Center for Separating and Divorcing Families (RCSDF).<sup>95</sup> Law students learn as members of an interdisciplinary team composed of graduate students in psychology and social work who provide coordinated therapeutic services to separating and divorcing families. The law students contribute to the team by providing assessment, legal information, dispute resolution (mediation), legal drafting, and filing documents with the court.

These examples provide important models for study. Either by redesigning courses to have an experiential/pre-clinical experience (such as Vermont and Hofstra), an add-on class (such as Cornell), or a robust legal clinical experience that moved substantive law into the clinic (such as Wisconsin and Denver), a growing number of law schools are integrating family law doctrine and theory with skills building through practical application. This Article represents a unique attempt to provide evidence and data for the value of this trend.

### **C. Bloom's Taxonomy Provides a Structure to Assess Student Learning Outcomes**

Traditional law school education focused almost entirely “on the lecture-based method of teaching and timed-essay format of testing.”<sup>96</sup> It would be some time before law faculty would incorporate the strongest principles of learner-centered education, knowledge-centered classrooms, and assessment-centered environments that can also include inclusive pedagogy.<sup>97</sup> Legal education and scholarship in the last twenty years has exploded with research and evidence about the role and benefits of understanding Bloom's Taxonomy as a way of organizing

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95. Marsha Kline Pruett et al., *Law Students on Interdisciplinary, Problem-Solving Teams: An Empirical Evaluation of Educational Outcomes at the University of Denver's Resource Center for Separating and Divorcing Families*, 56 FAM. CT. REV. 100 (2018).

96. Sonsteng et al., *supra* note 10, at 390.

97. *Id.* at 393.

one's thinking in doctrinal and experiential education.<sup>98</sup> In my teaching, I use Bloom's Taxonomy to measure student progress.<sup>99</sup>

Bloom's Taxonomy has been used in legal education for many years.<sup>100</sup> In 1956, Benjamin Bloom, an educational psychologist, presented "Bloom's Taxonomy," a system to categorize ways of thinking.<sup>101</sup> It is a classification of the different objectives and skills that educators set for their students (i.e., learning objectives).<sup>102</sup>

According to Bloom, thinking skills are divided into six levels of cognitive assessment.<sup>103</sup> The first three are designated as lower-order thinking: remember, understand, and apply. The next three are designated as higher-order thinking: analyze, evaluate, and create.

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98. For examples in experiential education, see generally Elizabeth G. Ford, *Toward a Clinical Pedagogy of Externship*, 22 CLINICAL L. REV. 113, 125 (2015); Erickson, *supra* note 14, at 96; Niedwiecki, *supra* note 33, at 246-47, 259. For examples in doctrinal education, see generally Larson, *supra* note 34, at 19-20; Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 6 (2012); Penny L. Willrich, *The Path to Resilience: Integrating Critical Thinking Skills into the Family Law Curriculum*, 3 PHX. L. REV. 435, 436-37 (2010).

99. One of the reasons I like Bloom's Taxonomy so much in higher education is that it has given us a taxonomy of action verbs that are measurable and observable. We want to make sure we are helping students learn what we want them to learn. Bloom's Taxonomy helps professors because if you are targeting any of those levels in terms of those verbs, you can assess whether the goal is met, and student can know if they met those goals.

100. Law Professor Michael T. Gibson skillfully outlines the ways Bloom's Taxonomy operates in the doctrinal classroom. See Gibson, *supra* note 98, at 6-21 (2012) (Prof. Gibson points for example that briefing a case is an example of level one: remember; writing out answers to old exams is an example of level three: apply; level four is used when students find logical fallacies in legal arguments; level five is evidenced by students creating outlines. I argue that level five, "evaluating" is presented when students write law review notes and level six "create" is evidenced when students tackle policy questions).

101. See, e.g., Jessica Shabatura, *Using Bloom's Taxonomy to Write Effective Learning Objectives*, UNIV. ARK. TIPS, <https://tips.uark.edu/using-blooms-taxonomy/> (last visited Aug 1, 2021). About two decades ago, Bloom's taxonomy went through two major revisions: one it went from a noun-centered to a verb-centered analysis, and then it also had a switch in evaluation and synthesis in terms of organization where now creating is seen as the highest order of thinking. Leslie Owen Wilson, *Bloom's Taxonomy Revised*, THE SECOND PRINCIPLE, <https://thesecondprinciple.com/essential-teaching-skills/blooms-taxonomy-revised/> (last updated 2020).

102. Shabatura, *supra* note 101.

103. Retired Judge Penny L. Willrich writes about the direct connection between Family Law and Bloom's Taxonomy in her work, *supra* note 98, at 442-43, 460.



Lower-Order Thinking Categories	Level One Remember	Students exhibit memory of previously learned materials by recalling facts, terms, basic concepts, and simple answers. <sup>104</sup>
	Level Two Understand	Students demonstrate understanding of facts and ideas by interpreting, exemplifying, classifying, summarizing, inferring, comparing, and explaining main ideas. <sup>105</sup>
	Level Three Apply	Students solve problems in new situations by applying acquired knowledge, facts, techniques, and rules in a different way. <sup>106</sup>
Higher-Order Thinking Categories	Level Four Analyze	Students are able to examine and break information into parts by identifying motives, causes and relationships. They can make inferences and find evidence to support generalization. <sup>107</sup>
	Level Five Evaluate	Students are able to present and defend opinions by making judgments about information, validity of ideas, or quality of work based on a set of criteria. They can justify a decision or course of action. <sup>108</sup>
	Level Six Create	Students are able to compile, generate or view information, ideas or products together in a different way by combining elements in a new pattern or by proposing alternative solutions. <sup>109</sup>

Bloom's Taxonomy involves encouraging learners to create new ideas and knowledge and implement them in novel or original forms like legal arguments, laws or regulations that have never been used

104. *Writing Learning Outcomes Using Bloom's Revised Taxonomy*, U. TORONTO CTR. FOR TEACHING SUPPORT & INNOVATION, <https://teaching.utoronto.ca/wp-content/uploads/2015/08/Learning-Outcomes-Using-Blooms-Taxonomy.pdf> (last visited Aug 1, 2021).

105. *Id.* at 3.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

before, and in the form of policies and laws that can guide our society toward equity and justice.<sup>110</sup>

Other studies have expanded Bloom's Taxonomy by creating an axis in which each level of thinking is paired with a knowledge dimension: factual, conceptual, procedural and metacognitive.<sup>111</sup> "Factual" knowledge represents the basic elements a student must know to be familiar with a discipline.<sup>112</sup> "Conceptual" knowledge describes the interrelationship among the elements in a grander structure that makes them function in concert.<sup>113</sup> "Procedural" knowledge represents how to do something, the methods of inquiry, and the standards for using techniques and methods.<sup>114</sup> Finally, "metacognitive" knowledge refers to understanding one's own awareness and cognition.<sup>115</sup> With these intersections, instructors can more richly develop assignments and activities to help students reach higher-order thinking.

However, what makes Bloom's Taxonomy so powerful is that it is cyclical and iterative:<sup>116</sup> after creating new knowledge, people often find themselves back at the lower-order levels, remembering, understanding, and applying the new policies or knowledge that they have created and then analyzing and evaluating them in new contexts. Retired Arizona Judge Penny L. Willrich<sup>117</sup> writes about the direct connection between Family Law and Bloom's Taxonomy in her

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110. The ends of equity and justice are not inherent to "create" in Bloom's Taxonomy, but the ends that I prefer to try to inculcate to my students. The architects of *Hobby Lobby*, *Shelby County*, and others reached the highest order of thinking when they advocated for these laws, but I do not feel that they advance justice in the United States.

