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Training the Ed Sparers of Tomorrow: Integrating Health Law Theory and Practice

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TRAINING THE ED SPARERS OF TOMORROW: INTEGRATING HEALTH LAW THEORY AND PRACTICE

*David F. Chavkin**

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INTRODUCTION

In preparing for this Symposium, I began, as did many of my colleagues, by reviewing Ed Sparer's writings.¹ One of the passages that struck me was his description of events that helped transform him from an individual with generalized concerns about social injustice to a fervent advocate for the poor.

Dissatisfied with both the Democratic and Republican parties of the day, I joined Henry Wallace's third-party revolt and went to the South in 1947 as a would-be organizer of textile workers for Wallace. I returned some months later, *shaken to my core, radicalized*, as were many others a generation later in the civil rights and antipoverty movements. What so shook me were my encounters with textile workers who were paralyzed with fear; with gaunt twenty-five-year old mothers in the textile communities who looked as if they were forty years old; with one-time militant labor organizers who—literally—had had their life essence beaten out of them by thugs; with black poverty which surpassed my imagination (but whose victims somehow maintained themselves within communities of warm life and mutual support to which I would flee occasionally for respite). . . . These experiences changed my life.²

Many of us in legal education in general, and in clinical legal education in particular, are dissatisfied with the notion of only training law students to represent privileged clients in disputes against someone else's privileged clients. Rather, we hope to inculcate some sense of social responsibility in future lawyers to represent the underrepresented³ and to develop

¹ In this process, I greatly appreciate the efforts of Krista Halla, my research assistant at Georgetown University Law Center. Because of her work in legal services and public defender programs, and because of her identification with many of Ed Sparer's thoughts, Krista brought a special enthusiasm and perspective to the research effort.

² Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 540-41 (1984) (emphasis added). This quotation comes from a section of the article entitled "Why I Am So Sure." *Id.* at 539. The section begins with the approving citation by Sparer to a quotation from Alan D. Freeman regarding the need to "step outside the liberal paradigm into a realm where truth may be experiential." Alan D. Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229, 1237 (1981).

³ In 1989, the Section of Legal Education and Admission to the Bar of the American Bar Association ("ABA") established the Task Force on Law Schools and the Profession: Narrowing the Gap. SUSAN K. BOYD, *THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR* 122 (1993). Chaired by Robert MacCrate, the ABA

some ability on the part of these lawyers-to-be to provide this representation in a manner that maximizes client autonomy.⁴ However, most of us recognize the inappropriateness and ineffectiveness⁵ of lecturing in the classroom about the importance

President in 1987-88, the Task Force stressed the importance of this obligation to represent the underrepresented: "A second general area of concern has to do with the lawyer's fulfillment of his or her professional responsibilities to provide *pro bono* service. It is by now well-accepted that that [sic] all lawyers bear a *pro bono* obligation." ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES 94 (1992) [hereinafter MACCRATE TASK FORCE REPORT]; see also MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993) ("[a] lawyer should aspire to render at least (50) hours of *pro bono* public legal services per year"); MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-25 (1980) ("[e]very lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged" and "[t]he rendition of free legal services to those unable to pay reasonable fees continues to be the obligation of each lawyer"); ABA House of Delegates Resol. on Pub. Interest Legal Servs. (Aug. 1975) ("it is a basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services"), reprinted in ABA Special Committee on Public Interest Practice, Implementing the Lawyer's Public Interest Practice Obligation 19-20 app. (June 1977).

⁴ The concern with client autonomy reflects a desire to focus on more than simply effecting improved litigation outcomes for clients. Rather, it focuses on the process of representation with the goal of reflecting a model of the attorney-client relationship that builds on warmth, empathy, openness, genuineness and caring on the part of the lawyer, ultimately to improve the ability of the client to protect his/her interests in the future. See ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION 57 (1990). As noted by Ed Sparer:

[T]he better clinical legal proponents emphasize the importance of personal elements in representation and are trying to expand the scope of legal service. Indeed, the appalling nature of many lawyer-client relationships, in which the lawyers give virtually no recognition to the views, appropriate role, or decisionmaking authority of clients, is one of the reasons why some people think we need more clinical legal education.

Edward V. Sparer, *The Responsibility of Law Teachers*, 53 N.Y.U. L. REV. 602, 604 n.5 (1978). Too often, in the process of learning to feel like a lawyer, the student develops a lawyer persona that is "controlling, cool, dispassionate, unfeeling [and] arrogant." Michael Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 624 (1983).

⁵ In commenting on the futility of even critical legal teaching within a traditional curriculum, Sparer wrote:

Do the Critical legal professors have anything to say to these students—except that they assume the students will discover in their practice those successful methods of change which the teachers not only have not found but do not care to seek? The more logical assumption, by far, is that such law teaching will be simply one more law school factor in the decisions of students once concerned with social change to pursue corporate careers.

of such representation and of the benefits for attorney and client.

How, then, can the law school experience be expanded to provide opportunities for the kind of human epiphany experienced by Ed Sparer and by many of us in our careers?⁶ At the same time, how can we improve the teaching of health law within the law school curriculum to better educate future health law attorneys?

This Article describes a model for addressing both of those goals within a health law curriculum—a model for developing future Ed Sparers.⁷ Many law schools already provide at least some of these opportunities.⁸ Most of the focus of this Article

Sparer, *supra* note 2, at 573.

⁶ It would be unrealistic to expect every student to be transformed by even the best models of instruction. As acknowledged by Homer La Rue, who has integrated theory and practice at City University of New York Law School at Queens College, University of Maryland School of Law, and now at District of Columbia School of Law:

[Not] every student taking an LTP [Legal Theory and Practice] course has a transformative experience in which she moves from "conventional moral reasoning" to a reasoning that emanates from a full integration of all dimensions of the person. Nor does every student understand the lawyer's role as translator as one of power, in which the client being served can be further silenced or assisted in obtaining her, his, or the community's own voice. However, there is anecdotal evidence that for some students, such a transformation does take place. Whatever the number of students affected may be, the LTP courses legitimate the inquiry into how law can serve human needs.

Homer C. La Rue, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 HASTINGS L.J. 1147, 1148-49 (1992).

⁷ Ed Sparer would probably have been the first person to question the wisdom of having even one Ed Sparer. He also was not insulated from the debate over the effect of public interest lawyers on communities and the potential harm that legal challenges might cause by diverting communities from the kinds of political organizing that are necessary to achieve lasting gains. See, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992). The debate over the appropriateness of training additional lawyers is beyond the scope of this Article. This Article assumes that there is a place for attorneys who behave appropriately with their clients and focuses on the ways to train appropriately those future attorneys.

⁸ At least one law school, the City University of New York Law School at Queens College, was expressly designed to bridge the gap between the traditional approaches to clinical and classroom legal education. See Vanessa Merton, *The City University of New York Law School: An Insider's Report*, 12 NOVA L. REV. 45 (1987); David A. Kaplan, *A Public Service Commitment: Pioneering Spirit Thrives at a Unique Law School*, NAT'L L.J., Oct. 1, 1984, at 1. Merton described the hope at CUNY that "our students evolve into Fools, which means that they will be able to emulate the song and dance and causerie of the best of the [court] jesters, but

will be on an approach not so commonly encountered.

I. TIMING

The effort to expand opportunities for experiential learning has been advanced by three related events—the issuance of the *MacCrate Task Force Report*,⁹ the amendment to the American Bar Association (“ABA”) Accreditation Standard 301(a), and the recent speech by former ABA President Talbot “Sandy” D’Alemberte.

A. The MacCrate Task Force Report

The *MacCrate Task Force Report* affirmed that education in lawyering skills and professional values should be central to the mission of law schools.¹⁰ It also recognized the curriculum changes leading to the current stature of skills and values instruction in law schools.¹¹ At the same time, it noted that “[m]uch remains to be done to improve the preparation of new lawyers for practice.”¹² The Task Force therefore urged that at each law school

the faculty ask as to each course, what skills and what values are being taught along with the coverage of a substantive field. . . . In a similar vein, we suggest that faculty for all advanced courses in a school’s program should at least consider the skills content that might be effectively included in such courses and the professional values implicated.¹³

The MacCrate Task Force also made specific recommenda-

will do so only in the service of someone they love. If you will, in the service of human needs.” Merton, *supra*, at 47.

⁹ See *supra* note 3. *The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* is commonly referred to by the name of its Chairperson, Robert MacCrate, Esq.

¹⁰ See MACCRATE TASK FORCE REPORT, *supra* note 3, at 6.

¹¹ “Unquestionably, the most significant development in legal education in the post-World War II era has been the growth of skills training curriculum. . . . Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved law schools.” MACCRATE TASK FORCE REPORT, *supra* note 3, at 6.

¹² MACCRATE TASK FORCE REPORT, *supra* note 3, at 266; see also Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993).

¹³ MACCRATE TASK FORCE REPORT, *supra* note 3, at 266.

tions to improve legal education and professional development. Of special significance within the recommendations to enhance "professional development during the law school years" is the following:

To be effective, the teaching of lawyering skills and professional values should ordinarily have the following characteristics:

- development of concepts and theories underlying the skills and values being taught;
- opportunity for students to perform lawyering tasks with appropriate feedback and self-evaluation;
- reflective evaluation of the students' performance by a qualified assessor¹⁴

Implementation of these recommendations would require significant changes in the structure of most law school courses.

