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1989

Reconsidering Role Assumption in Clinical Education

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RECONSIDERING ROLE ASSUMPTION
IN CLINICAL EDUCATION*

MINNA J. KOTKIN**

I. INTRODUCTION

Over the last twenty years, clinical education has become a fixture in the law school curriculum.[1] Few still debate the question whether some form of instruction in client-oriented lawyering is a legitimate academic function or is best left to post-graduate experience. The current dialogue about clinical education relates more to issues of scope and technique: the definition and breadth of the educational objectives in clinical programs;[2] the relative merits of various clinical formats, including live client, simulation and extern models;[3] the integration of clinical methodology into the traditional classroom;[4] and the pedagogic tools for

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1. An indication of clinical education's acceptance is found in recent articles theorizing on what these programs will look like in the next century. *See* LaFrance, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352 (1987); Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984). *See also A Look at Professional Skills: Progress, It's Here to Stay*, 1 SYLLABUS, Dec. 1987, at 1. It is safe to say that every law school has some form of clinical education today. Almost 10 years ago, when the Council on Legal Education for Professional Responsibility conducted its last of some 10 annual surveys of clinical programs, 134 law schools (more than 90% of the total number) had at least one clinical offering. Council on Legal Education for Professional Responsibility, Survey and Directory of Clinical Legal Education 1978-1979 (CLEPR 1979). An informal survey conducted in 1985 indicated that all law schools had at least one clinical program or practice-oriented course. *See* Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education*, 36 J. LEGAL EDUC. 35, n. 2 (1986).

2. For an exhaustive list of possible goals and purposes, *see* Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985). *See also* Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Direction in Lawyering Education*, 4 ANT. L. J. 287 (1986); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 4 B.Y.U.L. REV. 695, 879-86 (1977); Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 4 B.Y.U.L. REV. 1025 (1977). An attempt to define goals is also found in Report of the Association of American Law Schools—American Bar Association Committee on Guidelines for Clinical Legal Education, *Guidelines for Clinical Legal Education* (1980).

3. *See, e.g.*, Condlin, *"Tastes Great, Less Filing": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986) (suggesting a return to extern programs); Hegland, *Condlin's Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986) (describing the difficulties in the externship model); Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA. L.J. 95 (1987); M. MELTSNER & P. SCHRAG, TOWARD SIMULATION IN LEGAL EDUCATION: AN EXPERIMENTAL COURSE IN PRE-TRIAL LITIGATION (1975).

4. The interest in integration was manifest at the October 1987 National Conference on Professional Skills and Legal Education, sponsored by the American Bar Association Section of Legal Education and Admissions to the Bar and the University of New Mexico School of Law, at which a number of programs designed to combine clinical methodology with traditional course offerings were presented. Several of those efforts are described in this publication. *See also Innovative Clinic Programs*, SYLLABUS, Dec. 1987, at 5. National attention has focused also on the attempt at CUNY Law School to develop a fully integrated three year curriculum. *See* Halperin, *A New Direction in Legal Education: The CUNY Law School at Queens College*, 10 NOVA L.J. 549 (1986) (describing how clinical methodology, through simulation and live client representation, is incorporated into the course of study); Kleinberg & Bannes, *CUNY Law School: Outside Perspectives and Reflections*, 12 NOVA L.J. 1 (1987). Reports on similar efforts at other schools are beginning to appear. *See* Abrams & Masinter, *The New Nova Curriculum: Training Lawyers for the Twenty-First Century*, 12 NOVA L.J. 77 (1987).

more effective and efficient individual student supervision.[5]

As the discussion of clinical education has moved from the "whether" to the "how," little attention has been devoted to analyzing exactly what are the elements of this teaching methodology. Rather, with the institutionalization of clinics as part of the curriculum, a normative model of clinical instruction has emerged. The model is generally described as a two-part process: (1) the student acts in the role of a lawyer representing a real or imaginary client, and (2) the student and the teacher then engage in a dialogue designed to enable the student to learn from the lawyering experience.[6] In essence, the student's performance "in role" is the casebook for clinical instruction, as Professor Amsterdam has suggested.[7]

Those concerned with improving or expanding clinical methodology have focused exclusively on the second element of this model: the student-teacher interaction. Just as classroom teachers may from time to time change or supplement their casebooks, or even develop their own materials, clinicians thus far have only tinkered with the "in role" experience, experimenting with the substance of the live or simulated cases to which students are assigned. The concept of the student "in role," however, is considered the bedrock of the clinical experience.

This Article is an attempt to critically examine the proposition that clinical methodology, with its emphasis on individualized instruction, necessarily requires an exclusive adherence to the role assumption norm. It begins with a consideration of how this presumed norm may be constraining the discussion of significant issues in clinical education. It then explores how the norm of role assumption came to be, and suggests that its historical antecedents may no longer provide a sufficient rationale for its continuance as an exclusive model. The next section draws on my experience as a clinical teacher and the study of learning theory to demonstrate that role assumption does not facilitate learning for every student. Section IV offers suggestions for means of identifying students who may encounter difficulties with the role assumption model. Finally, this Article outlines several curricular modifications that might serve as an alternative to rigid utilization of the role assumption format. These approaches share the central concept that some students need the opportunity to observe and critically examine

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5. *See, e.g.*, Aiken, *supra* note 2, at 1068-85; Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade*, 33 J. LEGAL EDUC. 604 (1983); Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (1982); Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L.REV. 284 (1981); Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Ellman & Scott, *Why Is Effective Supervision So Hard?* (May 17, 1986) (discussion paper, A.A.L.S., National Clinical Teachers Conference, May 17-22, 1986, University of Colorado).

6. Anthony Amsterdam's description most articulately reflects innumerable others: "The students [deal] with the problem *in role*. They [bear] the responsibility for decision and action to solve the problem." Then, in rigorous *post mortem* critical review, "The students' own thinking and behavior in role [are] thus made the central subject of study, just as, in a traditional course, a judicial opinion or a statute [is] the subject of study." Amsterdam, *supra* note 1, at 616-17. *See also* Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANT. L.J. 301 (1986); Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973).

7. Amsterdam, *supra* note 1, at 616-17.

the lawyering of others, before they can effectively learn "in role." Simply put, the methodology proposes utilization of role modeling as well as role assumption, it calls for clinical teachers to engage in direct case handling, in addition to their traditional supervisory role, and to use their own lawyering as a "casebook" for clinical study.