111. *Revised Bloom's Taxonomy*, IOWA STATE UNIV., <https://www.celt.iastate.edu/teaching/effective-teaching-practices/revised-blooms-taxonomy/> (last visited Jul. 27, 2021).

112. *Id.*

113. *Id.*

114. *Id.*

115. This scholarship is also critical for the awareness of attorneys on how their own experiences and the experiences of their clients will inform their practice. For additional ideas, see Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016); *Revised Bloom's Taxonomy*, *supra* note 111.

116. *A Quick Look at a New View of Bloom's Taxonomy*, <https://apopheniainc.wordpress.com/2013/02/13/a-quick-look-at-a-new-view-of-blooms-taxonomy-wip/> (last visited Aug. 1, 2021).

117. Hayley Ringle, *Ex-judge receives NAACP Wilkins Award*, East Valley Tribune [https://www.eastvalleytribune.com/news/ex-judge-receives-naacp-wilkins-award/article\\_a5acc37e-c641-5992-bf80-8b81c5b603e5.html](https://www.eastvalleytribune.com/news/ex-judge-receives-naacp-wilkins-award/article_a5acc37e-c641-5992-bf80-8b81c5b603e5.html) (last visited April 15, 2022).

work.<sup>118</sup> Judge Willrich observed that Bloom's Taxonomy is analogous to the IRAC method and explains to her students how this way of thinking builds critical thinking.<sup>119</sup> Explaining to students how Bloom's connects to IRAC is a practice that should be implemented in every introduction to legal education. And by reflecting on their learning and thinking, students will have better knowledge retention and be prepared to move to higher-order thinking. Without a structure to assess a student's experience, reflections from students will be limited to a descriptive recitation of their experience or simply a venue to express their reactions.<sup>120</sup>

The FLER Report revealed that law professors struggled to move students beyond simply grasping what the law is to what the law can be.<sup>121</sup> Legal policy, one of the most important aspects in the practice of family law, can be pushed to the side as students demand a focus on bar prep. The Report captured that law professors felt that law and social change are deeply intertwined and that future lawyers should see themselves as agents and objects of change from the outset.<sup>122</sup> The law professors felt that students should explore: "(1) historical context: class sessions and readings could demonstrate how an event or series of events outside of *law* caused the *law* to change" and "(2) current context: students could be helped to consider forces presently at work and the changes they may be affecting in *family law*."<sup>123</sup> This happens through experiential learning and deep reflection. Law students can access high-level thinking through experiential learning. This training will follow them into their practice and profession.<sup>124</sup>

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118. Willrich, *supra* note 98, at 443-44.

119. *Id.* at 455. Additionally, Judge Willrich used an experiential exercise, role-playing, in her class setting. *Id.* at 456.

120. See Sarah Ash & Patti Clayton, *Generating, Deepening, and Documenting Learning: The Power of Critical Reflection in Applied Learning*, 1 J. OF APPLIED LEARNING IN HIGHER EDUC. 25 (2009).

121. O'Connell & DiFonzo, *supra* note 75, at 538.

122. See *id.* at 539.

123. *Id.*

124. The six levels of Bloom's Taxonomy are remember, understand, apply, analyze, evaluate, and create.

## II. DEVELOPING A COURTROOM OBSERVATION ASSIGNMENT FOR FAMILY LAW CURRICULUM THAT CONNECTS BLOOM'S TAXONOMY, ABA STANDARDS, AND THE FLER REPORT TO THE PRACTICE OF LAW

In light of the extensive research on inclusive pedagogy, Bloom's Taxonomy, and the benefits of experiential learning, I designed my experiential project. The assignment branched from a lesson learned from previous teaching experiences. In 2018, I was an adjunct faculty member at the University of New Mexico School of Law where I co-taught family law with University of New Mexico Associate Dean for Experiential Learning, Professor Aliza Organick.<sup>125</sup> Students participated in the Peter H. Johnstone Settlement Facilitation Day through the New Mexico Second Judicial District, where they shadowed practicing attorneys.<sup>126</sup> Most of the class chose to participate in the settlement facilitation and reported back on their experiences. Their responses revealed how much they gained professionally, intellectually, and personally from watching substantive law in practice and interacting with domestic relations attorneys from the Albuquerque Metro area.

The next year, as a tenure-stream assistant professor, I was assigned the family law course as the sole instructor. In creating my court observation assignment, I consulted with Associate Dean Organick. She provided me with a template that students used in the clinic for their courtroom observations. With her counsel, I modified some of the language to better connect to the unique nuances of family law. Additionally, Associate Dean Organick encouraged me to work with the New Mexico Second Judicial District Trial Court Administrator for court hearing dates that would be of interest to family law students. I then set the parameters for the activity and assignment.

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125. See Aliza Organick, UNIV. N.M. SCH. L., <https://lawschool.unm.edu/faculty/organick/index.html> (last visited ). In 2018, I had taught for eight years as a Senior Lecturer in Africana Studies and Associate Dean for Curriculum and Program Development in University College.

126. See *Pro Bono Mediation Day a Success at 2nd District Court*, THE MULCAHY L. FIRM, <https://mulcahylawnm.com/pro-bono-mediation-day> (last visited July 28, 2021). Peter H. Johnstone was a well-regarded New Mexico family law attorney who helped organize the event which is a free mediation program that connects family court cases with volunteer attorneys to settle a high number of cases in one day.

Students were required to watch one hour of court proceedings related to anything in domestic relations.<sup>127</sup> In 2019 and 2020, court hearings were scheduled in half-hour increments so this meant students would be able to watch two different hearings, thereby increasing their exposure to different proceedings, judges, and attorneys. In 2021, telephonic hearings were scheduled in forty-minute increments, so students stayed through one full proceeding and half of a second proceeding. The assignment was posted the second week of the semester, giving the students about seven weeks to complete the assignment. Students were directed to submit the assignment within two days of attending.

The students were asked to report on broad question categories related to attendees, attorneys, treatment of pro se clients, metacognitive assessment of their future practice methods, assessment of the behavior of judges and hearing officers, fairness of proceedings, comparisons from other courtroom watching experiences, an open-ended question about anything else they may have learned, and time spent. Students were encouraged to write as much as they needed to share their experiences.

There was a rationale for the assignment being crafted in this manner. Under the principles of inclusive pedagogy, professors should provide equitable classrooms that ensure accessibility for all and cultivate an inclusive climate so that students to feel that their lives are valued in the classroom.<sup>128</sup> Students are allowed seven weeks to complete the assignment to allow them to balance their course workloads, work commitments, and outside commitments such as childcare or caregiver responsibilities. Students had to watch an hour of court proceedings so that they could begin to get a sense of billable hours and how time passes in the courtroom that can feel very different from a classroom. Some proceedings can be completed rapidly while others will require more time than anticipated. Students were given a two-day turn around deadline to memorialize their most immediate responses to the experience. There was no word limit as I did not want to restrict the natural direction of focus that the students may feel. Additionally, students were also required to complete this project before

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127. The Appendix contains the assignment rubric and instructions.

128. *Inclusive Pedagogy at Iowa State*, *supra* note 27.

midterms because the focus of the second half of the semester would include a negotiation project, a separate experiential learning assignment.