B. *Revised ABA Accreditation Standard 301(a)*

ABA Accreditation Standards have until recently provided scant support for advocates of expanded opportunities for experiential learning.¹⁵ Accreditation Standard 301(a) of the ABA

¹⁴ MACCRATE TASK FORCE REPORT, *supra* note 3, at 331 (item six). This formulation of the elements of professional education is somewhat different from the model suggested by some education theorists. For example, as Edgar Schein theorized, there are three components to professional knowledge:

1. An *underlying discipline* or *basic science* component upon which the practice rests or from which it is developed.
2. An *applied science* or "*engineering*" component from which many of the day-to-day diagnostic procedures and problem-solutions are derived.
3. A *skills and attitudinal* component that concerns the actual performance of services to the client, using the underlying basic and applied knowledge.

EDGAR SCHEIN, PROFESSIONAL EDUCATION 39 (1973).

¹⁵ As early as 1976, the Council on Legal Education of the American Bar Association considered a proposal to amend accreditation standards to require that all schools provide courses in trial advocacy. BOYD, *supra* note 3, at 116. However, that proposal was rejected on the basis "that Standard 302 already required that law schools offer 'training in professional skills.'" *Id.* The issue of skills training in law schools was revisited in 1979 by a Task Force of the Section of Legal Education and Admissions to the Bar of the American Bar Association. *Id.* This task force, chaired by Dean Roger C. Cramton of Cornell Law School, recommended that law schools consider "a full range of the qualities and skills important to professional competence." *Id.* The task force recommended that law schools improve their performance in "(a) developing some of the fundamental skills underemphasized by traditional legal education; (b) shaping attitudes, values, and work habits critical to the individual's ability to translate knowledge and relevant skills into

establishes the basic standard for judging the adequacy of a law school's curriculum. Until August 1993, this standard simply required that "[a] law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar."¹⁶ Moreover, Standard 302 required specific types of instruction for all students, but did not require professional skills instruction¹⁷ as one of these elements.¹⁸

In 1980, however, the ABA issued Interpretation 2 of Standard 302(a)(iii).¹⁹ This interpretation provides that "[a] law

adequate professional performance; and (c) *providing integrated learning experiences focused on particular fields of lawyer practice.*" ABA SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 14 (1979) (emphasis added) [hereinafter CRAMTON REPORT].

¹⁶ MACCRATE TASK FORCE REPORT, *supra* note 3, at 261. Since the goal of legal education involves more than simple passage of a bar examination, the MacCrate Task Force proposed to add the following language to standard 301(a): "and to prepare them to participate effectively in the legal profession." *Id.* at 262.

¹⁷ The term "instruction" reflects a growing acceptance of the intellectual theory underlying skills and values instruction. As noted by the MacCrate Task Force:

The 1981 revision of the Standard [302(a)(iii)] substituted the word "instruction" for the rather craft-oriented word "training" in the prior Standard. This change reflected the growing appreciation of the intellectual quality of effective skills education and was in keeping with the more recent scholarly appraisals of professional skills teaching and newly developed methods for its teaching.

MACCRATE TASK FORCE REPORT, *supra* note 3, at 265. Whereas skills training might once have been characterized by exercises in how to introduce a business record into evidence, skills and values instruction in clinical education now encompasses far broader issues regarding the nature of the attorney-client relationship and the dynamics underlying client goal identification and realization. Although introducing business records into evidence is still an element of many programs, it is a means to a far broader end. It also reflects the underlying recognition that if student attorneys are so worried about how to get a document into evidence, they will not be able to think about the broader issues of role and responsibilities.

¹⁸ Standard 302 mandates that the law school shall:

- (i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum; (ii) offer to all students at least one rigorous writing experience; (iii) offer instruction in professional skills; (iv) require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession.

ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Standard 302(a) (1991). All law schools therefore are required to offer professional skills instruction, but not necessarily to *all* students.

¹⁹ The Council on Legal Education's interpretation of Standard 302 was approved at the August 1980 meeting. This vote was preceded by a discussion of lawyer competency and the recommendations of the Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice in the Federal Courts. This Committee is commonly referred to as the Devitt

school's failure to offer adequate training in professional skills, whether through clinics or otherwise, violates Standard 302(a)(iii).²⁰ Thus, at least since 1980, provision of "adequate" professional skills training has been an explicit requirement of that standard.

In August 1993, largely as a result of the MacCrate Report,²¹ the ABA House of Delegates amended Accreditation Standard 301(a) by adding the italicized language: "A law school shall maintain an education program that is designed to qualify graduates for admission to the bar *and to prepare them to participate effectively in the legal profession.*"²² The new focus on "effective participation in the profession" will require changes in the law school curriculum and in teaching methods to realize this goal. At the meeting of the ABA's House of Delegates in February 1994, the House approved a resolution urging law schools, *inter alia*, to:

identify and describe in their course catalogs the skills and values content of their courses and make this information available to students for use in selecting courses; . . .

advise law students regarding course selection to consider what opportunities may or may not be available to them after law school to develop the skills and competencies they will need in practice; [and] . . .

....

develop or expand instruction in such areas as problem solving,

Committee after Judge Edward J. Devitt, chairman of the Committee. BOYD, *supra* note 3, at 117.

²⁰ ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Interpretation 2 of Standard 302(a)(iii) (1991). Standard 302(a)(iii) has not been interpreted to require law schools to provide clinical courses for all students wishing to enroll. *See id.* Interpretation 4 of Standard 302(a)(iii) provides: "There is no ABA ruling that a student requesting enrollment in an advocacy course must be admitted to that course. The Standard in question states merely that the law school shall offer training in professional skills." ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Interpretation 4 of Standard 302(a)(iii) (1991).

²¹ Amendment of Standard 301(a) was originally proposed by the Illinois State Bar Association. That proposal expressly referenced the *MacCrate Task Force Report*: "Resolved, to amend Standard 301(a) of the ABA Accreditation Standards, regarding law school's educational programs, pursuant to Task Force Recommendation C.2. of the 'Report of the Task Force on Law Schools and the Profession: Narrowing the Gap'" *House Amends Standard 301(a)*, SYLLABUS, Fall 1993, at 15.

²² ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS & INTERPRETATIONS Standard 301(a) (1993) (emphasis added).

factual investigation, communication, counseling, negotiation, and litigation, recognizing that methods have been developed for teaching law students skills previously considered learnable only through post-graduation experience in practice;²³

This resolution was drafted by the Illinois State Bar Association to respond to the MacCrate Report.²⁴ It was approved over the opposition of Robert MacCrate (who described it as "unbalanced" because of its limited focus on law school responsibilities) and Norman Redlich, dean of New York University Law School and delegate from the Section of Legal Education (who described it as "uninformed law school bashing").²⁵

C. D'Alemberte Speech

Former ABA President Talbot "Sandy" D'Alemberte recently addressed a meeting on the MacCrate Task Force Report presented by the ABA in conjunction with West Publishing Co. and the University of Minnesota Law School.²⁶ The speech was characterized as having "unleashed a thunderbolt criticizing the direction [legal education] is taking in the United States."²⁷ D'Alemberte, a former dean at Florida State University College of Law, criticized the failure of law schools to teach students to be lawyers.²⁸ In language that echoed comments by Ed Sparer regarding the jobs to which law students

²³ *ABA Reformulates Ancillary Business Rule, Reaffirms Support for Universal Health Care*, 62 U.S.L.W. 2497, 2500 (Feb. 15, 1994).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Daniel B. Kennedy, *Fire and Brimstone*, A.B.A. J., Dec. 1993, at 96. The conference, "The MacCrate Report: Building the Educational Continuum," was held at the University of Minnesota School of Law from September 30 through October 2, 1993. *The MacCrate Report: Building the Educational Continuum*, SYLLABUS, Winter, 1994, at 7.

²⁷ Kennedy, *supra* note 26, at 96.

²⁸ As reported, D'Alemberte used the following language:

Law students "are being told by law professors that 'We don't teach you to be a lawyer, but to think like a lawyer,'" said D'Alemberte, launching in before his progressively more uneasy audience.

"Isn't that a damn strange statement?" D'Alemberte continued. "What would you say to . . . educators in other fields if they said, 'We don't teach you to be a musician, actor, historian, physicist—but only to think like one?'"

Kennedy, *supra* note 26, at 96.

are channeled,²⁹ D'Alemberte also criticized the impact of inadequate skills training on students choosing law firm jobs.³⁰

In light of the MacCrate Task Force's identification of the skills and values that new lawyers should seek to acquire³¹ and the role that clinical education can play in the development of those skills and values,³² advocates for expanded experiential learning opportunities within the law school curriculum now have additional arguments to use in seeking institutional change.³³

II. GOALS OF EXPERIENTIAL LEARNING

In advocating for a nontraditional law school curriculum, Ed Sparer argued that

The radical law teacher's responsibility is not simply to expose doctrinal incoherencies and build historical accounts. It is to point the way to a different kind of practice, one which utilizes that historical account. . . . It is a practice located "out there," in the world outside the law school, where injustice, legal procedures and programs, incipient protest, and social movement constantly intermingle.³⁴

The "out there" of real-life client representation can achieve Sparer's goal of permitting the student attorney to identify a nontraditional model of practice.³⁵ It also can realize many

²⁹ See *supra* note 5.

³⁰ As reported, D'Alemberte decried the impact of inadequate skills training on student employment choices after graduation and "described a 'conspiracy theory' that views legal educators as not unlike grocers who sort apples and potatoes according to size and quality, all for the benefit of the most reliable customers." Kennedy, *supra* note 26, at 96. The impact of this approach is to "precondition" students to seek and accept law firm employment and to make them believe that they will get the best training and have the greatest future alternatives by pursuing such jobs. *Id.*

³¹ MACCRATE TASK FORCE REPORT, *supra* note 3, at 135-221.