At first glance, questioning the concept of role assumption may seem almost heretical to clinical teachers. The student acting in role is a central theme of virtually every clinical program, and indeed, is a major factor distinguishing clinical from traditional methods of legal education. In reexamining the concept, however, I do not mean to suggest that there is something amiss at the heart of clinical education. Rather, I posit only that the methodology may not create an efficient learning experience for every student. The traditional law school curriculum has been criticized as benefiting only that group of students who learn well from one teaching style, and the development of clinical education was in part a response to that criticism. Clinical education may now be falling into a similar trap, effectively teaching only those students whose learning style enables them to successfully immerse themselves "in role."

II. THE IMPACT OF ROLE ASSUMPTION
ON CLINICAL METHODOLOGY

Defining clinical education as a methodology premised upon role assumption has far-reaching implications for clinical teachers and others concerned with curricular innovation. First, this presumption limits a teacher's ability to provide the individualized learning experience that is the essence of clinical instruction. In addition, it hinders clinicians' efforts to expand their teaching goals beyond the notion of "skills training"; it skews the debate over live client versus simulated experiences; and it thwarts the integration of clinical methodology into the traditional classroom.

My concerns with the role assumption model began with a sense that it was circumscribing clinicians' exploration of more effective teaching techniques. Much of the literature on clinical teaching,[8] the frequent professional conferences,[9] and the informal interchange among clinicians focus on the second prong of the methodology: the process by which student and teacher examine the student's performance in role. Various names have been attached to the process—critique, feedback, mutual inquiry—and attempts have been made to formalize and define it. Thus, clinicians debate directive versus non-directive approaches, and techniques for encouraging students to analyze their own performance. By concentrating only on the feedback half of the clinical model, however, and not addressing the question of role assumption, clinicians' efforts to improve their teaching methodology may prove futile.

Role assumption also has not been examined in terms of the debate over what should be the goals of clinical education. At least some portion of the academic

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8. *See supra* note 5.

9. The National Clinical Teachers Conferences, sponsored annually since 1978 by the American Association of Law Schools, which provide the opportunity for in-depth exploration of teaching methodology, have been devoted largely to issues relating to the teacher-student supervisory process.

community views clinical education as a teaching methodology designed to provide skills training, answering the call of the bench and bar for most competent lawyers.[10] Even the concept of "skills training" can be interpreted narrowly (i.e. proper format for a cross-examination question) or can be broadly construed (i.e. problem solving through analytical integration of law and fact). Others see clinical education as an attempt to teach an on-going process: to encourage a habit of self-analysis and reflection that will, in the end, result in continuing professional development.[11] Still others consider clinical education as an alternative methodology for the teaching of substantive law or concepts of professional responsibility.[12] Finally, some clinicians set as their goal to explore the broader issues of the law's and lawyers' relationship to society, examining what social, political and psychological factors have an impact on an individual's ability to manipulate the rule of law.[13] Given this range of goals, the question arises whether any one instructional methodology is best suited to accomplish all of them. Role assumption surely serves an important function in the realm of narrowly defined skills training, and in conveying the realities of professional responsibility. Its utility as a vehicle for other goals may be more problematic, however. The demands of role assumption on the student and the teacher responsible for supervision, particularly in the live-client clinic, may lead to a concentration on "skills" aspects at the expense of a consideration of broader themes.

Another debate of some significance concerns the live-client as compared to the simulation models of clinical education.[14] Those who favor the former look to its richness and concreteness, as well as to the added incentive provided by a person in need of legal help. The simulated experience, on the other hand, provides controlled learning, where pace and substance can both be predetermined, unencumbered by the vicissitudes of actual representation. From an institutional perspective, simulation allows for the conservation of faculty time and resources, which probably motivates its strongest adherents.[15] Both models, however, presume role assumption as the central student activity.[16] Many of the advantages of both models might be achieved if role assumption was not con-

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10. The call for pure skills training has come largely from the bar and the judiciary. *See, e.g.,* Burger, *The Special Skills of Advocacy,* 42 FORDHAM L. REV. 227 (1973); Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel,* 49 FORDHAM L. REV. 1 (1980).

11. *See,* Bloch, *The Andragogical Basis of Clinical Legal Education,* 35 VAND. L. REV. 321, 325 (1982). Bloch suggests that the clinical methodology, in itself, is the most lasting and substantial justification for clinical education.

12. *See, e.g.,* Wizner & Curtis, *"Here's What We Do": Some Notes About Clinical Legal Education,* 29 CLEV. ST. L. REV. 673, 678 (1980) (teaching of substantive law, one of two primary goals).

13. *See, e.g.,* Condlin, *supra* note 3, at 46-48. Condlin contends that the various objectives of clinical education "exist in a hierarchy" with critique—defined as "understanding and evaluating the manner in which [skills] practices contribute to the justice of the legal system"—at the top.

14. *See, e.g.,* Tyler & Catz, *The Contradictions of Clinical Education,* 29 CLEV. ST. L. REV. 693, 694 (1980) (claiming that the potential of clinical education "will not be realized so long as law school clinical programs rely primarily on 'live client' cases").

15. Tyler & Catz, *supra* note 14, at 700-05, catalogue a number of disincentives to handling live cases, including frustration on the part of clinical teachers and difficulties in maintaining experienced faculty, as well as the typical complaint of financial burden.

16. In his description of clinical methodology, *see supra* note 6, Amsterdam considers problems presented either by simulation or by actual clients to be equally appropriate for students' "in role" involvement. Amsterdam, *supra* note 1, at 616.

sidered the only mode of clinical teaching. The critical observation of lawyering in a live case could result in some conservation of resources, and control over the experience, without the artificiality and reduced motivation that plagues simulated experiences.

Finally, a more flexible approach to role assumption might contribute to curricular innovation outside of clinical programs. Clinical teaching methodology recently has begun to intrigue substantial numbers of traditional teachers. Professional workshops and periodicals are filled with descriptions of efforts at using simulation or role-play exercises in first year and upper class courses.[17] The goals of these experiments appear to vary: some are directed at providing skills training along with substantive law and doctrinal analysis; others are directed to positing an alternative to Socratic dialogue or the problem method for the teaching of doctrine and case analysis. Whatever the goal, however, role-assumption is being lifted increasingly out of the clinic and into the classroom. While these efforts warm the hearts of clinicians, many traditional teachers are daunted by the magnitude of time and effort that simulation and role-play entail, in development, execution, and feedback. Clinical methodology based on critical observation may be better suited to classroom experimentation than exercises that rely solely on role assumption.