### III. INSIGHT FROM STUDENT OBSERVATIONS

#### A. Data Points

This Section describes some of the categories of information students shared. Ninety-seven students submitted courtroom observations. My assignment asked students to answer the following open-ended questions:

1. Who was in the courtroom? What were their roles?
2. Would you want to practice in the manner of the attorneys you saw? Why or why not?
3. If one or more of the parties was pro se, how was the party treated? Why?
4. If you had been handling this matter for one of the parties, how would you have conducted yourself? Why?
5. Would you want that judge to hear your case? Why or why not?
6. Did the proceedings seem fair to both parties? Why or why not?
7. If this is not the first hearing you've watched, what additional insights have you gained since the last hearing you watched?
8. What else did you learn?
9. Time spent:

Below are sample responses to each of these questions, as well as information on procedural issues the students raised and a few issues they raised that I did not specifically ask about.<sup>129</sup> In some ways the comments on topics not asked about are the most interesting because they reflect what was notable to everyone.

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129. Data on file with author.

Year	Number of Students	First-year	Second-year	Third-year	Masters of Law
2019	33	5	19	8	1
2020	31	11	10	10	0
2021	30	20	6	3	1

	First time attending a hearing	Attended hearings before, but this was the first time attending a family law hearing	Attended family law hearings before	Did not answer directly
First-year	19	10	5	4
Second-year	7	13	8	6
Third-year	3	9	4	3
Masters of Law	-	1	-	1

The assignment asked students to attend for one hour. Based on reported times, students attended hearings for an average of seventy-three minutes. In 2019, the average time was eighty-nine minutes. In 2020, the average time was seventy-four minutes. In 2021, the average time reported was sixty-two minutes. Forty-five students reported that they stayed over the one-hour requirement. Fourteen of those students stayed over two hours, and three reported staying over three hours. The longest reported time was three hours and forty-five minutes.<sup>130</sup> Some students reported that they wish they could have stayed longer but had commitments with childcare, classes, or work.

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130. I believe the average time was shorter in 2021 because of the virtual nature of the hearings. It would be interesting to further unpack this data to see if there was a pattern related to the amount of time each proceeding took by topic.

The students reported attending the following types of proceedings.

Family Law Topic	No. of Students
Divorce	27
Parentage	4
Division of Property	1
Spousal Support	10
Child Custody	36
Modification of Custody	33
Kinship Guardianship	6
Procedure	4
Child Support	9
Other (e.g., reunification, drug test results, name change, order of protection, annulment, etc.)	16

It will be interesting to further explore if the breakdown of the types of proceedings the students observed mirror the general breakdown in the courts. This will matter because it will let students reflect on if the matter they observed was indicative of the experience they might have as a practitioner in court or a rare case.

### **B. Bloom's Taxonomy Assessment of Student Answers**

The questions in the assignment connected to the orders of thinking from Bloom's Taxonomy.<sup>131</sup> While others might categorize the

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131. See Appendix for the list of questions asked. To see how these questions could also be organized using the Borton framework, see TERRY BORTON, REACH, TOUCH AND TEACH: STUDENT CONCERNS AND PROCESS EDUCATION (1970).



questions to various levels of thinking, these are the closest fits to the objectives measured by the questions.

Level One Remember	#1 Who was in the courtroom? What were their roles? #9 Time spent.
Level Two Understand	#3 If one or more of the parties was pro se, how was the party treated? Why?
Level Three Apply	#7 If this is not the first hearing you've watched, what additional insights have you gained since the last hearing you watched?
Level Four Analyze	#2 Would you want to practice in the manner of the attorneys you saw? Why or why not? #5 Would you want that judge to hear your case? Why or why not?
Level Five Evaluate	#6 Did the proceedings seem fair to both parties? Why or why not?
Level Six Create	Questions #4 If you had been handling this matter for one of the parties, how would you have conducted yourself? Why? <sup>132</sup> #8 What else did you learn?

The students also demonstrated the various knowledge dimensions in this assignment.

Based on the Bloom's Taxonomy, I reviewed questions #2 "Would you want to practice in the manner of the attorneys you saw?" (Analyze),<sup>133</sup> #6 "Did the proceedings seem fair to both parties?"

132. I debated if this question was more level 3 "Apply" or level 6 "Create" as the two categories are very similar. In fact, many of the verbs are the same. If the question only had one solution, then I would be inclined to place it in the "Apply" category. However, if the matter in question has multiple solutions (even if not good ones), then it would be best to place it in the "Create" category. Teaching students how to make an apple pie and then asking them to make any other kind of pie using the same steps would be "Apply." Teaching students how to make an apple pie and then asking them to make any other kind of dessert based on the principles of making a pie would be "Create."

133. Six students saw pro se clients, one saw a social worker, and two did not respond.

(Evaluate),<sup>134</sup> and #4 “If you had been handling this matter for one of the parties, how would you have conducted yourself?” (Create).<sup>135</sup> Each question was assessed to determine if students demonstrated higher-order thinking using a scale of Exemplary, Accomplished, Developing, Beginning.<sup>136</sup> There was a total of 104 separate responses.<sup>137</sup>

Standard	Question #2 Analyze (Level 4)	Question #6 Evaluate (Level 5)	Question #4 Create (Level 6)
<b>Exemplary</b>	44 (46.3%)	41 (41%)	33 (32%)
<b>Accomplished</b>	24 (25.2%)	22 (22%)	20 (19.4%)
<b>Developing</b>	14 (14.7%)	13 (13%)	27 (26%)
<b>Beginning</b>	12 (12.6%)	22 (22%)	22 (21.4%)

It was promising to see almost half of the students were at an Exemplary level for Question #2 “Would you want to practice in the manner of the attorneys you saw?”. This excellence correlated to their ability to demonstrate “Analyze.” An example of Exemplary was a student who reported,

Respondent’s counsel seemed unprepared for the trial. For example, he did not have an exhibit book ready for the witnesses to use when testifying, but instead used a stack of papers that had tabs on it. Also, his cross-examination of the wife seemed as though it was impromptu, and he asked too many open-ended questions, losing control of the witness. His direct exam

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134. Four students did not answer.

135. One student did not answer.

136. The students also demonstrated the various knowledge dimensions in this assignment. See *supra* note 111 for the definitions of knowledge dimensions. For the factual dimension, the students were able to categorize and note the types of hearings they were watching. For the conceptual dimension, students were able to see judges, hearing officers, attorneys, *guardian ad litem*s, bailiffs, court clerks, psychologists, and social workers serving in their role in the courts. For the procedural dimension, students noted motions filed, the time of the hearings, and the order of steps that took place during the hearings. For the metacognitive dimension, students were able to articulate what added information they learned and how this current court hearing differed from previous hearings they may have attended.

137. Though some students submitted their reports in different submissions, a total of ninety-seven students participated. Six students submitted separate reports, and these were coded as different submissions since they were different experiences.

of his expert witness, respondent's domestic violence counselor, was choppy and he did not have a good rapport even though the counselor was his own witness. Respondent's counsel did not make appropriate objections to a) damaging hearsay evidence, b) damaging testimony that assumed facts not in evidence. Respondent tried to move exhibits into evidence during the trial that were already stipulated. Petitioner's counsel seemed better prepared, although she was discussing which exhibits she wanted to move into evidence with opposing counsel mere minutes before the trial was going to commence. She did a good job for the most part on direct examination of the wife, although she led her witness numerous times. She also asked questions that called for hearsay, but that could have been part of her strategy because her opposing counsel rarely objected to anything. On cross, she could have done a better job of asking her leading questions in the proper form, but she got the job done. For instance, she asked, "Did you recommend husband undergo domestic violence counseling?" instead of, "You recommended husband undergo DV counseling, didn't you?"<sup>138</sup>

An example of Accomplished was a response that read,

The Petitioner's attorney did not seem to do much except answer the court's questions. I would not practice in the same manner as the Petitioner's attorney. The Respondent's attorney seemed disorganized and unprepared. I would not have appeared in court without being prepared. A client pays a lot of money for representation[,] and their attorney should represent their client accordingly.<sup>139</sup>

An example of Developing was a student who responded,

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138. Student Response #41.