³² MACCRATE TASK FORCE REPORT, *supra* note 3, at 260-68.

³³ The movement to include pro bono/public service requirements in the law school curriculum represents another force for experiential advocates. At the same meeting of the ABA House of Delegates at which the amendment to Standard 301(a) was adopted, a resolution was also adopted on this issue. In response to a resolution by the Philadelphia Bar Association, the House of Delegates overwhelmingly approved the following resolution: "RESOLVED, that law schools are strongly encouraged to develop pro bono/public service programs as components of their skills training curricula or programs" *Action from the House of Delegates*, SYLLABUS, Fall 1993, at 9.

³⁴ Sparer, *supra* note 2, at 573.

³⁵ At the same time, Ed was fully aware of the limits of even nontraditional

other goals.³⁶

While clinical scholars have described many potential goals of clinical education,³⁷ six goals seem to predominate.³⁸

legal practice. As he described:

[E]ven if, in the final analysis, there is no effective radical practice for the radical law teacher as teacher to exemplify and demonstrate to her or his students, there is still another task: to demonstrate concern and ways of working—doing legal work—that at the very least are helpful to some oppressed human beings, [that does some ‘good’ for someone] regardless of their impact on oppressive systems.

Sparer, *supra* note 2, at 574.

³⁶ The role of experiential learning in developing skills required for competent lawyering dates back to at least the early 1930s. See Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 918-19 (1933) (noting that clinical education helps the student see the human side of the administration of justice, including: how juries decide cases; the uncertain character of the “facts” of a case; how legal rights often turn on the faulty memory, bias, or perjury of a witness; “[t]he effects of fatigue, alertness, political pull, graft, laziness, conscientiousness, patience, impatience, prejudice, and open-mindedness of judges;” the methods of negotiating contracts and settlements; and the nature of draftsmanship). Commentators frequently contrast the model developed for medical education with that developed for legal education. See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 157-66 (1993); William P. Creger & Robert J. Glaser, *Clinical Teaching in Medicine: Its Relevance for Legal Education*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 77 (Edmund W. Kitch ed., 1970). Abraham Flexner’s Carnegie Foundation report on medical education in the United States and Canada had criticized high student/faculty ratios which necessitated “didactic” and “demonstrative” teaching, rather than clinical teaching. ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING 93 (1910). By contrast, the law school model, developed in response to Christopher Columbus Langdell, is based on high student/faculty ratios, large classes, low per-student expenditures and, in consequence, on the nonexperiential pedagogy and tuition-driven financing that Flexner deplored. See Costonis, *supra*, at 160. As Jerome Frank questioned,

What would one say of a medical school where the students never saw an actual surgical operation, never watched a physician diagnosing the conditions of actual patients and prescribing for them? . . . Why not have the [law] students directly observe the real subject matter they’re supposed to study, with teachers acting as enlightened interpreters of what the students observe?

Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 28-29 (1951).

³⁷ For a fairly comprehensive list of pedagogical goals of in-house, live-client clinics, see Association of American Law Schools (“AALS”) Section on Clinical Legal Education: Committee on the Future of the In-House Clinic, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511-17 (1992). The Committee list included: (1) developing modes of planning and analysis for dealing with unstructured situations; (2) providing professional skills instruction; (3) teaching means of learning from experience; (4) instructing students in professional responsibility; (5) exposing students to the demands and methods of

First, clinicians hope to develop reflective practitioners—student attorneys who will have the capacity to analyze and critique their own performance and thereby continue to develop.³⁹ Second, clinicians hope to teach such lawyering

acting in role; (6) providing opportunities for collaborative learning; (7) imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people; (8) providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law; and (9) critiquing the capacities and limitations of lawyers and the legal system. *Id.*

³⁸ These goals are not listed in any order of priority. Clinicians place different weight on each goal and the clinical programs in which they teach tend to reflect these differing priorities. Not surprisingly, Ed Sparer was decisive in describing the goals that he believed clinical education should meet:

[T]he primary purpose of clinical legal education should be increasing the intellectual and theoretical grasp of the problems of law and society, focusing legal education on our social and legal institutions by placing students directly into those institutions, or into regular contact with them. Clinical work can provide a way to transcend some of the limitations of cognitive learning.

Sparer, *supra* note 4, at 604. In light of the changes in clinical education since 1978, particularly in the goals of clinical courses, it is likely that Ed would feel that his criticism has been incorporated in the current clinical movement.

³⁹ See DONALD SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987); DONALD SCHON, *THE REFLECTIVE PRACTITIONER: HOW PRACTITIONERS THINK IN ACTION* (1983). As explained by Schon,

[u]sually reflection on knowing-in-action goes together with reflection on the stuff at hand. There is some puzzling or troubling, or interesting phenomenon with which the individual is trying to deal. As he tries to make sense of it, he also reflects on the understandings which have been implicit in his action, understandings which he surfaces, criticizes, re-structures, and embodies in further action. It is this entire process of reflection-in-action which is central to the 'art' by which practitioners sometimes deal well with situations of uncertainty, instability, uniqueness, and value conflict.

SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER*, *supra*, at 50. Schon refers to the context in which students learn to become reflective practitioners as "the reflective practicum." *Id.* at 102; see also Kenneth 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). In the reflective practicum,

[t]he student learns to recognize and appreciate the qualities of good [professional practice] and competent [professional practice], in the process by which she also learns to produce those qualities. She learns the meanings of technical operations in the same process by which she learns to carry them out, and as she learns [to perform the professional practice], she also learns to learn [to perform]—that is, she learns the practice of the practicum.

SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER*, *supra*, at 50. As observed by

skills as interviewing, investigating facts, developing and implementing a case theory, counseling and negotiating.⁴⁰ Third, clinicians teaching in "subject matter" clinics attempt to teach substantive law in context.⁴¹ Fourth, clinicians attempt to develop enhanced professional responsibility in students.⁴² Fifth, clinicians hope to assist students in defining their personas as lawyers and in deciding what they will do as attorneys.⁴³ Fi-

Gary Laser, "[g]enerally, [in law schools] the practicum takes the form of a live-client clinical legal education program. . . . In the law school reflective practicum the students engage in lawyering performances and simultaneously learn to reflect on the practice in which they engage. That is how they learn to become reflective practitioners." Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI-KENT L. REV. 243, 260-61 (1992).

⁴⁰ The *MacCrate Task Force Report* listed "two analytical skills that are conceptual foundations for virtually all aspects of legal practice: problem solving . . . and legal analysis." MACCRATE TASK FORCE REPORT, *supra* note 3, at 135. The *Report* then listed "five skills that are essential throughout a wide range of kinds of legal practice: legal research, factual investigation, communication, counseling, and negotiation." *Id.* The *Report* then focused on three additional skills—"the skills required to employ, or to advise a client about, the options of litigation and alternative dispute resolution," "the administrative skills necessary to organize and manage legal work effectively," and "the skills involved in recognizing and resolving ethical dilemmas." *Id.* While the *MacCrate Task Force Report* emphasized that "[t]he Statement is not, and should not be taken to be, a standard for a law school curriculum," MACCRATE TASK FORCE REPORT, *supra* note 3, at 131, the *Report* does provide a framework for skills training with which few clinicians would argue. Some clinical programs, especially those that last longer than one semester, go far beyond these basic skills.

⁴¹ Subject-matter clinics handle cases in such areas as tax law, elderlaw, international human rights and criminal law. Population-based clinics handle cases on behalf of particular target population groups. These populations may include persons with disabilities, persons with human immunodeficiency virus ("HIV"), and persons who are homeless.

⁴² The *MacCrate Task Force Report* also identified four fundamental values of the profession with which law students should be familiarized. MACCRATE TASK FORCE REPORT, *supra* note 3, at 140-41. These fundamental values include: provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development. *Id.* Often these issues of professional responsibility derive naturally from ethical issues that arise within the real-life client cases. For example, it is one thing to talk about the ethical standard for representing a client with a mental disability. It is something very different to discuss in class the realities of representing a client with a severe mental disorder. As students grapple with elusive levels of competency and decision-making by a client, and seek advice from their classmates on how best to present options in a counseling session, professional responsibility ceases to be an abstract notion.

⁴³ Most students come to law school with little sense of what kind of lawyer they will be and what kind of law they will practice. Much of their sense of what

nally, clinicians hope to utilize clinic resources as a way of expanding the availability of legal services to underrepresented populations.⁴⁴

III. EXISTING MODELS FOR INTEGRATING HEALTH LAW THEORY AND PRACTICE⁴⁵

Many law schools provide three types of opportunities for experiential learning⁴⁶ within the law school curriculum.

a lawyer is will have been defined by such popular culture figures as Perry Mason or L.A. Law's Arnie Becker. Other than law school teachers, traditional law school courses do not provide students with role models to counter these stereotypes. By contrast, live-client clinical experiences provide students with an opportunity to begin to grapple with who they will be as lawyers and what they will do. Steve Wisner of Yale Law School tells the story of a Hasidic rabbi who was stopped by a policeman in the ghettos of Eastern Europe before World War II. The policeman asked the rabbi, "Who are you? What are you doing?" The rabbi responded by asking the policeman how much he was paid. The policeman answered, "Five kopecks. Why?" The rabbi then offered to pay the policeman ten kopecks if he would come to work for him. "What would I have to do," the policeman asked. The rabbi answered, "You will stop me several times a day and ask me who I am and what I am doing." In the clinical experience, the students begin to ask who they will be as lawyers and what they will do and also begin to find their own answers to both questions.