III. HOW ROLE ASSUMPTION BECAME THE NORM

Clinical education, in its modern form,[18] began in the 1960's out of a confluence of circumstances. The political climate of the period led to a general dissatisfaction with the "relevance" of higher education, a complaint from which the law schools were not exempted.[19] The earlier years of the civil rights movement put lawyers in the forefront of social change, and led to an influx of politically liberal undergraduates into the law schools.[20] After a year of the case method, many of these students decided that they had to devote the remaining two years to something more in keeping with their motivation to become lawyers

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17. *See, e.g.*, Galanter, *Worlds of Deals: Using Negotiation to Teach About Legal Process*, 34 J. LEGAL EDUC. 268 (1984); Brown, *Simulation Teaching: A Twenty-Second Semester Report*, 34 J. LEGAL EDUC. 638 (1984) (description of a semester long simulation with students in role used to teach a course in Land Development Law); Brest, *A First-Year Course in the "Lawyering Process,"* 32 J. LEGAL EDUC. 344 (1982); Hegland, *Fun and Games in the First Year: Contracts by Roleplay*, 31 J. LEGAL EDUC. 534 (1981).

18. As almost every writer on the subject of clinical education has noted, the concept of lawyering training as part of the law school curriculum did not emerge in recent years without historical foundation or precedent, but dates back at least to the 1920's. *See, e.g.*, Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929). For a full history, *see* Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974).

19. *See, e.g.*, Gorman, *Clinical Legal Education: A Prospectus*, 44 S. CAL. L. REV. 537, 554 (1971) ("Law schools have, in recent days, more freely acknowledged their role in law reform and community service (just as, writ larger, has the University.")).

20. *Id.* at 554-55 (noting, in 1971, the increase in the number of college students who, in choosing a professional direction, consider the opportunities for community service, and encouraging the law schools to attract these students by making available clinical programs); Bellow & Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664, 668-69 (commenting on the changes in law students' career patterns and interests, and their demands for "personal and institutional involvement in contemporary social problems").

in the first place, away from the ivory tower from which the students thought they were escaping. Law school faculties also were not immune from the spirit of the times. There, also, criticisms of the traditional curriculum were gaining force[21] and concern for service to the disadvantaged was growing.[22]

During this same period, the government entered the arena of providing legal services for the indigent on a large scale.[23] Federally-funded legal services offices were established across the country. Foundations also were pouring money into newly formed public interest law organizations.[24] Underfunded and overworked, these offices saw law students as a means of substantially increasing their impact.

Thus, clinical education began with law students working in local legal services offices.[25] All parties involved—the law schools, the students, and the offices— saw this as a service oriented effort, however, separate from the function of traditional legal education.[26] With service as the driving force, it was assumed that students should act as lawyers, taking on as much responsibility as their time permitted. The young attorneys who staffed these offices had little more experience than the students, and had developed their skills without the benefit of formal training.[27] The students were expected to pick up their skills in the same way. This methodology conformed with the students' goals also. Research and passive learning were what the students had hoped to leave behind.

This unstructured alliance between law schools and legal services programs might well have remained the status quo, had it not been for the Ford Foundation's creation of the Council on Legal Education and Professional Responsibility, known as CLEPR.[28] CLEPR was the real impetus for law schools to begin to

21. *See generally* H. PACKER & T. EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION (1972).

22. *See, e.g.*, Broden, *A Role for Law Schools in OEO's Legal Services Program*, 41 NOTRE DAME LAW. 898 (1966) (noting that government involvement in antipoverty programs had "quickened the consciences of many legal educators"); Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U.L. REV. 337, 341 (1987). This panel discussion gives an excellent picture of the mood surrounding the beginnings of the modern clinical education movement, through the eyes of some of those who were there at the time. Dean Hill Rivkin comments, "The fervor of the sixties penetrated law schools quite passionately." Panel Discussion at 341.

23. *See* Economic Opportunity Act of 1964, Pub.L. No. 88-452, 78 Stat. 508 (codified as amended at 42 U.S.C. §2996 (Supp. 1988)); Bamberger, *The Legal Services Program of the Office of Economic Opportunity*, 41 NOTRE DAME LAW. 847 (1966); Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967); Symposium, *The Availability of Counsel and Group Legal Services*, 12 UCLA L. REV. 279 (1965).

24. *See* COUNCIL FOR PUBLIC INTEREST LAW, BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA 226-44 (1976); FORD FOUNDATION, PUBLIC INTEREST LAW: FIVE YEARS LATER 9 (1976); FORD FOUNDATION, THE PUBLIC INTEREST LAW FIRM: NEW VOICES FOR NEW CONSTITUENCIES 36-39 (1973); Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970).

25. One of the first law review symposia on clinical education, published in 1971, describing a number of programs, shows the pre-eminence of this model. *See* Gorman, *supra* note 19, at 540 (the "most common form of clinical program involves the assignment of law students to a legal aid clinic or Community Legal Services offices"); Redlich, *Perceptions of a Clinical Program*, 44 S. CAL. L. REV. 574, 578 (1971) (describing the University of Wisconsin Law School program's utilization of a local legal services center as a base of operations); LaFrance, *Clinical Education: "To Turn Ideals into Effective Vision,"* 44 S. CAL. L. REV. 624, 636 (1971) (describing an externship program at Arizona State). *See also* Broden, *supra* note 22, at 898, noting that "a breath of fresh air has blown into many law schools" as a result of associations with legal services programs.

26. *See* Munger, *Clinical Legal Education: The Case Against Separatism*, 29 CLEV. ST. L. REV. 715, 719-21 (1980).

27. *See* Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NAT'L LEGAL AID & DEFENDERS A. BRIEFCASE 106 (1977).

28. CLEPR was founded in 1968, having been preceded by smaller scale Ford Foundation efforts to promote clinical education beginning in the early 1960's. *See* Grossman, *supra* note 18. In its first five

think seriously about clinical education. It provided seed money for the development of programs that would make available legal services to the poor within the academic-setting. Faculty members sympathetic with CLEPR's goals[29] saw the opportunity of hiring lawyers to staff offices in the law schools, and the first in-house clinics were established.

The lawyers staffing these programs were largely drawn from the legal services and public interest community.[30] They saw themselves, and were seen as, separate from the faculty. In large part, these lawyers simply replicated the service models with which they were familiar. The "good" students figured out how to help their clients, asking questions and getting advice. The lawyers served the advice function, and made sure no one was committing malpractice. Volume of service remained the primary concern, and therefore role-assumption by students was presumed.