139. Student Response #52.

For both of these hearings I only saw one attorney present. Overall, I think he did a fairly good job. I have attended other hearings in which the counsel was much worse than he was. He did not really seem to get into the level of questioning that I would have chosen to, but that may have been a tactful decision as well. Overall, yes, I would practice as he did.<sup>140</sup>

An example of Beginning was a student who wrote, “I thought that the attorneys for each party did their jobs effectively and made sure their clients voices were heard. I am not too sure that this is the type of representation I myself would like to do.”<sup>141</sup>

Over 40% of the students ranked Exemplary on Question #6 “Did the proceedings seem fair to both parties?” connecting to the Evaluate level of Bloom’s Taxonomy. An example of Exemplary was a student who recorded,

Frankly, in some ways I felt uncomfortable with the fact we could go through with the hearing without the respondent parents present, but I understand the practical reasons we first give notice and then have a hearing regardless if the other side shows up. For the respondent father who was in prison, I feel the state should be obliged to bring him to the hearing, since the state is physically preventing him from being there (side note, do the punitive statutes encompass the idea that a confinement punishment includes the additional punishment of getting no say in civil proceedings?).<sup>142</sup>

An example of Accomplished was a response that read,

The majority of the motions, if not all, sought to modify or otherwise change preexisting court orders, and so the

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140. Student Response #75.

141. Student Response #77.

142. Student Response #6.

judge focused on questioning the motioning party on why they were seeking the change and why it was justified. This led to some cases where the respondent had little to contribute to the conversation. While this felt strange, it makes sense to focus more on justifying a change to an existing order than on reweighing the issue entirely.<sup>143</sup>

An example of Developing was a student who responded, “He demanded respect from everyone in the court room, but also gave it. He was practical about his rulings on objections and his overall ruling, and he did his best to let the father, pro se, get his chance to question the mother, which I liked.”<sup>144</sup>

An example of Beginning was a student who wrote, “Both were represented and both had the opportunity to express their concerns.”<sup>145</sup>

As Create is the highest-order thinking, I anticipated that there would be a lower percentage of students who ranked at Exemplary standard for Question #4 “If you had been handling this matter for one of the parties, how would you have conducted yourself?” Approximately one-third scored in the Exemplary category. And an example of Exemplary was a student who recorded,

Looking back, if I could re-do the hearing, I would ask more questions in order to get more details on direct examination of our clients. I think it would have been better to give the court more details about relevant information so that the Hearing Officer wouldn’t have to ask as many questions as she did once I ended my examination.<sup>146</sup>

An example of Accomplished was a response that read,

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143. Student Response #27.

144. Student Response #40.

145. Student Response #54.

146. Student Response #51. This student submitted a court watching from when the student was in clinic.

In the first case if I had been handling this matter for the wife I would have ensured I had the entire discovery necessary in order to proceed with trial. More important than that I would have tried to facilitate mediation between the spouses because Judge [x] mentioned their net assets were a total of \$0 yet they had spent a combined \$100,000 on legal fees. I think being willing to ensure the client is able to express their frustrations and receive validation of their emotions might have helped to bring them to the negotiating table. That would be much more in their interests than the situation they find themselves in.<sup>147</sup>

An example of Developing was a student who responded, “I would have conducted myself the same if it were either party. Specifically, I would have been respectful and prepared. All these parents wanted was to spend more time with their children. There was no reason to be adversarial.”<sup>148</sup>

An example of Beginning was a student who wrote, “The parties were very respectful to one another. The father was very quiet and only spoke when spoken to. I think I would try to have better responses.”<sup>149</sup>

### C. Themes

There were many ideas that emerged from the students’ work, but four themes stood: family court procedure; equity and fairness; professionalism; and interactions with court officials.

#### *1. Family Court Procedure*

Students reflected on procedural components of family law practice. Though the students were not directed to give factual accounts of the hearings, procedure, testimony, or rulings, some did find this to be a clear way to approach the assignment. Students remarked how judges

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147. Student Response #13.

148. Student Response #5.

149. Student Response #58.

and hearing officers worked to connect with clients and, where possible, reduce tensions. They noted an interplay of family law to other courts such as criminal court, the role of expert witnesses (such as clinicians, *guardian ad litem*s), and the formality or informality of rules of evidence or trial practices. As one student observed, “Even though a criminal investigation is currently underway, and there is a Protective Order against the father, the Petitioner had valid doubts about the grandparents’ ability to keep the father away from the girl; the Petitioner’s doubts were based on the grandparents’ potential violations of previous court orders.”<sup>150</sup>

Other students remarked on the informality of the family law proceeding. One stated, “I liked that it was less formal than a trial and the attorneys could fully explain their client’s positions without being interrupted by objections and rules of evidence. I also liked that the clients seemed to feel more comfortable with their attorney there to represent them.”<sup>151</sup> Another student noted, “The proceedings seemed a little less informal and the parties kind of just started talking or raised their hand to talk when they didn’t agree with what the other party was saying or when they wanted to comment after the other party finished talking.”<sup>152</sup> Students were intrigued when a courtroom proceeding seemed to mimic the behavior seen in television dramas. One noted, “Of the hearings, the most exciting one was the second one. It was what you would expect to see in most dramatized courtroom shows. The proceedings were more formal, and the emotions felt like they needed to be contained into the process of the hearing.”<sup>153</sup> Another stated,

The clinician’s impression is that the children are in a toxic environment where they are encouraged to hate their father. The children sound scripted in their statements. The clinician said that parental alienation is a form of emotional abuse to the children. After the report was sent out there were allegations of sexual abuse and neglect. CYFD got involved. The clinician thinks the

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150. Student Response #33.

151. Student Response #72.

152. Student Response #6.

153. Student Response #21.

timing of the allegations right after the report were suspicious. CYFD unsubstantiated the allegations.<sup>154</sup>

A student also raised some ethical procedural issues that appeared during a hearing of change of counsel, stating,

The withdrawing counsel seemed to have violated a swath of rules of professional conduct which appeared to have harmed his client and wasted the time of the court. He may have also misled the court in a previous proceeding to get his first continuance (regarding the property and bankruptcy).<sup>155</sup>

Additionally, COVID-19 realities were noted as issues related to parenting and public health orders were being debated. One student noted in a hearing that involved a parent who did not wear masks during their parenting time that the judge found a solution that protected the child without taking away from the parent-child relationship.<sup>156</sup> I am pleased that students noted experiences that are unique to family law and applied concepts they had covered in courses like Evidence and Trial Practice.

## 2. *Issues of Equity and Fairness*

Several students noted issues related to equity and fairness. Based on the responses, 48.5% of the respondents attended hearings that involved pro se clients, and they reported a vast difference in treatment of the pro se clients by judges as compared to opposing counsel.<sup>157</sup> Students reported that judges treated pro se litigants well. There were 90% (forty-five responses) who reported that the pro se clients were treated well by the judge or hearing officer. And 4% (two responses) reported that the pro se client was not treated well.<sup>158</sup> One student positively noted when watching a judge's behavior during a hearing,

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154. Student Response #3.

155. Student Response #46.

156. Student Response #98.

157. For additional ideas on how courts can serve pro se clients, see Andrew Budzinski, *Reforming Service of Process: An Access-to-Justice Framework*, 90 U. COL. L. REV. 167 (2019).

158. Two did not respond to the question directly. In one instance, though both parties were pro se, neither had shown up.