⁴⁴ Various studies have examined the extent to which existing legal services meet the needs of such populations as minorities, low-income persons and persons with disabilities. See, e.g., MARYLAND LEGAL SERVICES CORPORATION ADVISORY COUNCIL, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988) [hereinafter MARYLAND ACTION PLAN]; see also Benjamin L. Cardin & Robert J. Rhudy, *Expanding Pro Bono Legal Assistance in Civil Cases to Maryland's Poor*, 49 MD. L. REV. 1 (1990).

⁴⁵ Some commentators define the shortcomings of traditional legal education in other terms. Judge Harry T. Edwards, for example, focuses on the neglect of doctrine for theory by "impractical" professors, professors lacking in any practice experience. He suggests that one of the goals is "to integrate theory with doctrine, to show how theory resolves normative problems left open by the authoritative legal texts." Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 65 (1992).

⁴⁶ My use of the term "experiential learning" in this context is intended to encompass learning through experiences that involve interactions with real-life clients, institutions and systems. Without denigrating their role as innovative experiential techniques for learning, simulation models are intentionally excluded from this discussion. For a description of a simulation course, see Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977, 1982-83 (1993) (describing a simulation course, "Child, Parent, and State," in which students are provided with an opportunity to explore family policy and state intervention in the family in the context of child protective service proceedings). Moreover, as Woodhouse acknowledges,

(T)he kind of simulations I suggest incorporating in traditional courses

These opportunities are free-standing clinical law courses,⁴⁷ internships and externships.⁴⁸

Free-standing specialized clinical law courses provide students with opportunities to represent live clients over one or two semesters.⁴⁹ Students often receive between four and eight credits per semester⁵⁰ and represent low-income clients with health-related legal problems such as Medicare scope of services, Medicaid eligibility and scope of services, medical guardianships, living wills, durable powers of attorney, insur-

are no substitute for real client representation, and I have too great a respect for the craft of clinical teaching to pretend that such "learning experiences" are a substitute, much less a match, for supervision by skilled and experienced clinical professors.

Id. at 1995. Similarly, as described by Gary Laser:

The strengths of simulation over live-client experiential learning are considered to be uniformity of experience among students, simplification of difficult problems with an orderly progression to the more complex, repetition of student performance when necessary, susceptibility to interruption and videotaping, minimization of harm to real clients with allowance for experimentation, lack of costliness, and a higher student-teacher ratio.

On the other hand, simulation is considered to lack the factual complexity and uncertainty of real cases. Furthermore, students do not become as emotionally involved. Because the emotional investment is less, the motivation and level of learning decreases as well. Also, real cases present students with ethical dilemmas in their emotional context. Many consider this necessary for teaching professional responsibility. To be truly effectual, simulation is seen to require the same level of supervision, making it just as expensive as live-client learning.

Laser, *supra* note 39, at 265-66. As discussed earlier, simulations may be necessary as a step towards ensuring that students can meet their professional responsibilities to their real-life clients. See *supra* note 4 and *infra* notes 76-83.

⁴⁷ For a comprehensive description of the status of in-house, live-client clinics, see Marjorie A. McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239 (1990).

⁴⁸ In the instructions to law schools that accompany its annual questionnaire, the ABA uses the terms "Placement" and "Placement/Externship" to describe "courses or programs in which students are placed with non-law school agencies or offices." MACCRATE TASK FORCE REPORT, *supra* note 3, at 238 n.3. Since the terms "internship" and "externship" are more commonly understood, I have chosen to use these terms.

⁴⁹ Many schools are grappling with the issue of whether clinical courses should last one semester or two semesters. One semester courses often prevent students from handling cases to their conclusion and greatly reduce the time in which students can learn skills needed for appropriate representation. However, one semester courses provide twice as many students with the opportunity to receive clinical education in skills and values. The trade-offs between educational integrity and limited clinical resources are, therefore, palpable.

⁵⁰ The MacCrate Task Force conducted a survey "which placed mean live client clinical credits at 4.1." MACCRATE TASK FORCE REPORT, *supra* note 3, at 252.

ance eligibility and denials of coverage, and medical service debt collection cases.⁵¹

Internships and externships⁵² have been a feature of many health law programs for three reasons. First, student interns and externs are given an opportunity to observe the application of health law theory in such practice settings as hospital general counsel offices, offices of state attorneys general and federal offices of the general counsel representing health and welfare agencies, federal and state legislatures, and federal and state administrative agencies. Second, student interns and externs often gain a leg up on other applicants in obtaining jobs after graduation with the programs in which they are placed. Third, student interns and externs are provided with an opportunity for "real-life" learning with minimal expenditure of law school resources.⁵³

⁵¹ The AALS Section on Clinical Legal Education maintains a comprehensive database of clinical programs by subject matter. Among the clinical programs in which health law cases constitute a significant portion of the caseload are health law clinics, disability clinics, HIV/AIDS clinics, public benefits/entitlement clinics, elderlaw clinics, and poverty law clinics. Health law issues may also arise in such clinics as general civil practice. As Membership Chair for the section, the author maintains a copy of the entire Clinical Section database.

⁵² The distinction between externship and internship programs is not always clear. Both externships and internships include practical work experiences outside the law school environment. Externship programs generally receive more credit (often between six and twelve credits per semester) than internship programs (often between two and four credits). In its most expansive form, externs may spend a semester away from the law school.

⁵³ Many law schools have used externship and internship programs as a device for providing experiential opportunities without committing the resources required of a clinical program. These resources are considerable. In the 1980 report of the AALS/ABA Committee on Guidelines for Clinical Legal Education, Peter deL. Swords, Associate Dean of Columbia University School of Law, and Frank K. Walwer, Dean of the University of Tulsa School of Law, co-authored a chapter on the cost aspects of clinical education. Peter deL. Swords & Frank K. Walwer, *Cost Aspects of Clinical Education*, in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 133 (1980). Analyzing data from an ABA survey of comparative costs for clinical and traditional programs at 78 schools, the authors reported that a law school-supervised clinic was, on average approximately 13 times more expensive than a field-placement program, 2.4 times more expensive than a traditional law school seminar and 7 times more expensive than a traditional class. *See id.* at 177-78. These costs were largely attributable to instructional expenses and the costs of compensation paid to faculty members teaching and supervising students. Supporting-service costs, including costs of the program's secretary, duplication, telephone and travel costs incurred by the program in prosecuting its caseload were important, but less significant factors.

IV. THE CLINICAL SEMINAR

Both free-standing clinics and internships/externships perpetuate the split between theory and practice. They attempt to compensate for the limitations of the traditional law school curriculum by going outside that curriculum. In describing the limitations of teaching health care law and related subjects in a classroom, Ed Sparer explained that "[t]he law . . . cannot be understood without grasping the way legal and social institutions in these areas interact with life. . . . This split in the theoretical and practical, and the cognitive and affective consciousness, is one reason why law schools do not come close to adequate scrutiny of our complex institutions."⁵⁴ The clinical seminar model,⁵⁵ which attempts to fully integrate theory and

Internships and externships therefore represent something of a "free lunch" for law schools. Students pay tuition to the law school for the credits associated with the internships and externships, but take fewer classes at the law school. The potential for abuse in such a context is at least one of the reasons for the new accreditation standards which end at least some of the law schools' "free lunch."

Under ABA Revised Interpretation 2 of Standard 306(b), placements must now be approved by the same procedures established by the law school for the approval of other parts of the academic program. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (1991). In addition, a field instructor or a full-time faculty member will have to regularly engage the student in a critical evaluation of the field experience. Interpretation 2(c) of Standard 306. *Id.* This requirement will add to the educational integrity of the field placement since feedback will now be required. Established and regularized communication among full-time faculty, student and field instructor must take place. Again, this will add to the educational rigor of the placement, and will require the commitment of placement and law school resources to ensure this communication. Periodic review of the program must be made by a full-time faculty member. Review by adjuncts will no longer suffice. Finally, placements for more than 6 credit hours per semester must now include a classroom component, written appraisals of the program, and "careful and consistent" faculty monitoring.

Even when fully implemented, these changes will not eliminate fully the inherent benefits of an in-house clinic in producing reflective practitioners. Unlike the externship setting, the in-house clinic setting is designed primarily to realize educational goals for the students involved. Moreover, clinicians are trained to supervise students and to develop the skills and values identified as the clinic's goals. See Laser, *supra* note 39, at 264 n.104.

⁵⁴ Sparer, *supra* note 4, at 604.

⁵⁵ This model was developed at the University of Maryland School of Law as part of the Legal Theory and Practice curriculum. With the imagination of Professor Michael A. Millemann and the support of then-Dean Michael J. Kelly and the faculty, the law school initiated a "legal theory and practice" curriculum for most first-year students. This curriculum is alternately referred to as "LTP" courses or Cardin courses, referring to Congressman Benjamin Cardin. Congressman Cardin helped create the Maryland Legal Services Corporation and helped author the

practice, and cognitive and affective consciousness, responds to many of Sparer's concerns and attempts to address the limitations of many traditional law school offerings.⁵⁶

study that concluded that existing legal services programs met less than 20% of the need for legal services within the state. See MARYLAND ACTION PLAN, *supra* note 44, at 27; Cardin & Rhudy, *supra* note 44, at 1 n.1, 6. As Speaker of the House of Delegates of the Maryland General Assembly, he helped find the funding to create and support the "legal theory and practice" program.