In the mid-1970's, clinical education began to move away from its service-driven beginnings, and teaching of skills took on a new importance.[31] Again, several factors probably led to the change. Students lost some of their political motivation and became more career oriented. Clinical teachers felt the influence of their surroundings and adopted the values of those around them in the academic community.[32] They became conscious of and discontented with differences in pay, status, perquisites, and title.[33] To begin to move towards parity, clinical teachers had to convince the traditional faculty that they were teachers also, not just lawyers practicing in a law school setting. Thus began the move towards limited caseloads and beyond that to simulation. Serious thinking about teaching

years, the Foundation made grants of some six million dollars to law schools for the development of clinical programs, and when it went out of business in 1980, the total approached ten million. *See* Survey, *supra* note 1.

29. CLEPR's goals were clearly directed toward increasing the services available to the poor, and developing a consciousness of the need for legal services in the academic community. An announcement of its formation published in the June 13, 1968 issue of the *New York Law Journal*, and quoted in Redlich, *supra* note 25, at 577 n. 17, states that programs seeking funding "should reinforce and broaden the existing social concerns of certain law students and professors through direct contact with injustice and misery. . . ." CLEPR's original emphasis was on encouraging law schools to supplement the work-force of local legal services offices, but CLEPR later shifted its priorities to support for clinics housed and staffed directly by the schools. The writings of William Pincus, the founder and President of CLEPR throughout its twelve years of existence, show this progression. *See, e.g.*, Pincus, *Programs to Supplement Law Offices for the Poor*, 41 NOTRE DAME LAW. 887 (1966); Pincus, *Clinical Legal Education in the United States*, 49 AUST. L.J. 420 (1975); *Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345, 348 (1980) (prefatory remarks by William Pincus, and appendix to prefatory remarks of John M. Ferren: Selected Publications of William Pincus).

30. *See* Panel Discussion, *supra* note 22, at 344 (remarks of Philip Schrag); Meltsner & Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978); Meltsner & Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976).

31. *See* Klare, *The Law School Curriculum in the 1980's: What's Left?*, 32 J. LEGAL EDUC. 336, 342 (1982) (noting "a tendency [of clinical education] toward drift[ing] away from its initial political moorings"). Rivkin calls this trend "the gentrification of clinical legal education." Panel Discussion, *supra* note 22, at 342.

32. Barnhizer comments on this phenomenon, noting the clinical faculty's "human need" to be accepted by their traditional faculty peers and an increasing disinclination to "strongly confront" the values of the existing educational system. Barnhizer, *supra* note 2, at 1033. He suggests that because of peer pressure and vested interests, clinicians have become "a rough parody of the traditional academic." *Id.* at 1033, 1034 n. 17.

33. *See* Munger, *supra* note 26, at 721. The ongoing battle for parity, spearheaded by the A.A.L.S. Section on Clinical Education, led to the adoption in 1984 of American Bar Association Accreditation Standard 405(e), which recommends, if not requires, that clinicians be afforded a measure of job security in the form of tenure or long-term contract eligibility.

methodology and scholarship started to take hold as a valuable activity for clinicians.[34]

From the viewpoint of the traditional faculty, the outside funds for clinical education were drying up, and law schools had to support expensive programs requiring very low faculty-students ratios.[35] Administrations were not interested in simply funding more legal services programs for poor people. The institutions wanted to be assured that teaching was the central concern of these programs and, therefore, found themselves paying attention for the first time to what was actually going on in these law offices.

This chain of development led to a concentration of attention on how clinicians were using students' practical experiences to achieve generalized learning about the lawyering process. It was no longer considered appropriate by many to even consider service as a valued goal of clinical programs.[36] Despite this radical change over a relatively short time period, however, the concept of role assumption by students was not questioned by students, clinicians, or traditional faculty.

Several factors may explain this lack of critical thinking about role assumption. First, with the decline of political concern, an alternate motivation for student participation in clinical programs was necessary. The lure of acting like a real lawyer replaced service as the selling point to students. Clinicians "sold" their programs by emphasizing their advantages over the traditional non-law school learning experiences: law firm clerkships. The clinic did not limit the student to doing research, filing papers, and watching lawyers work. To the contrary, in the clinic, a student could actually represent a client, try a case, take a deposition, argue a motion. In fact, without role assumption, the clinic had little to offer, compared to a part-time clerkship that brought in a paycheck and might turn into a permanent job opportunity.

Secondly, clinicians discovered a body of scholarship that provided a theoretical foundation for role assumption as the normative mode of clinical teaching. Learning theory developed by psychologists strongly supported the conclusion that adults profit most from experiential learning.[37] Clinicians effectively drew analogies to the medical school and other professional education models.[38]

A final explanation for adherence to strict role assumption may stem from the

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34. *See* Tyler & Catz, *supra* note 14, at 699.

35. *See Symposium, supra* note 29, at 368-71 (remarks of Robert B. McKay).

36. For example, the AALS/ABA Guidelines for Clinical Legal Education, *supra* note 2, state: "The primary purpose of clinical legal studies is to further the educational goals of the law school, rather than to provide service." *See also* Bloch, *supra* note 11, at 322 & n. 3 (commenting that "the majority of clinical educators are right to emphasize the educational values," although service is a "welcomed by-product").

37. *See, e.g.,* Bloch, *supra* note 11. Bloch posits that the concept of andragogy, a term coined by the educational theoretician Malcolm Knowles to describe the process by which adults learn through the use of actual experience, provides a critical basis and justification for clinical education. *See also* Hoffman, *supra,* note 6. Hoffman's article contains extensive citation to learning theory research, particularly in the context of the interaction between supervisor and student in an experiential learning setting.

38. *See, e.g.,* Hardaway, *Legal and Medical Education Compared: Is It Time for a Flexner Report on Legal Education?,* 59 WASH. U.L.Q. 687 (1981); Baer & Stall, *Legal vs. Medical Training, or Are Lawyers and Their Clients Missing Out,* 49 N.Y.ST. B.J. 568 (1977); Pincus, *The Clinical Component in University Professional Education,* 32 OHIO ST. L.J. 283, 291 (1971).

experience of most clinicians in learning to be lawyers. Because most clinical faculty have been drawn from the public service sphere, the learning mode that they experienced was largely through role assumption. Few public service enterprises have the luxury of leisurely introduction into the lawyering process, or prolonged mentoring relationships which allow for a gradual increasing of responsibility. The common complaint of new lawyers in these settings is not with being thrust into role, but with lack of feedback on performance. These experiences contributed to the direction of clinical teaching towards a concentration on the post-performance critique.