I sat in on a case where one party was Spanish speaking. I did not see any barriers that kept the case from flowing and coming to a determination. I saw patience and understanding by the presiding judge. I also saw a judge that could take it to another level but only if there was a need for it.<sup>159</sup>

Another student shared:

The hearing officer had to remind the pro se Respondent that he was unable to provide him with legal advice, but did recognize and give special consideration to the fact that the Respondent was appearing pro se by explaining in detail and at length what the standard procedure of the hearing would be and what each parties' respective rights and responsibilities were.<sup>160</sup>

Students documented a very different tone between opposing counsel and pro se clients.<sup>161</sup> However, related to treatment of pro se clients by opposing counsel, 8% (four responses) reported that opposing counsel treated the pro se clients well as opposed to the 24% (twelve responses) who reported that attorneys treated the pro se client in a dismissive manner. Students noted differences in behavior by attorneys with pro se clients. One student found, "The defendant [x] as pro se and was treated with respect from the entire court. The attorney treated him with respect almost like it was another attorney."<sup>162</sup> Another reported:

I truly respected this as appearing pro se is clearly a vulnerable position to be in. The attorney treated the father as if he was apathetic/implied that his parenting skills were inadequate. His tone was sometimes off-putting when communicating with the father. After the

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159. Student Response #13.

160. See Student Response #7.

161. Of the fifty students who saw hearings with pro se clients, thirty-eight saw hearings where both parties were pro se.

162. Student Response #99.

court proceeding, the attorney for the mother passively stated, “I don’t think we are even going to get a signature from him,” even though the father had stated his agreement to the Judge’s order.<sup>163</sup>

Fairness was another theme that students reflected on in their submissions. I left the definition of “fair” up to student interpretation to allow them to explore their own standard for evaluation as there are distinct types of “fairness” standards. Some used legal theory (code, laws, statutes, guidelines, objective criteria); equity theory (contribution of effort, energy, time, and/or money); culturally based/needs-based theory (group, not individually focused, shared resources); or faith-based theory (scripture, religious teachings, higher power). Some focused on judicial process and notice or “justice” broadly.<sup>164</sup> The vast majority (86.4%) noted the proceedings seemed “fair” to the parties. And 7.8% of responses reported that the proceedings did not seem “fair” to the parties. The most frequently reported concern was related to parents who were absent from the proceedings due to housing insecurity or incarceration. A student noted:

Specifically, I feel as though the petitioner (mother) was at a bit of a disadvantage. Not in the sense that the Court did not rule fairly, but the fact that she was unable to attend the hearing and advocate for herself. All the facts the Court knew about the mother were mainly based on what respondent (father) had said. Without the mother’s presence, there was surely potential that the father did not have the facts completely straight. . . . Furthermore, since she was recently released from prison she may be working and unable to have the day off.<sup>165</sup>

Several students reported on issues of domestic violence in the hearings they watched. One involved a parent who “had sent anti-Semitic and threatening e-mails to the guardian ad litem, [sic] he had

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163. Student Response #10.

164. As all of these are “fair” interpretations of “fair” and the larger goal is reflection to each student’s higher-order thinking, I leave it open to their personal interpretation. It could be interesting to study their personal choices and why they used the metric they chose.

165. Student Response #7.

attempted to assault the guardian ad litem, [sic]" intimidated opposing counsel at a local store, and sent opposing counsel threatening e-mails.<sup>166</sup> The judge ordered that a bailiff be present at all future hearings for the safety of all involved.<sup>167</sup> The child had expressed that he wanted nothing to do with that parent.<sup>168</sup> I am pleased that the students were able to notice systemic injustice in the courtroom, even if the participants seemed determined to achieve fairness or justice. This will help them to be better advocates for their clients and to improve the practice.

### 3. Professionalism

It is important to allow students to develop a sense of belonging and to learn professionalism. The students were asked to note their thoughts on the behaviors of the attorneys.<sup>169</sup> 32% (thirty-three responses) reported that they would practice in the manner of both attorneys present. They noted preparedness, the ability to respond directly and quickly to questions from the judge or hearing officer, and speaking up in defense of their client about procedural issues out of the client's control. 19.4% (twenty responses) reported they would not practice like the attorney they saw. They noted attorneys that were unprepared regarding the facts of the case such as the client's name and income; attorney decorum that showed frustration or an effort to antagonize the opposing spouse; and slovenly attire, lack of timeliness, and casual demeanors. 31% (thirty-two responses) reported that they would practice in the manner of one attorney present but not the other. The lawyers' communication styles or levels of preparedness were starkly contrasted. A student commented on the lack of preparation by capturing, "It didn't help that he appeared unprepared by not having a copy of his motion to withdraw with him. The new attorney was great

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166. Student Response #3.

167. Student Response #3.

168. Student Response #3. For more on ways children can be taught to recognize domestic violence, see Jane K. Stoeber, *Teach Your Children Well: Preventing Domestic Violence*, 13 SEATTLE J. FOR SOCIAL JUST. 515 (2014).

169. Seventeen students attended hearings that involved only pro se clients or were a different type of hearing, so they did not respond to this question.

at oral advocacy and had a difficult needle to thread where he was asking for a continuance before a judge who was not sympathetic.”<sup>170</sup>

Students additionally reflected on behavior as courtroom strategy. One student noted a combative model of lawyering in one of the attorneys and commented, “Husband’s attorney was a bit fast-talking for my taste and seemed a little unnecessarily combative. Wife’s attorney was a more junior attorney who seemed to be filling in for a more senior attorney and seemed less familiar with the details.”<sup>171</sup> Other students also found some adversarial behavior patterns by attorneys to be off-putting. A student noted,

The father’s attorney, in addition to being underprepared and unprofessional, was very pushy and adversarial toward the mother in [sic] the stand. I definitely do not want to practice in that manner. The mother’s attorney was professional in how she addressed the parties and well-prepared when asked for documents. I feel like this attorney’s professionalism demanded respect in the courtroom.<sup>172</sup>

Another student shared,

The respondent’s former attorney is a notable example of what to avoid as an attorney. Although the former attorney did not speak much in this hearing, it was clear from the proceeding that he had not performed his due diligence on behalf of his client. There were allegations that he had not provided the documents requested in discovery nor provided any of the documentation provided to him to the newly-appointed attorney. The judge used the term “trainwreck” [sic] repeatedly when referring to how the counsel had handled the case. He stated that the respondent was “woefully unprepared” and that his actions were a “disgrace” on the court.<sup>173</sup>

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170. Student Response #46.

171. Student Response #62.

172. Student Response #39.

173. Student Response #47.

This behavior seemed so egregious to students that another student who watched the same proceeding pondered, “I think it ultimately came down to both being new to the case and maybe unpreparedness stemming from possible attorney malpractice, because the previous attorney did not seem to have done his due diligence.”<sup>174</sup>

#### *4. Interacting with Court Officials*

Part of law student development is preparing to become members of the legal community. Understanding courtroom dynamics will improve their sense of legal cultural capital and help development a sense of belonging and value to the practice of law. Many students at our law school will practice in front of these judges, and it helps them become familiar, comfortable, and network with the judiciary. Out of the 103 responses, 90% (ninety-four responses) reported that the hearing was presided over by a judge. And 6.8% (seven responses) reported that a hearing officer was the presiding officer. One reported that it was an advisory consultant, and one did not report. I find this to be one of the most important points of the assignment.. A few judges had time after hearings to interact with the law students and this was well received by students, with one commenting, “Judge [x] then motioned me to the bench and very kindly spent about an hour chatting with me about all sorts of things, but mainly about the case I’d just observed and the underlying social and legal issues.”<sup>175</sup> Students commented on eye contact (or lack of it) by judges with parties and attorneys, taking the time to explain complex issues to pro se clients, and showing empathy for harrowing life issues, where one judge related to a respondent who had recently lost his mother. Students noted:

I would want Judge [x] to hear my case because he seems to enjoy what he does, follows the rules/law closely, and has no problem explaining any confusing terms/procedures. Additionally, Judge [x] seems to be predictable, which should be cherished. I know that he will look for the elements within the statute and weigh

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174. Student Response #2.