The LTP program has been well-described by its implementors. See generally Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159 (1992); Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context*, 43 HASTINGS L.J. 1111 (1992); Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175 (1992); La Rue, *supra* note 6. Although the LTP program also integrates theory and practice through either an experiential component or through client representation, the goals are somewhat different from those in a clinical seminar. The LTP program begins in the first year of law school for approximately one-half of the first year class at the University of Maryland. Since these students have not yet completed one-third of the credits required for graduation, they may not practice as student attorneys under Maryland's Student Practice Rule. See RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND Rule 16 (1993) [hereinafter RULES GOVERNING ADMISSION]. Thus, models for experiential learning other than a student attorney-client relationship must generally be utilized. See, e.g., Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992).

As described by one of the architects of the LTP program, the goal is to give students "a deeper understanding of lawyering as a human enterprise in which human interests and values are taken to be of primary importance." La Rue, *supra* note 6, at 1148. This was not an explicit goal of the clinical seminar model. Probably a closer description was offered by Boldt and Feldman: "Our goal was to make a meaningful presentation of doctrine inseparably linked to a conception of lawyering with expanded horizons." Boldt & Feldman, *supra*, at 1119.

It would be incorrect, however, to suggest that these were the first attempts to integrate theory and practice in legal education. For example, at Stanford Law School, Michael Wald has offered such a course in juvenile law, and Paul Brest and Bill Simon have offered such a seminar in Welfare and Housing Law. See Paul Brest, *A First-Year Course in the "Lawyering Process"*, 32 J. LEGAL EDUC. 344, 351 (1982). The model advanced by the author builds on these and other efforts.

⁵⁶ As with many of Sparer's observations, far more fundamental changes would be required in legal education and in the role of lawyers in our society to address fully his concerns. In fact, some of the advocates for integration of theory and practice have taken a very different approach from that advocated by the author. As Boldt and Feldman explain,

Our past failure to succeed in these efforts [to make available for students the link between theory and practice] was our single most important concern . . . , and our planning was directed toward identifying alternative approaches for achieving better results in this regard. . . . The conclusion we reached after this review of our previous teaching efforts was that we should revise our direction and attempt to focus

A. *What It Is*⁵⁷

The clinical seminar⁵⁸ is a small-enrollment law school course in which nearly all of the syllabus is developed through a discussion of real-life client cases.⁵⁹ Enrollment in the seminar is open to students who are eligible to practice under the jurisdiction's student practice rule.⁶⁰ A setting is thereby created in which theory and practice are unified. The University

more on the theory side of the theory/practice divide. . . .

The goal, in short, was not to offer more in the way of clinical supervision or reflection, but instead to offer a more compelling account of legal doctrine and theory in the classroom.

Boldt & Feldman, *supra* note 54, at 1122. The approach advocated by the author expands the practice aspects of the course to drive all discussions of theory in the classroom.

⁵⁷ The description of "What It Is" should be understood as partly descriptive of what was and partly aspirational of what should have been. Because of resource limitations, student to faculty supervision ratios were 16:1 in the Law and Mental Health Clinical Seminar and 17:1 in the Health Care Law and Clinic seminar. Many trade-offs had to be made to accommodate those ratios at a time when the author had other course responsibilities.

⁵⁸ This particular "clinical seminar" model owes much of its birth to Alan Hornstein, Professor of Law at the University of Maryland School of Law. During the period that the author was grappling with ways to integrate theory and practice, Professor Hornstein was Acting Dean. Although financial resources were extremely scarce during this period due to funding cutbacks, Professor Hornstein was extremely generous with his time and imagination as we grappled with various models of instruction. The term "clinical seminar" was the product of several discussions with him.

⁵⁹ Since many law students will have had no prior instruction in representing clients, some non-client based instruction is necessary to ensure that clients are treated in an appropriate manner. Even here, however, some effort is made to integrate theory and practice. This commitment of seminar resources could be avoided if the clinical seminar were the last stage in a continuum that might begin with a civil procedure simulation course, lead to a free-standing clinical course, and conclude with one or more clinical seminars.

⁶⁰ In Maryland, this meant that students could enroll beginning with their third semester since Rule 16 requires students to have completed one-third of the credits required for graduation. RULES GOVERNING ADMISSION, *supra* note 54. By contrast, under the student practice rule in the District of Columbia, students must have completed two-thirds of the credits required for graduation. D.C. CT. APP. R. 48(b)(2) (1993). This represents a significantly different target population from the Legal Theory and Practice curriculum at the University of Maryland. That curriculum is designed to counteract the "very powerful, often unarticulated, messages about law, lawyer's role, and professional values that students receive in the first year core curriculum." Boldt & Feldman, *supra* note 54, at 1142.

of Maryland offered two clinical seminars built on this model: Health Care Law and Clinic during the Spring Semester 1992 and Law and Mental Health Clinical Seminar during the Spring Semester 1993.

Prior to the creation of the Law and Mental Health Clinical Seminar,⁶¹ a conventional Law and Psychiatry seminar was part of the course offerings. The seminar addressed such topics as the nature of mental illness, the role of the mental health professional, the ethical issues that arise in representing a client with mental disabilities, the nature of the psychiatrist-patient relationship, confidentiality and its limits, liability of the mental health provider, civil commitment, the right to treatment, the right to refuse treatment, competency and guardianship, special education, public assistance, protections against discrimination, competency to stand trial and diminished responsibility, and treatment for the criminal offender with mental disabilities. Traditionally, classes utilized lectures and the socratic method to discuss hypothetical cases that raised these issues.

By contrast, the clinical seminar developed nearly all issues from real cases presented by student attorneys. For example, in discussing the professional responsibility issues involved in representing a client under a disability,⁶² the student attorneys described the issues that they were actually confronting in dealing with their client. As one student explained in presenting the facts of her new client's case to the

⁶¹ The Law and Mental Health Clinical Seminar owes much to Ellen Callegary. As an adjunct professor of law and former clinician at the University of Maryland School of Law, Ellen co-taught the classroom portions of the Law and Mental Health Clinical Seminar with the author during Spring Semester 1993.

⁶² Maryland Rule 1.14, "Client Under a Disability," which parallels the American Bar Association Model Rules of Professional Conduct Rule 1.14, provides that,

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, *mental disability* or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

MARYLAND RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1986) (emphasis added); see also MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1992).

class.⁶³

Our client has been diagnosed with paranoid schizophrenia. Her legal problem involves a collection lawsuit filed by a hospital in which she received emergency treatment.⁶⁴ The immediate problem we are having is that she views Mary [one of the two students] as "evil" apparently because Mary has dark brown hair while the client and I have blond hair. She has warned me to stay away from Mary and that she will protect me the best she can. Now she won't answer the phone or letters. How do you think we ought to approach this situation?

Similarly, a real-life discussion of the rights of a person with a mental disability to an appropriate special education can take on very different dimensions.

The school system says that Tom is, they didn't use these words exactly, but basically, a bad kid. They just want to get rid of him by expelling him for his fights in school. They seem to have too many kids and too little resources and therefore welcome the opportunity to deal with one less. Tom's mother seems to be burnt out by him and thinks that he should be placed in a residential school. When we met with Tom alone, he told us that he wanted to stay where he is, but if he couldn't he wanted to go to a neighboring school. He didn't want to leave his family or his friends. We're really confused about who is our client—the mother or the child—and what we should do if we don't think that the mother's decision is in Tom's best interests.

By careful selection of cases then, nearly all the issues within a traditional curriculum take on a very different dimension. The theory and practice of health law are seamlessly joined within a case-driven curriculum.

B. *Benefits of Real-Life Client Representation*

Rosalie Wahl, a former chair of the ABA's Section of Legal Education and Admissions to the Bar,⁶⁵ described the impact

⁶³ The following description and others that appear in this Article have been modified somewhat to protect the client. The names of the student attorneys have also been changed.

⁶⁴ The client's legal problems would rapidly expand to include a criminal prosecution and an appeal from a denial of Medicaid eligibility.

⁶⁵ Justice Wahl was chair of the Section from 1987-1988. BOYD, *supra* note 3, at 138. Now a Justice of the Supreme Court of Minnesota, Justice Wahl was one of two people assigned to establish the clinical legal education program at William Mitchell College of Law. *Id.* at 121.

of live-client representation on student attorneys in the following terms: "I personally feel that the real consequence of working with a live client has a quality and an ethical responsibility to that person that you cannot experience by just listening about it."⁶⁶ Some examples from the clinical seminars bring this point home. Barbara and Amy were assigned to represent a nine-year old girl in a commitment proceeding. The Department of Health and Mental Hygiene had petitioned for involuntary admission of this child because they claimed she was seriously depressed and at risk of suicide and might possibly harm others around her. After interviewing the client and then her mother, Barbara and Amy came back for the initial supervision meeting on this case.

Barbara (barely holding back her tears): She was so small and sweet. She was like my own daughter. What was so scary was the fear that we might lose and that she might be kept there . . . all alone.

Amy: At the same time we had to figure out what was really going on. Was Sharita [the child] really at risk? Was the system attempting to punish Mrs. Brown [Sharita's mother] through Sharita for being a black woman who was not simply going to defer to the "professionals"? And what should we do about the allegations of physical abuse in the file against Mrs. Brown? How much should we consider what she wants for Sharita?

This case was not unique in its reflection of many of the reasons why real-life client cases bring a dimension to experiential learning that cannot be achieved through classroom instruction or through simulations. Students are given the opportunity to relate to people of backgrounds that are often very different from their own.⁶⁷ Especially within a client-centered

⁶⁶ BOYD, *supra* note 3, at 122.