IV. THE VARIATIONS IN THE SUCCESS OF THE ROLE ASSUMPTION MODEL

Most clinicians would agree that there is a large variation in how much students learn from a clinical experience premised on role-assumption, regardless of how broad or narrow the goals of the program, or how talented the students may be. Some learning variation can be accounted for by differences in motivation and time investment, but even holding these factors constant, the differences are greater than might be expected. Nor does basic skills level in legal research, writing and analysis—at least as measured by first year performance—adequately account for differences in performance. There are always some "good" and motivated students who fail to make much progress either in skills development or towards the broader goals of achieving an analytical and self-critical perspective on the lawyering process.

Clinicians tend to diagnose the problem for these students as revolving around the feedback process. It is assumed that something in the interaction between student and teacher is amiss. My experience in supervision suggests, however, that for some students it is the very concept of role assumption that inhibits their learning.

A typical learning difficulty arises in the context of interviewing a client. In the best of all worlds, the learning process might begin with the student reading about a model of interviewing, such as Binder and Price's work, which offers both skills guidance (for example, the use of open-ended questions to elicit the broadest factual chronology) and theory (the value of client-centered decision-making).[39] Supervisor and student then would discuss the student's plan for the interview, perhaps rehearse a portion of it, and possibly watch and critique a videotape of another interview. All of this pre-performance guidance is designed to insure that the student has a basic comprehension of the skills dimension and at least understands the justification for the model and the values underlying it. Thus, a student should understand the differences between asking, "The light at the intersection was green, wasn't it?", "So you went through a red light?", and "Can you tell me what happened when you approached the intersection?",

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39. D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH (1979). Other commonly used texts are: G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: MATERIAL FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); T. SHAFFER, LEGAL INTERVIEWING AND COUNSELING (1976); SCHOENFIELD & SCHOENFIELD, INTERVIEWING AND COUNSELING (1981).

in terms of the interviewer's ability to gain a full factual picture, and to actively involve the client in the process of representation.

After the interview, the supervisor reviews a tape of the session, and finds to his surprise that it sounds more like a cross-examination, filled with narrow questions, value-laden responses, and directive advice. In the post-performance analysis with the student, the supervisor explores how successfully the previously articulated goals of the interview were accomplished. Through the use of a non-directive approach, the supervisor elicits from the student a self-reflective critique of the interview, which enables the student to learn very efficiently the basics of this skill from one experience. For most students, the second interview shows a vast improvement. This teaching methodology substantially compacts the learning curve for any particular skill. It replaces the years of trial and error through which practicing lawyers developed skills before the advent of clinical teaching.

For some students, however, the methodology simply does not work. Despite the students' ability to articulate interviewing theory and identify shortfalls in their own performance, the second interview is no more skillful than the first. In these circumstances, the supervisor may fall back on more directive feedback, which only succeeds in decreasing the students' ability to engage in self-reflection, undermines self-confidence and further inhibits experiential learning. I have found that the only way to break out of this cycle is through modeling by the supervisor: what, in essence, amounts to role reversal. The supervisor takes on the lawyer's role, the student plays the client. This technique has substantial pedagogical drawbacks, which will be discussed below, but it does seem to lead to a sometimes dramatic improvement in a student's ability to translate thinking into effective performance, as compared to directive feedback, which take the form of the teacher pronouncing what is good and what is bad.

These admittedly anecdotal experiences have led me to question whether it is the feedback process that is creating the learning difficulty, or whether it is the process of role assumption itself that stands in the way of some students' mastery of skills.

V. THE THEORETICAL BASIS FOR QUESTIONING ROLE ASSUMPTION

The hypothesis that not all students learn well through role assumption finds support in the study of learning theory. To return briefly to historical development, when clinical teaching came under increased scrutiny, learning theory was used to justify the role assumption methodology already in place, which was derived from a service orientation.[40] Thus, role assumption was legitimized under the general theory of experiential learning.

In the experiential learning model,[41] learning is viewed as a four-stage cycle. The learner first must immerse herself in immediate, concrete experience. The experience then forms a basis for the learner's reflection and self-observation.

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40. *See supra* text accompanying notes 31-38 and note 37.
41. John Dewey was among the first to articulate this model of learning. *See* J. DEWEY, EXPERIENCE AND EDUCATION (1938); J. DEWEY, ART AS EXPERIENCE (1958).

From this process emerges the formulation of abstract concepts, hypotheses, and generalizations. Finally, the learner tests the implications of the deduced theories in new experiential situations.

The basic progression of experiential learning is easily understood, and its applicability as a theoretical framework for clinical legal education is apparent. It exactly describes the methodology that many clinicians instinctively developed, and forms a strong foundation for the assumption that "in role" performance is an indispensable starting point for clinical programs.

Learning theorists have begun to explore the experiential learning cycle in more depth, however, examining the effect of individual differences on a person's ability to profit from teaching methods constructed on this model. The work of David Kolb has been particularly influential.[42] Kolb notes that in experiential learning situations, the student must possess an unusually broad range of different skills, which he calls concrete experience abilities, reflective observation abilities, abstract conceptualization abilities, and active experimentation abilities.[43] Moreover, this learning mode requires the utilization of skills that are polar opposites, concreteness and abstraction; the learner must continually choose which set of learning abilities she will rely on in any given situation.[44] Most people resolve this conflict in characteristic ways: "Some people develop minds that excel at assimilating disparate facts into coherent theories, yet these same people are incapable or uninterested in deducing hypotheses from their theory; others are logical geniuses, but find it impossible to involve and surrender themselves to an experience, and so on," Kolb notes.[45]

Kolb has developed a questionnaire known as the Learning Style Inventory, which identifies a person's strengths and weaknesses in the four skills required for experiential learning.[46] According to his research based on the inventory, there are four dominant types of learning styles. The "converger" excels at abstract conceptualization and active experimentation: she can effectively apply ideas to concrete situations. The "diverger" has the opposite skills, and is most comfortable with concrete experience and reflective observation. The "assimilator" relies on abstract conceptualization and reflective observation: he is best at creating theoretical models, and has most difficulty with practical application. The "accommodator's" strengths lie in concrete experience and active experimentation; he is likely to disregard theory when faced with facts.[47]

Applying Kolb's research to the typical law school clinical experience, some

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42. *See* D. KOLB & R. FRY, *Towards an Applied Theory of Experiential Learning,* in THEORIES OF GROUP PROCESSES, 33-57 (G. Cooper, ed. 1975); *see also* D. KOLB, I. RUBIN, & J.M. MCINTYRE, ORGANIZATIONAL PSYCHOLOGY, AN EXPERIENTIAL APPROACH TO ORGANIZATIONAL BEHAVIOR 19 (1984); D. KOLB, I. RUBIN, & J.M. MCINTYRE, ORGANIZATIONAL PSYCHOLOGY: A BOOK OF READINGS (1979); D.M. WOLFE & D. KOLB, *Career Development, Personal Growth and Experiential Learning,* in ORGANIZATIONAL PSYCHOLOGY: READINGS ON HUMAN BEHAVIOR IN ORGANIZATIONS 124-52 (Kolb, Rubin, & McIntyre, ed. 1984).