175. Student Response #44.

the credibility and evidence with a keen eye for detail, considering everything.<sup>176</sup>

Judge [x] almost appeared disinterested while listening to the case. However, he managed the courtroom well including monitoring time, giving reasonable rulings to objections, giving “straight talk” to both parties at the end, and issuing orders that seemed very reasonable. On a side note, he seemed very patient about dealing with a very tragic situation.<sup>177</sup>

This was one of my favorite results from the assignment. Students have received externship offers from judges and others have stated that they felt more connected to the legal community. Those who had little exposure or negative interactions with the judiciary – because of personal experiences – shared that they were developing more objectivity about the work.

#### **IV. OBSERVATIONS ON LESSONS LEARNED AND WHAT I MIGHT DO DIFFERENTLY IN THE FUTURE**

When determining learning outcomes and assessing whether students achieve the goals of the course and the needs of the profession, there is always an opportunity to refine learning outcomes. Students’ needs and preparedness are also changed by factors such as isolation due to COVID-19 and access to other experiential opportunities. This Section will discuss adjustments I will make to the activity going forward.

##### **A. The Connections Developed Between Theory and Practice**

There are ways to have students connect the classroom to the courtroom. We can also ask the students to point out something they heard or saw that connected directly to an issue we studied. There can also be a benefit to allowing for longer reflection time when a student completes the assignment. While some students would benefit from a

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176. Student Response #36.

177. Student Response #11.

“stream of consciousness” report, others might find more connections and lightbulb moments if they have more processing time than two days.

First year law students were permitted to take this course. I noticed that their in-class discussions became sharper as the semester progressed from interacting with upper-class students and making that first connection between theory and during courtroom visits. Also, the experience alone helped many students understand the practice and profession of law. Many 1L students seemed invigorated about watching a court hearing as it helped mark their entry into the legal profession. Some students told me anecdotally that they felt more comfortable seeing themselves as practitioners or were interested now in becoming judges. Helping 1Ls develop their professional identity and feel a sense of belonging in the legal community was a bonus I had not expected.

I was very interested in 2L students who said they had never been to a court hearing before. These students would begin their clinical rotation in the next academic year, and this activity would expand their lexicon and understanding before they have clients of their own. 3L students who reported having never been to court surprised me. They may have participated in clinics that focused on advocacy, policy work, or had a transactional focus.

At the midterm point of the semester, students had not yet explored child custody, child support, alternative dispute resolution, private ordering, or assisted reproductive technology. This means students had not yet learned in the classroom all the legal issues they observed in court.

Every semester, the classroom presented a different tone or area of passion. The semester begins with a discussion on constitutional protections for families, the influence of contractual standards in family law, and the purpose of the family in the twenty-first century. These themes return throughout the semester as we discuss every topic including cohabitation, same-sex marriage, polyamorous relationships, divorce, child custody, assisted reproductive technology, domestic violence, and private ordering. And though the learning outcomes and topics presented each semester were the same each year, the students organically coalesce around different guiding principle that influences our classroom discussions. Some cohorts are fascinated in unpacking the distinctions of family bonds compared to the right to contract. For

another cohort, the insights may focus on gender equality and equity in custody determinations or property distribution. Still other cohorts have pointed to issues of class and race and constitutional family privacy rights. Some reflect on balancing the interests of spouses, children, and the state. Each cohort might take a different area of focus because of the culmination of courtroom observations. Some ways to further higher-order thinking would be adding an additional court observation at the end of the semester, directly connecting the final exam to a professionalism policy question, or requiring students to follow up with pleadings related to the hearings they observed earlier in the semester.

### **B. The Move to Remote Hearings and the Effects on Participants**

In 2020, I had the assignment due March 13, 2020,<sup>178</sup> the last day before spring break. By March 12, 2020, the university and the world had changed drastically, and the courts cancelled all hearings expected to be held on March 13.<sup>179</sup> I have been looking for drastic differences in student responses from those who attended the hearings in person in 2019 and 2020 versus the 2021 cohort who attended hearings telephonically. Students reported finding value in attending telephonically, as lawyers practiced exactly this way over the last year and a half. They also understood that their classmates in clinical rotations used virtual and remote communication for client interviews and attendance in courtrooms.

Students were able to reflect on the impact virtual hearings had on the practice of law, noting that attorneys had varying levels of professionalism and different abilities when “accomplishing ‘courtroom decorum’ in the virtual setting.”<sup>180</sup> One noted that an attorney took a phone call while on mute but visible on the video camera screen.<sup>181</sup> One who had attended in person hearings in the past felt there was less tension in the telephonic hearings as the parties were removed from each other, noting:

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178. Maybe it is all my fault for setting the assignment deadline on Friday the 13th.

179. In fact, one student had planned to attend court that day and was worried about not being able to complete the assignment on time.

180. Student Response #97.

181. *See id.*



This is the first full telephonic hearing that I attended so that was new. Mr. [x] was in his office while his client dialed in from home; I am unsure if Ms. [y] was with her client, but her client also dialed in separately. During the in-person hearings, there is a lot of whispering between the attorneys and their clients. I am unsure about how that works here—whether the attorneys and clients have a separate chat or phone line they talk on. I think if I were a client, I would like to be near my attorney so that I can provide additional information or ask questions when I need to. As efficient as this hearing went, the lack of personal interaction is probably frustrating for the clients. However, the benefit is less drama from the client—no yelling, accusations, gesturing, eye-rolling, etc. I thought the court (the bailiff) handled the transitions well. This hearing was relatively smooth. There were no major technological problems.<sup>182</sup>

I encouraged the students to attend an in-person hearing when it was safe, so they can compare both experiences. A student reflected, “Overall, I am glad I had the opportunity to sit in on one of the hearings. While it would have been nice to attend in person, this COVID-adjusted hearing allowed me to see how a potential summer internship in the courts could end up being.”<sup>183</sup>

I did not detect any demonstrable distinctions in the experiences and reflections by the students about their courtroom observations in submissions nor in casual conversation. The hearings moved from being scheduled for thirty minutes to forty minutes to account for more delays related to calling into the hearings. Anecdotally, I felt that the 2021 cohort of students who attended telephonic hearings commented more about feeling like they were intruding by listening to the telephone hearing. I did hear students comment about feeling like they were intruding in previous years, but it felt more pronounced in 2021. This may be because students felt separated from the proceedings because

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182. Student Response #43.

183. Student Response #96.

they were not in person. Regardless of the format, the students still showed higher-order thinking in their written reflections.

### C. Explaining Higher-Order Thinking to Law Students

It is critical for doctrinal law professors to create opportunities to practice higher order thinking throughout the semester.<sup>184</sup> In this assignment, students demonstrated demonstrated all six levels of thinking based on Bloom's taxonomy.