⁶⁷ The diversity of the client community and the impact of such factors as race on litigation outcome can provide important lessons for students that cannot be brought home in the same way in a traditional classroom. As described by Bryant and Arias, "[i]n a clinical setting, students begin to develop an understanding of how race, gender, ethnicity and class can influence lawyering. As a result, students are able to define appropriate roles for lawyers. Often lawyering skills courses that are taught through simulation teach skills without an explicit recognition of the importance of context. In the clinical setting, however, the real world makes context more apparent and forces students to apply their lawyering skills to problems with real world complications." Susan Bryant & Maria Arias, *A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-*

approach to representation,⁶⁸ students find that they have much to learn from their clients and must grapple with a model of representation that maximizes client autonomy in decision-making.⁶⁹

Another benefit of real-life client clinical experiences relates to motivation. Most legal educators are aware of the law school maxim, "The first year they scare you, the second year they work you, and the third year they bore you." As Gary Laser has described:

It has also been noted that students tend to lose interest in their studies as they progress in law school. In live-client in-house clinics, students move from spectator to actor. This change has a profound impact, in that the personal identification with clients and the assumption of the lawyering role bring with them a heightened desire to learn.⁷⁰

Real-life client representation may therefore motivate students in a way that even the most enthusiastic and energetic teaching cannot possibly match.

Another significant benefit of live-client representation is

Solving Vision of Lawyering That Empowers Clients and Community, 42 J. URBAN & CONTEMP. L. 207, 210 (1992).

⁶⁸ As described by Bastress and Harbaugh, this client-centered approach has the following characteristics:

The lawyer in our model believes in the innate goodness of man and woman and that each person has some instinct, however undernourished, toward self-fulfillment. Furthermore, we believe both individual and interpersonal relations prosper when people deal with each other as equals and with mutual respect. Helpers are most effective when they are warm, empathic, open, genuine, and caring. As a general precept, though certainly not a rigid rule, the role of the lawyer is best filled by a nonjudgmental helper.

BASTRESS & HARBAUGH, *supra* note 4, at 57; *see also*, DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991).

⁶⁹ At various points in the attorney-client relationship, the characteristics of the client-centered model may change. As noted by Bastress and Harbaugh,

At some point in the lawyer-client relationship, decisions must be made and action steps must be taken. When that stage is reached, the lawyer must identify potential solutions, advise on their viability, and participate in—perhaps even force—decision-making. In this stage, the lawyer remains empathic, respectful, and genuine, but these attributes assume a more complex meaning, and he or she becomes more active, more involved, and maybe more confrontive. The lawyer may also find it personally necessary in certain circumstances to assert his or her own judgment.

BASTRESS & HARBAUGH, *supra* note 4, at 57.

⁷⁰ Laser, *supra* note 39, at 267.

the ability to identify and answer questions of professional responsibility that directly confront the student's role as a lawyer.⁷¹ In Barbara and Amy's case, who was ultimately the client to whom they were accountable? How should they formulate options and make decisions with a nine-year-old client? What information should be shared with the mother? These were only some of the ethical issues that they had to answer.

Another consequence of a real-life client clinic is the impact on the community of expanding availability of representation. In Barbara and Amy's case, Sharita would have received representation from a public defender at the hearing, but a public defender could not have represented Sharita in the ancillary proceedings that were required, such as those involving special education. In addition, because of the impact of funding cutbacks and caseload increases, a public defender could not have devoted the time and resources needed during the factual investigation and negotiation phases of this case. Barbara and Amy, however, did dedicate sufficient time and reached a resolution that got Sharita out of the hospital and into an appropriate care setting.

The final, and perhaps most significant effect, is the impact on the students of developing a personal stake in the client and in the outcome of the case. While representation is not always characterized by tears, many clinicians have had to comfort students who have lost clients to AIDS and other diseases. Although student attorneys and clients start off as strangers, many relationships progress from those with a somewhat artificial empathy to relationships of genuine respect. Many student attorneys eventually develop a level of caring and appreciation for the life and essence of the client that contains within it the potential for the kind of student transformation to which Ed Sparer referred. These students personally feel the injustices experienced by the client and develop the special sense of urgency in addressing the client's

⁷¹ With regard to the necessity of "live-client learning" for students to deal effectively with professional responsibility issues, see Andrew S. Watson, *Lawyers and Professionalism: A Further Psychiatric Perspective On Legal Education*, 8 U. MICH. J.L. REF. 248, 249-52 (1975), Andrew S. Watson, *The Quest For Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968); and Andrew S. Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1 (1963).

problem that goes far beyond the minimum levels of ethical diligent representation. While that transformation is not always achieved, the real-life client contact becomes a necessary, albeit not always sufficient, condition to make that transformation happen.

And, as students deal with real life-and-death situations, that connection is brought home. As one student in the Health Care Law and Clinic described her case to the class:

Our client is dying of stomach cancer. He and his wife are absolutely committed to living out his last few months at home. However, since he cannot tolerate any nutrition orally, he is totally dependent on enteral nutrition—intravenous feeding. He has been enrolled in a health maintenance organization for the past few years and has been getting his nutrition as a home health care service from the plan. Now the plan has decided to impose a 30-day limit on home health care services even though that limitation had not been part of the plan before and was not in place when this course of treatment was begun. Our client and his wife do not have money to pay for this service on their own. So, if we are not successful in overturning this limitation, our client will literally starve to death.

It is one thing to discuss the structure of prepaid health care plans in class, even if that discussion includes consideration of the financial incentives to underprovision of services in a prepaid setting. It is quite another to have a student describe the impact of such a financing mechanism on a real-life couple and to brainstorm with the rest of the class over the possible legal theories that could be utilized to keep that client alive.

C. Case Selection

The seminar was planned so that each student would work on two cases. The one common element in every student's caseload was to represent an alleged mentally disabled person in a commitment hearing.⁷² Commitment cases were chosen because of the short turn-around time,⁷³ the complexity of

⁷² As with many plans, reality did not always cooperate. For example, one client eloped from the facility almost immediately after meeting with the students. No cause-and-effect relationship was found to exist, although the student attorneys carefully analyzed their counseling session with the client after the elopement.

⁷³ Ordinarily, in Maryland, representation at commitment hearings is provided by the Office of the Public Defender. Arrangements were made with that office to receive case referrals of clients willing to be represented by student attorneys.

professional responsibility⁷⁴ and other issues, and the opportunity for students to participate in a quasi-judicial hearing.⁷⁵

In addition to the commitment hearing, students represented clients with such legal issues as insurance denials for mental health services, competence to stand trial, criminal responsibility, guardianships, right to treatment, right to refuse treatment, least restrictive alternative, special education, and public benefits. Several cases raised multiple issues for the students. In these more complicated cases, student representation was generally provided in teams.

D. Methods of Instruction

While the goals of the clinical seminar will necessarily determine the model of instruction, there are some common elements that can be described. Some of these elements are related to the substantive content goals of the seminar; other elements are driven by the need to ensure that clients are appropriately represented.

1. The Role of Simulation

Many students come to a clinical seminar without any experience in interviewing or counseling low-income clients or in negotiating on their behalf.⁷⁶ Since clients often have a hard enough time without having insensitive student attorneys inflicted on them, some threshold level of competence in client-interaction skills must be developed.

Although seminar meetings include discussions on these

Cases were ordinarily received late Thursday afternoon, the client was initially interviewed on Friday, and the case was "worked up" (including fact investigation and research) over a very intense weekend. The hearing was then held on Monday afternoon.

⁷⁴ The professional responsibility issues included such questions as whether the client could competently consent to a voluntary admission if he or she wished. As in most other states, a patient may not be involuntarily admitted to a state facility if he or she is willing to consent to voluntary admission. MD. CODE ANN., HEALTH-GEN. §§ 10-617(a)(4), 10-632(e)(2)(iv) (1994).

⁷⁵ In Maryland, commitment hearings are presided over by an impartial hearing officer. MD. CODE ANN., HEALTH-GEN. § 10-632(d)(2) (1994).

⁷⁶ Even when students have prior experience in these areas from work settings, there may be a need to help them unlearn the bad lessons that they were taught.

lawyering skills issues, many clinicians supplement this learning with simulations as a way to develop these competencies. Prior to the development of the Health Care Law and Clinic course,⁷⁷ for example, two simulations were created.⁷⁸ One of these simulations, the "Allen" simulation, involved Medicaid, AFDC, Hill-Burton, debt collection and charitable exemption issues. The other simulation, the "Gold" simulation, raised Medicare, Medicaid, long term care insurance and consumer fraud issues.

Students played the role of attorney in one of the simulations and the role of client in the other. Although the client role-playing added somewhat to the level of artificiality in the exercise, the manner in which the student played the role of client often raised fundamental questions about student assumptions and barriers to effective representation. These assumptions thereby often formed the basis for discussions with the student about their views of their clients.

Students begin with an interview of their "client." This interview is videotaped. After the students conduct a self-evaluation of their performance,⁷⁹ a video critique is conducted. The clinical supervisor reviews the interview simulation videotape frame-by-frame with the student on a one-on-one basis. Although time-consuming,⁸⁰ both skills and values issues flow naturally in the critique. Moreover, the critique setting provides an opportunity for the student and clinician to develop a personal relationship that carries great dividends for the course as a whole. Most students and clinicians comment on

⁷⁷ This was the first attempt to develop an integrated health law theory and practice course at the University of Maryland. However, only a subset of the students who enrolled in the health law course also enrolled in the clinical component. By contrast, in the Law and Mental Health Clinical Seminar, there was no division between theory and practice as all students enrolled for the entire seminar.

⁷⁸ These simulations are available on request from the author.

⁷⁹ Students conduct self-evaluations after the interview, counseling and negotiation simulations. Students also conduct self-evaluations after major events in their real-life cases. The final self-evaluation is conducted at the end of the course. During the final self-evaluation, students evaluate their performance in the course in a number of different areas, including growth in self-reflection skills. Copies of these self-evaluation forms are available on request from the author.

⁸⁰ A critique often runs three to four times as long as the simulation. With a student/faculty ratio of 8:1, this often means 16 hours or more of critique for each simulation.

the change in the texture of the clinic after the initial critiques are completed.⁸¹

The interview simulation is followed by further simulations involving the theory of the case development, fact investigation and counseling. The simulations culminate in a negotiation simulation in which students negotiate against each other in one of the simulated cases.

The goal of these simulations is to provide students with an opportunity to test their developing skills and to explore their values in a setting in which they can afford to experiment without worrying about any adverse impact on a real client. The simulated cases provide a controlled environment in which certain issues are scripted to arise and in which external observation is possible without interfering with the students' real-life attorney-client relationships.⁸² Students can then utilize these skills in their real-life cases with some confidence in their abilities and with some understanding of the interplay between these skills and their values.⁸³

2. Live Client Representation

Issues stemming from the representation by student attorneys of their real-life clients are generally considered in two settings. Case supervision meetings provide an opportunity for the student attorney or student-attorney team to meet privately with the clinical supervisor. Grand rounds provide an opportunity for the student attorney or student-attorney team to share experiences and issues with the entire class.

⁸¹ The critique provides a context in which clinician and student talk about what the student attorney was feeling and thinking during the simulation. To provide a setting in which the student feels comfortable in talking about these issues, clinicians generally reciprocate with a level of self-disclosure and emotional intimacy that goes far beyond that present or possible in the classroom. See Kathleen A. Sullivan, *Self-disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 IND. L. REV. 115 (1993).

⁸² See *supra* note 43.

⁸³ These simulations also provide clinicians with some measure of confidence that clients will be treated in an appropriate manner. Most of our clients have more than enough to deal with in their lives without being set upon by students who practice with many of the traditional lawyering stereotypes. See *supra* note 43.

a. Case Supervision Meetings

Case supervision meetings provide probably the most important setting for the discussion of lawyering skills and values issues.⁸⁴ These meetings permit clinicians and student attorneys to identify strategic decisions that must be made, identify issues for research, and develop approaches for making these decisions with the client. Most clinicians utilize a non-directive model of case supervision in which students actually function as the client's attorney.⁸⁵ The role of the clinician is limited to ensuring that representation is provided within the range of appropriate ethical practice. However, the clinician ordinarily does not even meet the client until a hearing or other appearance at which the supervisor must be present.⁸⁶

b. Grand Rounds

Case supervision meetings often identify issues that have implications beyond the immediate case. Thus, periodically throughout the seminar, student attorneys present the latest developments in their case to the rest of the class in a setting comparable to "grand rounds" for medical residents. Often the student attorneys simply will be sharing information about the progress of their case. However, sometimes the students will be asking the rest of the class for suggestions about how to address a particular issue. These issues sometimes involve lawyering skills; frequently professional responsibility issues

⁸⁴ These case supervision meetings are held at periodic intervals, usually weekly and as needed, to discuss developments in the case, to consider representational issues and to discuss ways in which to maximize client autonomy.

⁸⁵ For a comprehensive discussion of non-directive clinical case supervision, see Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 20 N.Y.U. REV. L. & SOC. CHANGE (forthcoming 1994). Some commentators urge a different role for clinical supervisors. See Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 188 (1989) (arguing that non-directive supervision in which the student takes on the role of the attorney is not the most efficient learning experience for every student; a helpful alternative is role-modeling, in which the supervisor assumes the role of the attorney and the student plays the client).

⁸⁶ Under student practice rules, a clinical supervisor is required to be present at administrative and judicial hearings. See, e.g., D.C. CT. APP. R. 48 (1993).

are brought back to class because of their implications for practice. Students usually are very interested in the work of their colleagues and look forward to the opportunity to present their own casework.

In addition to lawyering skills and professional responsibility issues, each case also raises one or more substantive issues. At each juncture in the syllabus, there are substantive issues to be discussed that relate to issues in one or more of the actual cases being handled in the clinic. Grand rounds provide an opportunity to seamlessly link theory and practice.

For example, in the Law and Mental Health Clinical Seminar, as the class considered issues of treatment for criminal offenders with mental illness, students presented their case involving a defendant who pleaded not guilty by reason of insanity to a charge of simple assault. Although the defendant likely would have faced a period of incarceration of less than six months if he had been found guilty, he had then been institutionalized in a state mental institution for four years without any improvement. Following the presentation, the same constitutional cases that would have been discussed in a traditional class were discussed in the clinical seminar. However, the context for the discussion was very different. Instead of simply analyzing legal principles, the class was now utilizing their readings to develop and implement a theory of the case that would ultimately allow the client to be released. The class therefore took on a very different and immediate quality from a traditional seminar.

Similarly, when issues of competency and guardianship were discussed in class, the context for the discussion was an actual case presented by the students. The students had been appointed to represent an alleged disabled person in a guardianship proceeding initiated by the local department of social services. These students presented the problems they had in interviewing their client, such as their attempts to visit her at different times of the day, hoping to maximize her lucid moments. They presented their conflict over how to respond to the petition and whether to waive the client's right to a jury trial in the absence of meaningful guidance from their client. The students discussed the procedures they went through in representing the client and the nature of the court proceeding. They described their efforts to explain these proceedings and their

potential outcomes to the client. For all of the students, the nature of that class was very different from a class based on hypothetical cases.

E. Resources Required

A clinical seminar requires the commitment of resources beyond those required for a traditional seminar. These resources fall into two categories—instructional services and support services.⁸⁷

1. Instructional Services

The costs for instructional services include the compensation paid to faculty members for teaching and supervising students.⁸⁸ Whereas the student-to-faculty ratio in a traditional seminar may be 15:1 or 20:1, and the ratio in a traditional classroom course may range from 30:1 to 150:1,⁸⁹ the demands of case supervision in a clinical seminar require a significant reduction in these ratios.

Most schools utilize a ratio of approximately 8:1 for traditional clinical courses.⁹⁰ Although appropriate supervision ratios must still be assured in the clinical seminar model, the

⁸⁷ See BOYD, *supra* note 3, at 119-20.

⁸⁸ Sometimes faculty members are supplemented by supervising attorneys who are compensated on a contractual basis. Standard 405(e) provides that law schools "should afford to full-time faculty members whose primary responsibilities are in its professional skills program a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members by Standards 401, 402(b), 403 and 405." ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Standard 405(e) (1991).

⁸⁹ This is not to suggest that these ratios are appropriate even in the traditional classroom setting.

⁹⁰ When the AALS Section on Clinical Legal Education surveyed law schools in the summer of 1987, 54% of the clinics had a student/faculty ratio between 8:1 and 10:1. McDiarmid, *supra* note 47, at 241, 254. The probable average ratio for all reporting schools was 8.41:1. *Id.* at 254. In 1980, the report on the GUIDELINES FOR CLINICAL LEGAL EDUCATION described a typical student/faculty ration of 8:1 to 10:1. CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 82 (1980). The *Cramton Report* used student/faculty section ratios of 6:1 or 10:1 for fundamental skills training. CRAMTON REPORT, *supra* note 15, at 23. The *MacCrata Task Force Report* cited a ratio of 8:1 for live-client clinics. MACCRATE TASK FORCE REPORT, *supra* note 3, at 250.

nature of the course permits a significantly higher student-to-faculty ratio. Fewer cases are handled within the clinical seminar model since the focus is on using case work to drive the course syllabus. Moreover, since the course work focuses on the substantive issues raised by the cases, cases need not encompass extensive judicial or administrative hearing appearances. Since instructional costs are the greatest barrier to expanded experiential learning within the law school curriculum, the clinical seminar model can help accommodate financial realities with educational goals.

2. Support Services

While the costs of clinical seminar support services include many elements common with the traditional law school setting, such as telephone and copying costs, there are also many costs that are either unique to the clinic setting or are different in kind. For example, computer support has become a valuable resource in many clinical programs. While sophisticated networked systems may be beyond the financial and technical ability of many schools,⁹¹ students need to have access to computers and printers for word processing tasks related to their cases. Moreover, while most students can utilize word processing software these days, some secretarial support is necessary to assist students with technical questions and with special needs. Telephone calls from clients and from prospective clients also need to be answered and redirected.

Physical plant resources must also be considered. Live-client representation means that students need rooms to interview clients and meet with adversaries. In addition, student work areas with access to telephones are necessary so that calls can be received and returned. Moreover, if simulations and critiques are enhanced through the use of videotape, videotape equipment and settings appropriate for taping must be available.

Access to specialized library materials must also be consid-

⁹¹ At the University of Maryland School of Law, for example, clinic computer systems are all networked. Clinicians can access the computer files of their students and can review and comment on works in progress, can monitor time sheets, and can communicate with students, individually and in groups, by electronic mail.

ered. Some law school libraries do not have adequate practice materials. Even if adequate materials are available, however, students will need to remove these materials to the student work areas to photocopy them. A far better approach is to create a small self-contained clinic library with such specialized reporters as the Medicare and Medicaid Guide, published by the Commerce Clearing House, and the Clearinghouse Review, published by the National Clearinghouse for Legal Services. This library also will avoid the nonavailability of materials at times when they are on loan from the law school library.

Finally, although clinical programs have an exceptional record with regard to malpractice, insurance will be required to protect clinicians, students and, ultimately, clients. Insurance is often purchased through arrangements with such groups as the National Legal Aid and Defender Association.

F. *Other Dividends*

Although the separation of experiential learning from traditional cognitive learning drew Ed Sparer's attention,⁹² the separation of clinical education from traditional legal education and the separation of clinicians from traditional law school faculty are also significant issues.⁹³ To the extent that

⁹² In 1978 Ed Sparer also decried some of the more traditional models of clinical education:

We assume that the primary purpose of clinical legal education should be the improvement of skills, no doubt, because most proponents of clinical education assert that such is their purpose. In so framing the purpose, however, the proponents of clinical education join with their critics in separating "practical" experience from theory. On the contrary, the primary purpose of clinical legal education should be increasing the intellectual and theoretical grasp of the problems of law and society, focusing legal education on our social and legal institutions by placing students directly into those institutions, or into regular contact with them. *Clinical work can provide a way to transcend some of the limitations of cognitive learning.*

Sparer, *supra* note 4, at 604 (emphasis added).

⁹³ The *MacCrate Task Force Report* listed the following traits as being necessary for faculty employed in teaching skills and values: "Commitment to teaching skills, experience, training, knowledge of the growing literature of clinical scholarship, an ability to contribute to that scholarship, and reflection and attention to educational theory. . . . In addition, a willingness to be highly accessible to students, patience and sensitivity are required." MACCRATE TASK FORCE REPORT,

clinical education remains a separately identifiable component of the law school curriculum, developed and staffed to compensate for shortcomings in the traditional law school curriculum, it is easy to marginalize clinical education.⁹⁴ The clinic and clinicians are normally located across the street or on the first floor.⁹⁵ They are tolerated and sometimes even encouraged, but they generally do not alter the basic fabric of the law school institution.⁹⁶

supra note 3, at 245. Some of these traits overlap those required of traditional faculty members. However, some are unique to the clinical setting. To these traits one might also add "stamina," as any clinician knows after an unscheduled one hour supervision meeting with a student attorney who has come into her office with "one quick question."

⁹⁴ As noted by Mark Spiegel, "Clinical teaching is considered another course like International Law that every law school should offer; it has not affected the basic structure of legal education." Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 577 n.1 (1987).

⁹⁵ It is not that long ago since Packer and Ehrlich wrote that:

clinical education lends itself to being a *separate* activity; it is by nature removed from the law school and up to the present has been essentially extracurricular. Thus small clinical programs can be added "on the side" to the curriculum, necessitating no fundamental changes in the life of the law school nor, more significantly, in the lives of most of the faculty.

HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION, 37-38 (1972). Nor is it so long since Meltsner and Schrag played on words to describe their work in the clinical law program at the Columbia University School of Law through the title *Report From a CLEPR Colony*. Michael Meltsner & Philip G. Schrag, *Report From a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976). CLEPR, The Council on Legal Education for Professional Responsibility, was created by the Ford Foundation with a grant in excess of \$10 million to provide the impetus for the expansion of clinical programs. CLEPR provided more than 100 grants to law schools to provide lawyer-client experiences for their students. Most of these schools then continued and expanded the programs started with CLEPR grants. See William Pincus, *Preface to COUNCIL ON LEGAL EDUC. FOR PROF. RESPONSIBILITY, INC. & INT'L LEGAL CENTER, SELECTED READINGS IN CLINICAL LEGAL EDUCATION* at i (1973); see also WILLIAM PINCUS, CLINICAL EDUCATION FOR LAW STUDENTS 21-31 (1980); JOEL SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL 160-62 (1978). Marjorie McDiarmid observed more recently that "[a] concern about faculty attitudes still exists, although not to the degree implied by the title to Meltsner and Schrag's early article" McDiarmid, *supra* note 47, at 265. It is instructive, however, that the title of McDiarmid's article acknowledged both the physical separation of many clinical programs ("In the Basement") and the psychic distance many clinicians experience ("What's Going on Down There?"). *Id.* at 239.

⁹⁶ This necessarily is changed when clinicians with voting rights and committee assignments make up a significant percentage of the law school faculty. This depends on clinicians gaining comparable status to that of other faculty members—a goal not yet achieved despite the requirements of Standard 405(e) of the ABA Standards for Approval of Law School and Interpretations. See McDiarmid, *supra*

By breaking down the barriers between "clinic" and "substance," by integrating theory and practice, it is far more difficult to marginalize the goals of clinical education⁹⁷ or to ignore the diversity that clinicians often bring to the law school community.⁹⁸ Opportunities to cross lines and to combine "clinicians" and "traditional faculty" in clinical seminars can expand the opportunities for cross-fertilization and ultimately for a revolution in the traditional law school curriculum.⁹⁹ Once "skills" and "values" instruction is brought into the mainstream by efforts like the *MacCrate Task Force Report*, opportunities will develop to draw mainstream faculty into what had been the margins of legal education. The dividends from this effort may yield even greater results for the institution and ultimately for the law students affected.

note 47, at 274-80. As Richard Boswell has observed, "[t]he adoption of accreditation standard 405(e) was a *quid* accompanied by an inevitable *quo*." Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187, 1189 (1992).

⁹⁷ Spiegel has noted that "[t]he way to ensure that clinical education has minimal impact within the law school world is to equate it with skills training. Skills training, by definition, is a marginal activity within academic circles." Spiegel, *supra* note 94, at 606. Although clinical education has for years done far more than teach students where to stand when questioning a witness, clinicians have had only limited success in persuading their non-clinical colleagues of the intellectual rigor of their work. The clinical seminar model, by tearing down any barriers between theory and practice, should further that effort.

⁹⁸ Although it is difficult to develop sufficient empirical evidence, there is certainly anecdotal evidence to believe that there are far more women clinicians, clinicians of color, gay and lesbian clinicians and clinicians from a lower socioeconomic background than the faculty-at-large. As Justice Wahl observed, clinical programs are an important avenue for women into legal careers.

The old established law firms weren't open to women. We had a chance to get into the profession by working for the public defender, prosecutor's offices, the public offices of the attorney general, and law schools, beginning with the clinical program. . . . There are still more women teaching in the clinical program because that's where you could get a foothold.

BOYD, *supra* note 3, at 122 (quoting Justice Wahl).

⁹⁹ The context of a clinical seminar partnership may also be seen by some traditional faculty as less threatening because it provides an opportunity for them to demonstrate their mastery of the substantive law without assuming full responsibility for the case supervision. The difficulty of this task should not be underestimated, however. As Roy T. Stuckey, University of South Carolina Law School clinical professor and a member of the Council of the Section of Legal Education and Admissions to the Bar cautioned, "[t]raditional legal educators in this country have no motivation and no interest in change." BOYD, *supra* note 3, at 120.

CONCLUSION: REPLICATION AND EXPANSION

In 1973, Gary Bellow described the methodology of clinical education as the performance by the student of a role within the legal system and the use of this experience as the focal point for intellectual inquiry.¹⁰⁰ Fourteen years later, Mark Spiegel wrote that "[i]f clinical education is a methodology, it conceivably can be used to teach any of the substantive subjects in the curriculum. . . . [T]here is nothing inherently limiting about clinical education other than using the student's performance as a starting point for inquiry."¹⁰¹

The clinical seminar model can be implemented in a wide variety of subject areas within an overall health law curriculum.¹⁰² Basic courses in health care law and law and medicine could integrate theory and practice.¹⁰³ In addition, such health law-related areas as the legal problems of the elderly, law and mental health, and AIDS and the law, provide natural candidates for integrated theory and practice courses. The clinical seminars will not then substitute for free-standing clinic courses, but can provide another option within a continuum of experiential learning opportunities ranging from legal theory and practice courses, through clinical seminars, internships and externships, to free-standing clinics.

¹⁰⁰ Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education As Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374, 379 (1973) (Council on Legal Education for Professional Responsibility, Working Papers prepared for CLEPR National Conference, 1973).

¹⁰¹ Spiegel, *supra* note 94, at 591.

¹⁰² This instruction model is obviously not limited to health-related courses. Among the traditional courses that could be "clinicized" are tax law (in which students would represent clients before the Internal Revenue Service and Tax Court), special education law (in which students would represent clients seeking a free, appropriate, public education for their children), family law (in which students would represent clients in divorce and custody proceedings), and administrative law (in which students would represent clients in rulemaking and adjudicatory proceedings before administrative agencies). There are few courses, if any, that could not be so "clinicized." As Chris Edley described, "[a] real legal training clinic could include departments of housing, public benefits, commercial contracts, taxation, and domestic relations." Christopher Edley, Jr., *Another Agenda: Borrowing a Page From the 18th Century*, MANHATTAN LAW., May 1990, at 14.

¹⁰³ Although the titles of the classes vary from school to school, Health Care Law usually involves an examination of the health care financing and delivery system. Law and Medicine considers the relationship between the patient and the individual provider.

In each of these courses, the educational goals can be expanded and enhanced through the opportunities presented for experiential learning. At the same time, faculty members can inform their classroom teaching through the clinical experiences of their students as they grapple with health law problems in the real world. Moreover, although the focus in an educational institution is properly on the achievement of educational goals, the beneficial impact on the client community through the provision of appropriate legal services should not be underestimated.

The clinical seminar model provides an opportunity for students to be transformed by working to make a difference in the lives of their clients. For most of these students, these initial clients will never be forgotten. For some of these students, the representation will be a transforming experience in their legal career—a transforming experience that will galvanize the Ed Sparers of tomorrow.