43. D. KOLB, *On Management and the Learning Process* in ORGANIZATIONAL PSYCHOLOGY: A BOOK OF READINGS 27, 28 (1979).

44. *Id.* at 28.

45. *Id.* at 29.

46. The Learning Style Inventory appears in D. KOLB, I. RUBIN & J.M. MCINTYRE, ORGANIZATIONAL PSYCHOLOGY: AN EXPERIENTIAL APPROACH 29 (1971).

47. D. KOLB, *supra* note 43, at 30-31.

conclusions emerge that are consistent with questioning the utility of role as-
sumption as the starting point for every student. The converger will have difficulty
with the beginning stages of the experiential learning cycle: performing in role
and reflecting on the experience. While the student-teacher interaction can pro-
mote increased reflection, the student's difficulties in getting into role will limit
the effectiveness of the process. The assimilator may have more pronounced
problems with the clinical methodology. His weaknesses lie in both the immersion
and the application phases, while his strengths replicate what clinical teachers
typically see as their function, encouraging reflection and generalization. The
diverger will profit from a teacher's efforts to promote generalization from ex-
perience, but may have problems putting theory into practice. The typical clinical
teaching methodology is probably best suited to the accommodator. The teacher's
guidance in developing reflection and abstraction skills will provide the missing
link to enable her to learn from experience.

The Kolb learning style analysis may explain the sense of frustration clinicians
experience when a well-executed feedback process does not result in improved
student performance. It suggests that teachers can improve the learning process
for some students by facilitating their ability to function in role, rather than
concentrating only on the reflection and abstraction stages of the experiential
cycle.

VI. IDENTIFYING AND TEACHING THE STUDENT
WITH ROLE ASSUMPTION PROBLEMS

Given that some students may not learn best by being thrust into role, the
next question is whether clinical teachers can or should adjust their methodology
to account for these differences. In most, if not all clinical programs today, the
degree to which a student is an effective role assumer measures her success in
the clinical experience. Good role assumers get the high grades, the good rec-
ommendations, the positive relationships with supervisors, or whatever other
rewards are available. The poor role assumers, despite their level of motivation
and effort, are relegated to the ranks of the clinic's failures.

The next section of this Article discusses changes in teaching methodology
that might succeed in breaking the cycle of failure for poor role assumers. For
clinicians to individualize their teaching to allow for different learning styles,
however, they have to be able to identify, at or near the beginning of the clinical
experience, the students who would profit by a different methodology.

Some clinical programs are experimenting with the use of learning style di-
agnostic tests,[48] such as Kolb's Learning Style Inventory and a similar ques-
tionnaire, the Myers-Briggs Type Indicator;[49] other tools developed by psychologists
might well prove equally effective. The concept of psychological testing of
students makes many clinicians uncomfortable, however, and perhaps rightly

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48. I am aware of such efforts at the University of Florida Law School, Hastings College of Law, and
the Loyola-Chicago Law School.
49. I. BRIGGS MYERS, INTRODUCTION TO TYPE (1980); I. BRIGGS MYERS, MANUAL FOR THE MYERS-
BRIGGS TYPE INDICATOR (1962).

so.[50] To students, tests are invariably equated with being judged, and despite whatever disclaimers are offered, their use at the beginning of a semester might well establish a difficult precedent to begin an experience of cooperative learning. Moreover, the degree of self-revelation inherent in these tests may offend many students' notions of privacy.

A review of these tests indicates that they are basically attempts to elicit, in a systematic way, a person's own views about how he learns best. For example, the Learning Style Inventory asks the person being evaluated to rank 40 words, such as "intuitive," "observing," "logical," and "pragmatic," as to how well the words describe the person's learning style.[51] The Myers-Briggs Type Indicator asks 100 multiple choice type questions: for example, "In traveling, would you rather go (A) with a companion who had made the trip before and 'knew the ropes' (B) alone or with someone greener at it than yourself."[52] It would seem that the same kinds of questions could be used in a dialogue between student and teacher, thus eliminating the possible negative consequences of testing. The goal of such a session should be to elicit how the student reacts to the various phases of experiential learning.

It also seems likely that clinicians can call on their past experience to predict who may fall into the category of poor role assumers. My experience suggests that one significant variable is self-confidence. Particularly insecure or self-critical students have difficulty with the beginning and the end of the experiential learning cycle—entering into the experience, and translating theory into action—although they may be quite adept at the reflection and generalization stages. Students who lack maturity may have the same kinds of problems. Both qualities prevent the student from moving away from self-reference to the concept of representation. Sometimes, more mature students—those who come to law school after other careers, or with already developed ideas of lawyer-client interaction—may have problems with the last stage of experiential learning for different reasons. Their patterns of behavior vis-à-vis clients and other actors in the legal system are already fixed, and despite the students' ability to reflect on the efficacy of those patterns, they have difficulty making changes. They fall back on the models of interaction to which they are accustomed.

These characteristics do not necessarily have a negative influence on performance in the traditional curriculum. Traits such as insecurity and experience in the working world in fact may contribute to success. Thus academic averages generally are not significant predictors of how well students will learn from role assumption.

If we can predict which students will have difficulty learning through role assumption either through diagnostic testing, through an interview which rep-

50. The same problem arises in the use of student questionnaires as a basis for empirical research in the clinical setting. In their study of adversarial and "Machiavellian" behavior, Stark, Tegeler and Channels note that assessing student values through a questionnaire may raise potential civil liberties problems, even when students consent to the study, because free consent may not be possible in the clinical environment. Stark, Tegeler & Channels, *The Effect of Student Values on Lawyering Performance: An Empirical Response to Professor Condlin,* 37 J. LEGAL EDUC. 409, 421, 424 (1987).

51. D. KOLB, I. RUBIN & J.M. McINTYRE, *supra* note 42.

52. I. BRIGGS MYERS, *supra* note 41.

licates some aspects of testing, or through some evaluation based on predictors drawn from our experience, we are faced with the question of what to do about those we have identified. One answer is that these students should be discouraged from participating in the traditional live client or simulation programs that rely heavily on traditional clinical methodology. Indeed, for those programs that are oversubscribed and depend on interviewing or an application process for permission to enroll, this discouragement undoubtedly occurs with or without conscious realization.

Screening students on the basis of intuitive notions or explicit consideration of their role assumption abilities, however, may result in the exclusion of those who might profit most from clinical education, if experiential teaching can be adapted to a more flexible utilization of role assumption. Students who are good role assumers will be successful in replicating the norms of the practice in which they find themselves once they leave the law school. Whether or not the norms are what we would hope, their superiors will find their performance at least adequate. For these students, a clinical experience emphasizing reflection and theory generation can help equip them to think independently and creatively, to learn new skills quickly, and to question the norms that surround them.

The same may not be true for poor role assumers. Unless these students find themselves in a practice that allows for a very gradual increase in responsibility, or offers little responsibility, their abilities may never develop. Few legal jobs today offer this sort of opportunity, however, given the economics of law practice.[53] Even the large firms can no longer afford the luxury of prolonged introductions to lawyering.

Rather than excluding these students from clinical programs, we could suggest to them alternatives to the live client or simulation models that depend heavily on acting in role. Carefully selected and structured extern programs, in which students work under the supervision of practicing lawyers, may perform a valuable function in this regard. In many such programs, students explicitly or implicitly are viewed as assistants to the practitioners. The observational opportunities that these programs provide may be of substantial benefit.

Extern programs, however, frequently suffer from problems of quality control,. The experience is only as good as the practitioner responsible for supervision. There is a risk of legitimizing norms of practice that may not be desirable. Furthermore, the demands of everyday practice often take their toll on even the most well-intentioned supervisor: little if any attention is given to the critical overlay that experiential learning presumes.[54]

Recently, there has been an effort by the ABA to improve the quality of

53. *See* Schwartz, *The Reach and Limits of Legal Education,* 32 J. LEGAL EDUC. 543, 555 (1982) (noting the unlikelihood of a return to the apprentice model).
54. *See* Hegland, *supra* note 3; Rose, *supra* note 3. Rose notes that with externships, "the balance between training students and receiving assistance in practice must tip in favor of practice." In addition, supervisors lack teaching skills, and students do not have the opportunity to have contact with clients, or to see more than one piece of a case. Rose, *supra* note 3, at 104. Rose suggests, however, that careful program design can overcome these "formidable but not insurmountable" obstacles. *Id.* at 105-06. Law student employment is still another alternative, but it offers little opportunity for assuring adequate supervision and a systematic learning experience that addresses much beyond research and writing skills. *See* Zillman & Gregory, *Law Student Employment and Legal Education,* 36 J. LEGAL EDUC. 390, 401 (1986).

externship programs, by requiring law schools to monitor more closely their design and implementation. At present, however, these programs do not present a sufficiently developed alternative for students who need help with the role assumption stages of experiential learning.

VII. ROLE MODELING AS AN ALTERNATIVE TO ROLE ASSUMPTION

Before clinical education took hold in the law school curriculum, law graduates learned skills largely by watching the performance of other lawyers, and analyzing the good and the bad in what they observed as best they could. The luck of the draw in choosing a role model was the controlling factor in defining the young lawyer's norms of practice. Clinical methodology rejects role modeling as an inefficient and unsystematic learning technique. Clinicians, when they find themselves in pre- or post-performance sessions demonstrating a particular skill at length, conclude that they have gone astray from the goals of clinical pedagogy, because they perceive the technique as inhibiting the student's self-reflection and critical thinking. A teacher's performance leads the student to half-hearted attempts at mimicry.

Learning theory suggests, however, that for students who have difficulty immersing themselves in an experience, opportunities to observe others "in role" provide an important bridge to the acquisition of skills. The problem with utilizing modeling may be that clinicians do too little of it rather than too much, and that they do it without attention to the other aspects of experiential learning. The modeling is considered the end, rather than the beginning of the interaction between student and teacher.

Modeling, as now utilized in clinical programs, is narrowly focused on the rudimentary skills elements of lawyering.[55] Thus, a clinician may offer for analysis an alternative approach to beginning an interview or using non-leading questions in a direct examination. Rarely do we try to model the more complex aspects of case preparation such as ends-means thinking, legal and factual theory development, and strategic judgment. The demonstration of these skills is difficult to contemplate, perhaps because norms of effective performance are more elusive even to the most analytical clinicians.[56] If we cannot ourselves completely define these processes, we are naturally reluctant to offer our approach.

Even at the basic skills level, our modeling generally only addresses a small segment of the task, because of the time constraints under which we all operate. Thus, a student might be able to provide an adequate opening to an interview

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55. Menkel-Meadow discusses the use of explicit, existing models for interviewing, counseling, fact investigation, negotiation, and questioning and argumentation in trial advocacy at the clinical program at UCLA. Menkel-Meadow, *supra* note 2, at 292-93. Students there are required to master a Binder and Price type interview in role-play, for example, so that "there is at least a minimal level of competence and comfort with lawyering." This approach is designed to remedy some of the same learning problems identified here: "[S]tudents are so unable to translate their fine conceptual understandings into behavior that some authoritarian 'drill'" is necessary. *Id*. However, the approach seems premised on "canned" models that must necessarily lack reality and immediacy.

56. The search for lawyering norms is beginning to emerge as a valuable new direction for legal scholarship. *See, e.g.*, Cort & Sammons, *The Search for "Good Lawyering": Some Approaches to Resolving an Historical Debate*, 1 ANT. L.J. 7, 52 (1981) (describing an attempt to find generic lawyering competencies and models that can be applied to a wide range of lawyers' tasks).

after observing the supervisor's example, but flounders through the rest of the meeting. Finally, our approach to modeling necessarily creates in the student's mind a right-wrong dichotomy. It is unrealistic to expect a student to reflect critically on a sequence performed by a supervisor, particularly when it comes after a prolonged attempt at using less directive methods to improve performance. The student acknowledges that he has seen the light and the teacher breathes a sigh of relief. How much real experiential learning that can be translated to other contexts, has taken place, is open to question, however.

Indeed, there is something inherently dishonest and manipulative about this technique.[57] We model only those skills that we can easily perform in a textbook manner, never venturing into those areas where we cannot assure ourselves that our performance is unreproachable. Our models necessarily look effective because they take place in a hypothetical context. We shield ourselves from the real clients or even the "real" simulation, under the guise of the pedagogic principle that students must have the primary responsibility in the clinical setting. We inhibit self-reflection on the part of ourselves and our students by viewing modeling as the end, rather than the beginning, of a supervisory process.

Clinical programs can utilize modeling in a more honest, rigorous, methodical and analytical manner, however. To surmount modeling's significant drawbacks, clinicians must demonstrate the full range of lawyering skills, as well as the process of experiential learning, by engaging in real or simulated client representation. In partnership with the student, the supervisor acts in role, reflects, generalizes, and applies. Thus, we ask of ourselves the same that we ask of our students.

In practical application, this theory of clinical teaching could operate in at least three ways. The first application would be structured so that there was a gradual shifting of lawyer role from supervisor to student over the course of the clinical experience.[58] The student's observation and participation in critique not only would build his confidence and break down existing but unproductive patterns of interaction, but would also help him to internalize the sense of advocacy that poor role assumers seem to lack. This application is not intended to replicate the apprenticeship or law clerk system, which may be successful over the long term in teaching skills, but does little to teach the ability to learn from experience. The difference is in the scope of the observation and in the process that occurs thereafter. Modeling requires, in addition to skills demonstration, the exposing of the analysis that goes into every decision and judgment;

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57. Condlin levels this criticism at the entire spectrum of feedback techniques, arguing in a series of articles that even when clinicians claim to utilize non-directive approaches, they are imposing their own system of values and lawyering styles in a manipulative and hidden manner. *See* Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction,* 40 MD. L. REV. 223 (1981); Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade,* 33 J. LEGAL EDUC. 604 (1983); R. CONDLIN, *The Moral Failure of Clinical Legal Education,* in THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS 317 (Luban ed. 1984).

58. Hoffman suggests that the supervisory relationship should change over time. In the beginning stage, the supervisor should give specific instructions, along with their underlying rationale; as the student progresses the supervisor becomes increasingly less directive. *See,* Hoffman, *supra* note 6. The approach suggested in this Article concentrates less on the directive aspect and more on the observation and critique of the lawyering process at the early stages.

the supervisor must think out loud. The supervisor must then remove herself from the task at hand and consider her choice of actions, reflecting on its effectiveness and conformity to normative models and previously defined goals. She must engage the student in the effort, opening herself to the same kind of critical examination that the student is expected to develop from his own performance in traditional clinical experiences.

This application basically calls on us to practice what we preach. The process of critique breaks down the right-wrong dichotomy that makes modeling so flawed. It teaches what many clinicians acknowledge as a central goal: that learning from experience requires a methodology that extends through one's entire career. If we cannot analyze how our thinking and performance as lawyers can be improved, we can hardly expect our students to reflect upon their own performance, particularly given their very limited basis of comparison in relation to our presumably more substantial scope of experience.

There are obvious practical drawbacks, however, to the notion of shifting roles. Particularly in a live client clinic, when client representation begins with the teacher rather than the student in role, the dynamic of authority established in the minds of the client, adversary, and court, may be irrevocable. Because of the perceptions of these other actors, the student may never be able to fully assume the lawyer's role.

A second alternative that addresses this difficulty is for student and teacher to assume different roles in different cases. The teacher would be primarily responsible for the lawyering in one matter, to which the student was assigned also, along with the student's normal caseload. The student could then immediately put into practice the learning derived from the experience in observation, critique and reflection on the "co-counselled" matter.

A potential disadvantage of both the shifting role and the co-counsel concepts is the time investment that they require on the part of the supervisor. Clinicians are already consumed with the everyday demands of individual supervision, and now increasingly add to their commitments classroom teaching and scholarship. An expectation of practice in addition would be viewed by many as simply too much. I suggest, however, that the practice aspect of these methodologies may ultimately relieve some of the frustration of clinical teaching and have a liberating effect.[59] The use of non-directive feedback requires constant attention to restraint and self-control. Our own lawyering can serve as a release from that restraint and thereby reinvigorate our teaching.

A final proposal for utilization of role modeling in clinical education requires the preservation and use of a supervisor's case-handling experience as the basis of a clinical program's classroom component. Clinicians have developed elaborate classroom exercises, frequently based on simulation, with the goals of exposing students to models of lawyering, and providing controlled skills training and experiential learning. The lack of reality in even the best designed simulations, particularly when such exercises are used in conjunction with a live-

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59. In speculating upon the future of clinical teaching, the subject of "burn-out" is frequently raised. *See, e.g.,* LaFrance, *supra* note 1, at 354; Gee & Jackson, *supra* note 2, at 973. Other frustrations are discussed in Tyler & Catz, *supra* note 14.

case component, however, detracts from their effectiveness as teaching tools. As a substitute for these exercises, we could record one of our own experiences in case handling and use it as the basis of classroom teaching. The optimal record would include not only videotaped performances and written products, but the preservation of our thinking and decision-making along the way. The record thus compiled, which could be used and reused, would create a subject for reflection and theory generation in the classroom, as a joint endeavor involving the teacher-lawyer and the students. The record might also provide the added dividend of creating an empirical basis for scholarship on normative models of lawyer competence.

VIII. CONCLUSION

Extended role modeling combined with critical examination, as an alternative or supplement to the role assumption format of clinical education, surely presents a number of troubling questions. It requires a discomforting degree of self-exposure and revelation on the part of the teacher. But this is exactly what clinical teachers ask of their students, and it is on the students' ability to comply with this request that clinical teachers judge them. Furthermore, for role-modeling to be of value, the students must be able to break down the hierarchy inherent in the academic setting so they can objectively and without inhibition critique the performance of those in the position of authority. The solution here depends on the clinician's leading the way through honest self-reflection, which also accomplishes the function of creating a model for the students' process of self-reflection. Clinician lawyering also challenges our only recently developed or developing status as teachers in the academic community, and might appear to some as a throwback to the early days of clinical education. The strength of the pedagogic foundation for experimentation in this area must serve to overcome these doubts. Finally, the proposed methodology puts forward only one supervisor's concept of good lawyering, which necessarily depends on individual values. In the typical clinical experience, however, we may impose our models and values in a less explicit and more manipulative fashion, and to the degree we do not at least suggest models, we are inhibiting the learning of a substantial segment of those we teach. One model and one set of values, honestly and closely examined, is better than none.