The lower-order thinking skills were shown as students demonstrated Level 1 "Remember" by giving an accounting of the procedure, facts, or rulings. Level 2 "Understand" was demonstrated when students noted how judges and hearing officers treated pro se parties. One student noted:

The hearing officer had to remind the pro se Respondent that he was unable to provide him with legal advice, but did recognize and give special consideration to the fact that the Respondent was appearing pro se by explaining in detail and at length what the standard procedure of the hearing would be and what each parties' respective rights and responsibilities were.<sup>185</sup>

The same student additionally showed an understanding by making inferences concerning the status of the opposing party in the same case. The student, noting the mother had just been released from prison, and had not responded to the court summons stated, "Her current socioeconomic situation likely played a role in her lack of attendance. I think the ruling was fair, but I think it would have been more in the interest of justice for the mother to be present."<sup>186</sup> Another student connected the experience to substantive content covered in class, stating, "From this hearing specifically, I learned, like we discussed in

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184. In all my doctrinal course final exams, I include a policy question that is assessed using a Bloom's Taxonomy rubric. In fact, I made a nine-minute video explaining to students about Bloom's Taxonomy and the casebook method. Sonia Rankin, *Bloom's Taxonomy, the Casebook Method, and Policy Questions*, YOUTUBE (Dec. 15, 2020), <https://www.youtube.com/watch?v=67ogazhWVIQ>.

185. Student Response #7.

186. *Id.*

class, that both sides usually have a valid argument. Also, for hearings involving children, the court should always have the interests of the child in mind when making decisions.”<sup>187</sup> Level 3 “Apply” was demonstrated when students listened to the hearings and could sort out which issues would be relevant or not. One student stated, “I think sometimes the things they bring up sound petty or unrelated to the issue that the judge is getting at but I understand that is the nature of family law.”<sup>188</sup>

The higher-order thinking skills were also evidenced in the student response. Level 4 “Analyze” was demonstrated by a student when they noted how other parts of a person’s life can impact their courtroom behavior. A student stated, “The Attorneys did act professionally however I would hope to be less flustered but you never know what kind of day they have been through.”<sup>189</sup> Another student noted that though a judge made a ruling that was in line with the law, it harmed a parent facing homelessness: “This is not the fault of Court, but it highlights some of the issues that homeless individuals face when it comes to advocating for themselves in the legal system.”<sup>190</sup>

Level 5 “Evaluate” was a very critical stage that I was glad to see students demonstrate. Making decisions on what behaviors are of value in the family court setting demonstrates that they are prepared to next begin creating a better legal system. A student stated:

Family ties and the emotions that are rooted in the identity of your family are difficult to maintain, so it made me wonder if the area of family was a unique in that sense. Seeing the father look visibly upset but still talk as if there is nothing bothering him was like the struggle of family law trying to find the balance of conflict and resolve.<sup>191</sup>

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187. Student Response #96.

188. Student Response #98.

189. Student Response #98.

190. Student Response #7.

191. Student Response #102.

Level 6 “Create” was demonstrated as students began to ponder what type of procedure should be used regarding child custody proceedings. An astute student noted:

I learned that there is an appropriate and inappropriate tone for different types of hearings. Family court does not have to be adversarial, in fact the Court prefers if it were not that way. During the hearing, it appeared to me that unless there is some outrageous action by either of the parents the Judge is not going to make radical changes to an already determined parentage agreement. The Judge is going to base each parent’s time on what is in the child’s best interest, not what is easier for the parents. Hearings like the one I witnessed are better resolved between the parents or through motions. I don’t think hearings are in the best interest of the parents or the child.<sup>192</sup>

I learned that it is important to time when Bloom’s Taxonomy is introduced to law students. They are learning a new way of reasoning, and it is important to not present topics before they are ready to process them. In my first semester of teaching, I presented Bloom’s Taxonomy early in the semester, but it was the wrong time. Students were adjusting to law school, and most were not able or really interested in hearing that preparing case briefs were the lowest order of thinking.<sup>193</sup> I now introduce Bloom’s Taxonomy about one month before finals to help them prepare to answer my final exam policy question. Because this court watching assignment is completed in the first half of the semester, I will explain that the court watching experience, the later negotiation project, and learning Black letter law contributes to their higher-order thinking and practical applications to their forthcoming semester in the clinic during the summation lecture of the semester. This will be used to call back to my first lecture where I tell them there are benefits to combining theory and practice.

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192. Student Response #5.

193. See Gibson, *supra* note 98, at 17.

## D. Issues of Diversity, Equity, and Inclusion

As a Black woman law professor, the topic of diversity, equity, and inclusion is where I have done my most uncomfortable personal reflection. As initially created, the assignment did not explicitly require students to note issues of diversity, inclusion, and equity such as race, ethnicity, gender, sexual orientation, class, or disability. Some students chose to address these issues, and others did not.<sup>194</sup> Some students noted where issues of gender appeared, such as in parents arguing that a child's particular gender is a reason they should be given custody. Others noted concerns about the financial assets of the parties involved whether they were very high or very low. Though I do have a learning outcome in the course that addresses race, gender, and sexual orientation, I had not planned to assess it through this as I felt students may not have noticed yet that the topic was interwoven throughout the semester.<sup>195</sup> I was also unsure if the students are ready by midterms to truly unpack what they see happening in the courtroom related to these issues. I also wondered if asking them to view proceedings with a racial, gender, or sexual orientation lens would force them to look at the courtroom through my lens as opposed to their lenses, and I thought that allowing them to later reflect on what they did and did not notice would be a much more valuable tool for their professional growth in this field.

After the racial reckoning that impacted the United States in Summer 2020, I did create more intentional focus on teaching Torts the following fall with an analysis of race.<sup>196</sup> As an untenured Black female professor, I am consciously and unconsciously adjusting what and how I teach because of this reality. Though I have scholarship, data, and insight in support of the theories I present, students could decide to penalize me for raising the topics in a way that they do not like or penalize me simply for having the audacity to think I am educated or

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194. One student noted both attorneys were male, another pointed out how issues of puberty were used by a mother to argue for custody, and one noted the impact of language barriers in the legal proceeding.

195. One student noted, "Additionally, I understood how there could be potential for gender bias in the courts, like we've touched on briefly in class." Student Response #97.

196. A one-hour class lecture morphed into an impromptu one-hour post-class discussion with 90% of the class, and an additional evening virtual "happy hour" discussion with 1/3 of the class and other interested students, faculty, and staff members.

prepared to instruct them on the law and its impact.<sup>197</sup> In communication, conversation by a speaker can be received as confrontation by a recipient. Research highlights that this is a particular challenge for Black women, especially those who are pre-tenure.<sup>198</sup>

And despite efforts at increasing equity in law school experiences, there is still a disconnect between the racial, ethnic, gender, and sexual orientation makeup between students, faculty, and clients in the community.<sup>199</sup> Though some students have expressed concerns about how I teach about bias, many more have commented on how glad they were to have discussions in the classroom connecting substantive law to current events and racial inequity.

As it relates to the court observation, student comments often reflected their own perceptions, even if they were not cognizant of their lens. Students who stated whether they felt a witness or accusation was credible, showed they were injecting their subjective perception into what they were viewing.<sup>200</sup> I am not opposed to this, but I should have provided a space that encouraged them to reflect on how their accounting might be influenced by their biases. One student reflected on this issue unprompted, stating,

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197. See Sherrée Wilson, *They Forgot Mammy Had a Brain*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez ed., 2012) (outlining the constant challenges of being viewed as “other” and therefore believed to be inferior and that Black women lack necessary qualifications); Aretha Faye Marbley, *Finding My Voice: An African-American Female Professor at a Predominantly White University*, 22 ADVANCING WOMEN IN LEADERSHIP ONLINE J. (2007), <https://journals.tdl.org/awl/index.php/awl/article/download/257/232>; MEERA E. DEO, UNEQUAL PRO. RACE AND GENDER IN LEGAL ACADEMIA (2019) (discussing the intersectional discrimination and implicit bias about the presumption of incompetence in women of color law faculty); Emma Coleman Jordan, *Images of Black Women in the Legal Academy*, 6 BERKELEY WOMEN’S L. J. 1 (1990) (dedicating the entire volume to the unique experience of Black female law professor); Meera Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015).

198. See Marbley, *supra* note 197.

199. For instance, in New Mexico, nearly 60% of the population is made up of Black, Indigenous, Hispanic, and other communities of color, though lawyers of “color” represent about 20% of the bar. Denise Chanez & Sonia Gipson Rankin, *UNM Law’s New Co-Deans Right for School*, Albuquerque Journal, <https://www.abqjournal.com/605238/unm-laws-new-codeans-right-for-school.html>.

200. A student wrote, “The children have an unhealthy attachment with their mother. It is ‘cult-like.’” Student Response #3. If I would have provided a prompting for the student, they would have reflected on their language more and thought about personal bias.

From personal experience, I would have normally sided with the mother in such a situation, but as time went on, I realized the father had the better argument. I constantly had to remind myself that I couldn't be biased towards one side over the other. As a bystander to the hearing, I could see how difficult it would be for a judge or other member of the court to not be biased either. Thus, my respect for the members of the court grew after attending this hearing because this impartiality is something I found somewhat difficult to maintain and a skill all should strive to improve on, not just those in the legal field.<sup>201</sup>

In addition, I will be mindful of a universal design format. Although this has not yet emerged, I will ensure that all students know how to access the telecommunications system for the deaf (TDD) that the court has available to people attending telephonic hearings so that no student feels uncomfortable asking for this accommodation.<sup>202</sup> I will also work with the University of New Mexico's Accessibility Resource Center to see what other proactive steps I can take to improve universal design of this assignment and my classroom. It is also important to reflect on the impact of students who could only stay for the required one hour observation versus students who had the flexibility to stay longer. I am comfortable with this distinction as students share lessons learned from longer observations throughout the semester during class discussions.

I now feel that some students will not look for issues in diversity, equity, and inclusion unless professors direct the opportunity. This activity and assignment is an excellent opportunity to reinforce the other themes raised over the course of the semester. In the future, I will provide readings on equity and inclusion in family law for the students to review before attending court.<sup>203</sup> Additionally, I will add the

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201. Student Response #97.

202. See *Second Judicial District Court: Language Access Plan*, N.M. COURTS, <https://seconddistrictcourt.nmcourts.gov/home/court-administration/language-access-plan/> (last visited July 28, 2021).

203. See Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012); Twila Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481 (1994).

following two questions: “*Did you notice any issues related to equity and inclusion (such as race, gender, sexual orientation, language, physical ability, mental health, or mental illness) raised in the hearing?*” and “*Could you see any bias from your own personal experiences, beliefs, or values in how you viewed the proceedings, parties, attorneys or judges?*” Furthermore, I will send out an anonymous survey to former students about the impact of the observations and what additional suggestions they may have. I have decided to not wait until tenure to encourage students in this area, and I look forward to watching even more unique creative comments and insights from students’ observations in the future.

## V. CONCLUSION

In many ways, this Article is well timed. In 2020-21, students, faculty, and administrators worried about the quality of virtual legal education and its ability to properly prepare students for the practice of law because of the COVID-19 pandemic. It is shortsighted to focus solely on *what is* the practice of family law if we are not equally encouraged to explore *what can be*. Moreover, post-COVID-19 provides the perfect opportunity to pause, reflect, and reset practices in our classrooms. Court watching in doctrinal classrooms, which can be evaluated in many ways, including Bloom’s Taxonomy, supports the skill of developing theoretical proficiency and practical lawyering skills. The MacCrate Report, ABA Standards, and the FLER Project have provided all the foundational rationale necessary to incorporate experiential learning activities in doctrinal classrooms. It is now time for doctrinal faculty to boldly incorporate innovation in our traditional classrooms. The students have asked for it, research supports it, and the legal community needs it.

Bethune-Cookman University, founded by the great educator Mary McCleod Bethune, has a motto that states, “Enter to learn; depart to serve.”<sup>204</sup> Our students enter our classrooms with a goal to serve in courtrooms, boardrooms, classrooms, and administrations. They will become practitioners, judges, legal theorists, and involved community citizens who will help guide how our nation supports families. We must

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204. *Who We Are*, BETHUNE-COOKMAN UNIV., <https://www.cookman.edu/about/index.html> (last visited July 27, 2021).



incorporate in all points of a law student's experience opportunities to reflect on their thinking and develop their agency. They must be encouraged to practice higher orders of thinking and explore concrete and abstract ways of knowing. Doctrinal courses can prepare students for success on the bar exam, practical skills of the practice of law, and the heart and spirit to serve our community with care and empathy. Courtroom observation activities allow students to decide on the type of lawyers and advocates they want to be, see substantive law in practice, and better understand why family law is both structured in a way that is simultaneously concrete and fluid.

Creating laws and policies that will guide how our nation supports its families is easier with some experience and context. Students will be better prepared if they are encouraged to practice higher orders of thinking as they participate in the classroom. These skills can then be transferred to their practice leading to a more cognitively aware population of litigators and legal thinkers.

## APPENDIX

**Relevant Court Watching Assignment Syllabus Language 2021****Student Learning Outcomes.**

Upon completion of the course, you should be able to engage in and demonstrate knowledge of:

1. the elements and related doctrines of substantive family law as well as the various legal processes for dispute resolution and private ordering in family law. You will demonstrate mastery through a negotiation exercise, examinations, class activities, and class discussions (ABA Standard 302 (a));
2. how to articulate legal issues presented in a fact situation, apply the relevant family law and policies to facts, construct arguments, defenses, and counterarguments to scenarios, and reach appropriate legal conclusions. You will demonstrate mastery through classroom activities and examinations (ABA Standard 302 (b));
3. how to explore cultural competency of gender, race, ethnicity, class, sexual orientation, and its influence on legal rulemaking in the area of Family Law. You will demonstrate mastery through classroom discussions (ABA Standard 302 (d));
4. the basic skills required to develop and evaluate potential solutions and strategies for resolving them through class discussions (ABA Standard 302 (b));
5. how to speak and write clearly, logically, and effectively, in a manner appropriate to the audience and purpose through class activities, exams, and class discussions (ABA Standard 302 (b) & 302 (d)).

Finally, although this is not a “skills” course (by the criteria of the ABA), this course will include some attention to professional skills needed for competent and ethical participation as members of the legal profession engaged in family law practice.

**Court Watching Synopsis.**

You will “virtually” attend a family law matter at the court (via telephone). This assignment may change depending on court rules during the public health emergency. Additional details will be distributed in the first two weeks of the semester.

**Grading.**

Your final grade will be weighted as follows:

Court Watching Synopsis*:	15%
Quizzes:	5%
Negotiation Project:	20%
Final exam:	60%

*\*Depending on rules during the public health emergency*

**Family Law Court Watching Form 2021**

Name:

Date of Hearing:

Presiding Judge:

Type of  
Proceeding:

*Please submit this form within two days of the hearing you watched.  
You can write as much as you need to share your experience.*

1. Who was in the courtroom? What were their roles?
2. Would you want to practice in the manner of the attorneys you saw? Why or why not?
3. If one or more of the parties was *pro se*, how was the party treated? Why?
4. If you had been handling this matter for one of the parties, how would you have conducted yourself? Why?
5. Would you want that judge to hear your case? Why or why not?
6. Did the proceedings seem fair to both parties? Why or why not?
7. If this is not the first hearing you've watched, what additional insights have you gained since the last hearing you watched?
8. What else did you learn?
9. Time spent: