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Edwin H. Greenebaum

Indiana University Maurer School of Law, greeneba@indiana.edu

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The Professional School as a Focus for Clinical Education

By Edwin H. Greenebaum*

The critical features of a clinic are an individual or group needing help to achieve a desired change, professional helpers with specialized knowledge and skill which may help effect that change, and an organizational context in which professional and client come together in a helping relationship.¹ By this definition, professional service organizations of all kinds provide services to their clients in clinics. Less obvious, professional schools by this definition are clinics as well. Students need help to change their status from laymen to individuals qualified to become licensed practitioners of law; faculty have special qualifications from training and experience to help the client-student achieve this goal; and courses and other organized activities in the school are the institutional contexts in which faculty and their student-clients meet to work together. Fieldwork courses in which we train students in applied settings are clinics with a dual focus, giving professional help both to student-practitioners and to their clients.

Structural features shared by all clinics give rise to common issues of interpersonal and organizational dynamics, and the experience and structure of legal education is, therefore, a clinical event which is an unexploited resource to professional training. An experience with a case which would be used for a variety of lessons in a clinical course will help introduce the subject matter.

* Professor of Law, Indiana University, Bloomington.

This article incorporates parts of papers presented to the faculty of the School of Social Work, Indiana University on September 11, 1981, and to the Clinical Education Teachers' Conference, sponsored by the Association of American Law Schools at the University of Minnesota Law School, June 19-26, 1982, as well as parts of a book manuscript in preparation, UNDERSTANDING CLINICAL EXPERIENCE: THE CASE OF LEGAL EDUCATION.

1. Webster's gives as one definition of "clinic": "a class, session, or group meeting devoted to the presentation, analysis, and treatment or solution of actual cases and concrete problems in some special field or discipline." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1961) (generalizing from the traditional medical usage of the word which dominates most dictionary definitions).

A frequent case for a criminal defense practice, especially in a public defender or legal aid service, is a defendant of modest means, socially and financially, who on an occasion when he has consumed enough alcohol to affect his behavior commits an act which results in a criminal charge. This is not the first occasion on which defendant's drinking has been followed by criminal prosecution, and there is reason to believe that his family life and employment have been affected as well.

A group of students in my course, "Roles and Relations in Legal Practice," had been working with the problems of a client, like the one described. In discussing the case, the group confronted the question of what their feelings might be if the client failed to follow through on a treatment program with a community mental health clinic to which the client had agreed as part of the arrangement for his avoiding a prison term, which they as attorneys had negotiated on client's behalf. Group members suggested they would feel betrayed, manipulated, angry, and have other related emotions, if the client showed his lack of sincerity in this way. After some discussion, I asked the group if there were similarities between this client not showing up for the agreed treatment and law students responding to assignments with incomplete preparation or cutting classes. After initial shock, and denial that the situations had anything to do with each other, group members came to see that the complex factors which produce behavior in each context have their counterparts in the other. In each instance clients want something which can be obtained only with the intervention of a helping profession; to obtain that goal the profession, through its representatives, insists on changes in the client through a prescribed course of treatment; to obtain the desired goal client "agrees" to the program; but the client is, of course, at best ambivalent about changing and may not understand the treatment or its necessity.

This illustration can serve to introduce us to the fact that typical clinical issues which confront lawyers are matters which concern practitioners of legal education as well. In the discussion which follows, we will first take an overview of some structural issues common to all clinics. The second part will explore ways of exploiting these clinical phenomena in a law school teaching program. Finally, I will discuss some general considerations which this clinical education approach suggests.

1. Professional School as Clinic

Professional students need to recognize those issues which are structurally inherent in clinics to enable them to generalize from immediate clinical experience for transfer of learning to new contexts. This preliminary view will survey some areas of difficulty which pervasively infect professional-client relationships: (1) information, values and reality testing, (2) group phenomena, (3) difficulties of helping relationships, (4) the different viewpoints of clinic and client, and the difficulties of negotiating tasks, and (5) clinics as open systems.² The major point will be that these are critical features of all clinical situations about which it is important for practitioners to learn.

A. *Information* VALUES AND REALITY TESTING

Transactions between professional and client involve ascertaining and communicating information and values. Professionals bring to clinical work the specialized data and concepts which are the intellectual tools of their professional disciplines while clients bring knowledge of their personal situations and their goals. With knowledge come explicit and implicit values. Testing the reliability of the participants' understanding of the other's communications, and of the content thereof, is an important, but uncertain business. The questions are always present, but frequently unasked (and ultimately unanswerable): Do I understand you correctly; can I trust what you are telling me?

The problems of reality testing have their roots in the nature of individuals' mental boundaries. The physical reality of perception is that our nerve endings are stimulated at our physical boundaries, producing effects in our nervous systems which are translated internally in ways which attribute meaning to the experience. This is true whether the phenomena interpreted are tactile or visual sensations interpreted as encountering tangible objects, or auditory sensations experienced as hearing music, voices or other noises. Communication is animate behavior which causes physical phenomena which are available for the attribution of meaning by others.

2. In making these points, I will be stating briefly some matters treated in some depth in my book, *UNDERSTANDING CLINICAL EXPERIENCE: THE CASE OF LEGAL EDUCATION* (Draft, December 1981).

That the mental boundary between self and the outer world is internal to the individual, between our nerve endings and mental attribution, is demonstrated by the phenomena of hysterical blindness and hallucinations. In the former, no meaning is perceived although the optic nerve is in working order and is appropriately stimulated, while in the latter events are perceived which have no physical reality. Boundaries appear to be kept within our minds as well. Forgetting and remembering, relevance seen and not seen, occur in patterns which psychoanalytic observers understand to be motivated (and which they discuss under the label, "repression"). Because all meaning is attributed internally and selectively, distinguishing true from false and me from not me is potentially tenuous.

Reality testing can be tricky enough even in matters having physical reality,³ but testing conceptions of ideas is an especially uncertain business. The only way it can be done is to articulate one's conceptions and compare them to one's perceptions of the articulations of others. For example, legal knowledge is a structure of ideas, and lawyers face considerable difficulty in validating their own and others' conceptions.

Consider the situation of a law student reviewing an examination paper with a faculty member. The instructor and the student each has a unique perception of the subject matter of the course of the examination itself, of the content of the student's examination paper, and of the present communication between them. All these perceptions are subject to distortion in a field of complex motivations.

According to these conceptions, we can understand others only through meaning which we attribute to them. Clinicians, including law professors, frequently perceive the behavior of their clients, patients or students as irrational, inexplicable and stupid; sometimes the feeling is mutual. How are we to reach an agreement regarding what belongs to whom and who is confused about what? No procedure or rule can assure reliable, rational answers.⁴

3. See M.I.J. ABERCROMBIE, *THE ANATOMY OF JUDGMENT* (1960).

4. See ROBERT A. BURT, *TAKING CARE OF STRANGERS: THE RULE OF LAW IN DOCTOR-PATIENT RELATIONS* (1979). This is the stuff of introjection, projection, transference and other unconscious mechanisms which are the focus of psychoanalysis.

B. Group PHENOMENA

There is some tendency in the literature on professional-client relationships to speak as though such relationships are matters between individual professionals and each client, but complex group phenomena always complicate the situation. Even where a solo practitioner is helping an individual client, groups are implicated.

As clinical helpers, we are members of professions, perhaps of speciality groups within them; we are members of service organizations and of departments within them. Memberships outside our occupations will be racial, ethnic, religious, political, socio-economic, national, regional, fraternal, and avocational, and we all fall on to one side or the other of the line which divides us by gender. More intimately, we are members of families, immediate and extended. All these memberships contribute to the identities we feel the need to defend. We are also members of groups in the eyes of others, provoking stereotyping responses with which we must cope. Our various group attachments may be stronger or weaker and may vary in strength as we find ourselves in different contexts.⁵ Their impact on us may be in our awareness or unconscious. Supervisors, colleagues and clients encounter us with their group memberships as well.

Clinicians participate in the emotional lives of the groups to which they belong. Unconscious needs of groups are the bases of myths and rules of group behavior which are not, and which must not be, examined for reality and utility. Professional disciplines pride themselves on the rigor of their learning, and practitioners have well developed rationalizations to defend the choices they make in relating to clients and their problems. Nevertheless, dependency relations emphasizing strength and weakness, the vigor of attack on enemies (and the need to perceive them as such), and the hope which is invested in the dialogue of adjudication may be fueled by emotional needs which carry unexamined behavior beyond objective justification.⁶

5. See KURT LEWIN, *RESOLVING SOCIAL CONFLICTS* (Gertrude W. Lewin ed. 1948).

6. Wilfred Bion has hypothesized that in addition to working on normative tasks, groups are motivated by one of three shared (usually) unconscious "basic assumptions." They behave as though they have gathered to be protected by an all-powerful leader ("dependency basic assumption"), to witness the (re)production of a savior by a pair of members ("pairing basic assumption"), or

In this field of multiple group attachments and shared emotional needs, members of groups take up roles. In our *positions*, as deans, professors and attorneys, with their *job descriptions*, we execute the *functions* required for our various tasks, yet we do not always conform to the *expectations* of us which prevail in our culture. Roles may be assigned and taken up to satisfy *emotional needs* rather than, in reality, to accomplish work. For example, a dean might take up the role of a director, to satisfy dependency needs, when a role as moderator might be more suitable for the task in hand. Other views which individuals and groups have of each other may also satisfy emotional needs; we need our wisemen and our fools, those we trust and our scapegoats.

Professionals and clients must manage their roles, in these multiple senses, in the multiple groups to which they belong, and in this complex context professional and client seek to communicate and to understand.

C. *Difficulties of HELPING RELATIONSHIPS*

Even without the complications of group phenomena, relations between two people are affected by their past histories and by the difficulties of giving and receiving help. Helping relationships have threatening potential for intimacy. Intimacy must seem especially frightening when a client must put his trust in a stranger. Trust is not made easier by the inevitable conflicts of interest between professional and client, as clinicians, for example, need to defend their professional status, and clients want the best service at the least cost, costs limited by no means to only financial considerations.

Clients' responses in this situation are colored by their feelings, perhaps of embarrassment, regarding being in a position of needing help. Dependency relationships are most likely, as well, to evoke unfinished business from significant early relationships. Such "transference" phenomena are among the prominent topics in the developing literature on legal interviewing and counseling.⁷ "Interviewing" is always tricky as the participants try to disentan-

to attack or flee from an enemy ("fight/flight basic assumption"). Such unconscious assumptions may support or detract from accomplishing work. WILFRED F. BION, *EXPERIENCES IN GROUPS* (1959). See also Rioch, *The Work of Wilfred Bion on Groups*, 33 *PSYCHIATRY* 56 (1970).

7. See, e.g., ANDREW S. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* 23-26 (1976).

gle what belongs to whom. Projections, stereotypes, and limited/limiting personal experience always cloud vision. To the extent helper and client have difficulty perceiving and accommodating the other's reality, determining who is confused about what becomes difficult.⁸

D. Different VIEWPOINTS OF CLINIC AND CLIENT; NEGOTIATION OF A TASK

While the central task of a clinic is the conversion of clients with problems to clients without problems (or at least in an improved status), the viewpoints of a clinic's professional helpers and of their clients will be very different. The professional staff will be loyal to the maintenance and operation of the clinic for the service of clients of whom a particular client is only one case. Clients, on the other hand, are not concerned with the overall clinical enterprise, but only with the solution of their particular problems and the relation of their problems to their overall life situation. Professionals and staff also have their own lives and conflicting interests, but they have a longer range commitment to and identification with the institution and its tasks, and their well being will depend upon the continuing well being of their service organizations. In the case of professional education, students are also establishing a continuing relation with the profession, but most students are joining a different branch of the profession than that to which faculty belong. These diverse concerns will be further compounded in clinical education by the conflicting interests of the students (the school's clients), of the clients whose cases are being examined for educational purposes, and of the students' future clients following their qualification as licensed professionals.

Respect for the autonomy of both professional and client requires that reaching agreement on a shared task be a critical feature of establishing a work relationship, but as the episode which opened this article illustrates,⁹ difficulties of mutual understanding and of conflicting interests make informed consent a challenge indeed. Professional and client have such different frames of reference. Expert helpers, trying to perceive work they are competent and authorized to do, focus on fitting clients' needs into the terms

8. See ROBERT A. BURT, *TAKING CARE OF STRANGERS: THE RULE OF LAW IN DOCTOR-PATIENT RELATIONS* (1979).

9. See *supra* p. 2.

of their professional discipline, which is foreign to clients. From clients' viewpoints immediate matters may be part of larger life developments. What for the lawyer is a business transaction with legal implications may for a client be more significantly a career development.¹⁰ While clients come to clinics for help, they may be perversely ambivalent about the changes they appear to seek when the change implies significant alterations in the client's personal world.¹¹

E. Clinics as OPEN SYSTEMS

In order for clinics to survive, they must exchange their services for sustaining resources with their clients and other elements in their environments, and as organizations with complex, interrelating parts, what happens in one part of the clinic has ramifications through the whole.¹² The allocation of aspects of a clinic's work to its subsystems and the manner in which leadership is exercised to manage transactions across boundaries between the clinic and its environment, between the subsystem within the clinic, and between the clinic, its personnel and its clients determine the effectiveness and responsibility with which work is accomplished.

In an ideal organizational world an organization's priorities would be certain, the tasks which must be performed to accomplish those priorities would be assigned to subsystems with a clear and rational relationship to the organization as a whole, and the persons brought into the organization to do its work would each have the necessary competencies and reliably focus on their assigned tasks without distraction from conflicting perceptions and interests. But always, constraints of culture, politics, economics and human nature make the ideal organization impossible.

Applying the structural features of clinical situations and the open systems frame of reference to legal education, it can be seen that a law school and a law student are systems which intersect for a period of time on the student's path to becoming a lawyer; for each, the other is a transitory experience. For law schools, education and research are the reasons for their existence and are their

10. See DANIEL J. LEVINSON, CHARLOTTE N. DARROW, EDWARD B. KLEIN, MARIA H. LEVINSON & BRAXTON MCKEE, *THE SEASONS OF A MAN'S LIFE* (1978).

11. See PETER MARRIS, *LOSS AND CHANGE* (1974).

12. See ERIC J. MILLER & A. KENNETH RICE, *SYSTEMS OF ORGANIZATION* (1967); *TASK AND ORGANIZATION* (E. Miller ed. 1976).

continuing business. From law students' viewpoint, in contrast, legal education is a temporary, preliminary phase: they bring with them prior learning and experience, import a selection of the knowledge and experiences available to them in law school, and go forward from law school to pursue the task of earning their livelihood through the exchange of legal services for material rewards with the institutions and individuals who will be their clients and employers. A parallel analysis is available for law offices and their clients as intersecting, interacting systems.¹³

II. Using Law School as Clinic in a Teaching Program

I will illustrate the deliberate use of these clinical phenomena in professional training with three law school courses. The first example focuses on legal education itself as a clinical event; the second exploits the parallels between law school and practice to learn about the latter; and the third extends the analysis to a fieldwork teaching clinic.¹⁴

A. *Understanding Clinical Experience*

My course, "Understanding Clinical Experience," helps students understand the issues of interpersonal and organizational dynamics we have been surveying and recognize them clinically in experiences of legal education. The course syllabus informs students that the course's primary task is to increase their ability to understand clinical experience. The course is itself a clinic with its professional helper and clients. Authorized by the faculty to offer the course, I conceive my responsibility to be to help students

13. Legally trained readers often have difficulty with the models and jargon (specialized vocabulary) used in expositions which cross boundaries between law and social science disciplines. Discomfort comes not just from strange vocabularies, but because social science models heuristically focus attention on phenomena in a new way and on some matters which have been on the periphery, not placed centrally in view for close attention. Of course, clients have the same problem in understanding lawyers' (or law professors') explanations.

14. I will describe these courses in the progression in which I would like to teach them to students rather than in the order of their development. Chronologically, *Roles and Relations in Legal Practice* was first taught in 1972 and was described by myself and the colleague with whom I designed and developed the course. Phyllida Parsloe, in Greenebaum & Parsloe, *Roles & Relations in Legal Practice*, 28 J. LEGAL EDUC. 228 (1976); *Understanding Clinical Experience* was first taught in spring, 1981, and *Civil Practice Clinic* in spring, 1982.

work on the course task, and I tell them that I will work with them in such manner as will in my judgment best achieve that purpose. My role in the course also includes management functions of arranging facilities, importing students into the course and exporting them at the end with appropriate certifications of accomplishment. The relation of methods of leadership to the structures of task and organization is a subject for study and critique in the course. Developing perceptions of boundaries and of the consequences of exercising leadership regarding them in different ways is an important part of the learning.

The course accomplishes its work in two types of "events," discussion events, which are this clinic's "academic component," and laboratory events, in which students have an opportunity to learn experientially. One goal of the laboratory events is to examine and make judgments about present experience. In clinical work attention is habitually focused on the creation of a product, and while disciplined understanding of present, "here and now," experience is important to making sound clinical judgments, explicitly focusing on present experience is a challenging and uncomfortable experience for many. For example, in the course's Study Group Event, the stated task is to develop students' abilities to understand their present experience of the exercise of authority, responsibility and leadership.¹⁵ In addition to this task being unfamiliar, my exercise of leadership, in accordance with my view of what the work requires, does not accord to students' expectations of teachers' behavior. I mark clear boundaries, entering and leaving the group exactly on time; I do not undertake to tell the group what their experience is or how they should understand it, and I participate in discussion only when I judge I have an understanding of my own experience the communication of which will be helpful to students' work.¹⁶ Thus, to do this clinic's work, students,

15. The Study Group is in a tradition of group relations training first developed at the Tavistock Institute of Human Relations in England, and the course as a whole is very much informed in its conception by my experience with "Tavistock" group relations training conferences which are similarly temporary educational institutions where issues of authority, boundaries, leadership, and related phenomena are studied as they occur in the experience of the conference itself. *See generally*, GROUP RELATIONS READER (A. Colman & W. Bexton eds. 1975).

16. The Study Group and Collaboration Event sessions meet for a period and a half (75 minutes). To utilize only that time resource which is allocated to a three hour course, the course schedule compensates by omitting equivalent class

like new clients generally, must develop an understanding of a new task and overcome resistances to altering their expectations. That is, laboratory events in the course are apt examples of clients coming to professionals for help in a discipline they do not understand. Students report that the Study Group experience is strikingly reminiscent of initial experiences of "Socratic" law classes, and inexperienced legal clients have analogous problems.

In another laboratory event, the Collaboration Event, students have an opportunity to design a work structure for which they must take responsibility. In this event I delegate to the students the authority "to plan and execute an educational event working on the course's primary task." I make my consultation available to the group, but they must obtain it by reaching agreement with me on the terms on which it will be given. Students are here confronted with problems of developing an organization, of deciding whether to work as one group or to divide into subgroups (and if so how), of using limited resources, and of managing their emotional needs as they try to work together. Students are also confronted with problems of intergroup relations as subgroups seek to conduct business with each other and with me. As consultant, I require group representatives to be clear regarding the authority which their groups have given them. To the extent students work without me, they must cope with problems of absentee management, absent in fact but frequently present in their minds.¹⁷ In reflection on their work in this event, students see how professionals with a range of options, many of which are defensible with "reasons," may easily make choices which are prompted in large measure by their emotional needs.

As students increase their competence to understand clinical experience, they learn regarding being effective and responsible clients as well as professionals, by the way enabling them to be more productive law students. Their understanding of law is increased by their insights into how the interaction of participants in the le-

meetings.

17. As is the case with traditional courses, consultation is given principally to the group rather than to individual members. I confer individually with students on their initiative on a time available basis, as I would in other courses, but as consultant, I make a practice of never working with individual students regarding their participation in a laboratory event while it is in progress. In part, choice of this mode of working is constrained by my teaching another clinical course at the same time which involves a greater element of individual supervision.

gal system with each other and with institutional structures result in decisions in clinical contexts. The law is, after all, what lawyers in their various roles do. Furthermore, students may become more competent and contributing participants in the legal education enterprise from a better understanding of their experience as our clients.

Students, in their educational discomforts, tend to view themselves as victims of legal education and its practitioners. In the course, students may learn to see the inconsistency of their implicit demands that they have the autonomy to choose for themselves and at the same time have security of rules and structures.¹⁸ Authority and responsibility in groups are complex and subtle, and through the course's focus on group phenomena, students may learn how they contribute to the creation of the situations they find so intolerable.

Another aspect of course learning which especially seems to contribute to students' understanding of their legal education experiences is the study of the interrelation of clients' life-developmental tasks to the specialized tasks on which a clinic focuses in its limited way. Students may begin to resolve for themselves the issues which arise from the relation of becoming a lawyer to becoming an adult, of their ideals for their futures with the realities of what being a lawyer requires, and of joining the new professional group and maintaining their relationships to the family and community groups which are important to them. These issues create anxieties in our student-clients which interfere with their hearing our intended messages, and understanding this may help students to listen better.

These aids to students' legal education are, however, collateral benefits, priority being given to the focus on examining and developing models of clinical experiences by which members understand experiences of helping and being helped in clinical work, with special emphasis on the relation of tasks to boundaries and the relations of individuals to groups.¹⁹

B. Roles and Relations in Legal Practice

Roles and Relations in Legal Practice has as its purposes in-

18. Cf. Leff, *Unnatural Law, Unspeakable Ethics*, 1979 DUKE L.J. 1229.

19. The importance of allocating priorities to different courses and avoiding the trap of the all-purpose course is discussed in Part III, *infra*.

roducing law students to interpersonal phenomena in law practice and leading students to reflect on lawyers' roles and their personal relations to these roles. The course studies selected work and decision making roles frequently played by attorneys, evaluating the professional issues—personal, ethical and legal—typically confronted in the various contexts. For each project students are given a problem-fact situation calling upon them to perform a task commonly performed by attorneys. Legal materials sufficient to deal with the legal aspects of the problem are provided and readings from related disciplines are assigned. The teaching methods include role enactments, videotape playback and small group discussion.²⁰ Attorneys and other counselors who deal with the problems as a recurrent matter in their practices are invited to discuss the issues with the class. Where the project has involved interviewing, counseling or negotiation, the visitors will usually have done the class exercise, and videotapes of their work are presented as a focus of discussion. Throughout the course the reading materials and visiting attorneys are selected to present a variety of viewpoints and approaches, and students are encouraged to evaluate the offered models critically.²¹

This course brings into the present context professional events in which students expect to (and sometimes already) engage; but the real event is still a present educational one, and the two levels (enacted and real) inform each other, as was demonstrated in my example in which reflection on the similarities between clients failing to follow through on agreed treatment and law students cutting classes illuminated clinical features of both contexts.²²

While the absence of real clients for the student "practitioners" in the exercises in this course places some limits on what is available to be learned, the use of role enactments also presents some special opportunities. Most obvious is the opportunity to learn from enacting clients' roles. Student's sympathies and imaginations are engaged regarding the situations of the clients they are enacting, while at the same time they are confronted with the profound difficulties of understanding a situation from another's viewpoint, especially when the other's life experience is very differ-

20. I limit enrollment to fifteen students.

21. The details of the methodology are more fully described in Greenebaum & Parsloe, *Roles and Relations in Legal Practice* 28 J. LEGAL EDUC. 228 (1976).

22. See *supra* p. 2.

ent. The message is clear that if understanding is difficult when one's task is to enact a client's role, how much more perseverance and empathy are required when one is seeking to understand a client while maintaining one's role as attorney. Important learning opportunities result from the strategy of instructing multiple groups of students to respond to the same role enactment stimuli.²³ Responses of interest include how students understand and act upon my instructions as well as the content they give their roles, which include roles of attorneys, clients and supervising partners. Professionals, their colleagues and their clients make choices in myriad little matters as well as in big ones. When students are confronted by the fact that they have seen things differently and chosen to act in different ways, seeking explanations of their diverse responses can lead to very instructive discussions. Similarly, when the group acts uniformly, when useful alternatives can be demonstrated to exist, and when no one appears to see things plainly available to be seen, these collusions also beg explanation. The group, thus, has an opportunity to explore processes which explain diverse responses to the same stimuli and collusions which inhibit using diverse experience and competencies.

The course, then, uses evidence of students' behavior to draw out and demonstrate the models in students' minds on which they act, and the absence of the constraints of real clients and long term relationships sometimes produces more exaggerated behavior, which is helpful for this purpose. From a different viewpoint, the course is a protected environment in which students have freedom to experiment and act out their ideas for shared examination without fear of injuring clients. The extent to which students choose not to use this opportunity and present themselves as narrowly confined by my instructions or by implicit rules of the group is in itself an important matter for examination. In the face of this protected environment, students demonstrate their aversion to risk taking. They show themselves to be very uncomfortable about the likelihood that they will make mistakes which may injure clients. They seem to feel that they should soon be crossing a line when they will become ADULTS and LAWYERS, when they will be supposed to do only correct things all the time, leading only to

23. A class of fifteen students will produce five versions of each exercise as students work in groups of three. For example, in a typical interview exercise students will enact roles of "attorney," "client," and "consultant-observer."

happy results.

The primary goal of this course is learning regarding professionalism. Among the issues of lawyers' roles which are recurrent themes in the course are the following:

Are lawyers' working relations with clients properly controlling and hierarchical or mutual and collaborative?²⁴

Are lawyers technicians or counsellors? What are lawyers' relations to the personal aspects of their clients' problems?

When should clients be counseled regarding conciliation as an alternative to adversarial dispute resolution?

When and how should attorneys work with professionals in other disciplines to resolve clients' problems?

How do attorneys cope with the conflicts between clients' interests and attorneys' survival needs?

Within the wide latitude which the canons and customs of the profession provide, students discover the choices they are inclined to make in these matters. Examination of the parallels between present and future realities is helpful in these issues. As students enact the roles of lawyer and client, comparison to how they work with me as my clients, helps students conceive how lawyers' clients may feel. With feelings of distrust of the intrusiveness of my work with them, students resist my control, but want me to make the practice of law safe for them. Their learning regarding working responsibly with each other in the present context can help them consider strategies for surviving with their ideals in practice. Most important is learning regarding the problems of helping and being helped in professional relationships.

C. Civil Practice Clinic

In Civil Practice Clinic I work with law students working in a law office engaged in a civil practice.²⁵ The attorneys in the office bear the responsibility of supervising the interns' work to maintain the quality of service to clients, while course members work with me for academic objectives, namely to build a model of the clinic, of its task and structure and of its relation to its environment, and to gain an understanding of the interrelation of the choices the interns are making in their professional roles to that clinical context.

24. See DOUGLAS ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* (1974).

25. In the first offering of the course, students were interns in Indiana University Student Legal Services on the Bloomington campus.

In the clinical program, which is a fantasy in my mind, students would progress through these three courses. Having taken Understanding Clinical Experience, Roles and Relations in Legal Practice, and other preparatory courses, they would come to Civil Practice Clinic ready to use their learning in the service of clients whose fates depend on their work. In this fieldwork clinic, interns experience the pleasures of being lawyers, of helping clients and of learning skills which will help them function in their future careers. At the same time interns experience conflicts between caring for themselves, their clients and the clinic. They are charged to work with diligence even when the client's problem seems petty compared to their own. They must cope with the pain and frustration of failure at times to meet clients' objectives, sometimes because they could not be met, but occasionally through mistakes of the intern or of participants in the clinic whom the intern cannot control. They experience the reality that client interviews may result in confusion as well as in increased insight. Interns assess the costs of failure to maintain clarity regarding tasks and boundaries, while learning that maintaining them is difficult work. Interns experience the disappointment of being manipulated and lied to by clients, but at the same time consider their own, the office's and the profession's contribution to the behavior they experience as offensive. They learn the potential that clients can suffer from the constraints of politics and economics within which the clinic works and from problems within the clinic, especially in a teaching clinic from the inevitable constraints of two tasks competing for primary status (that is, training interns and client service). In Civil Practice Clinic, interns learn the utility of using discussion and support from colleagues to help them cope with their practice problems. Even with clients depending on interns' work, the Civil Practice Clinic is a relatively protected environment with supervising attorneys watching interns' work closely and with the interns' relation to the office being of limited duration. A student in the course referred to this as a "transition practice."

In establishing this course, we considered two models. For the first offering of the course, the choice made in negotiation with the staff attorneys responsible for the office was for the faculty member to consult outside the office structure to interns who enrolled in the course. I in fact did not set foot in the office or discuss the course with the supervising attorneys during the term in which the course met. An alternative model followed the second year is for

the faculty member to consult to the office, with special work being offered to those interns who enrolled in the course for credit.²⁶ Of course, in either model the clinical course will inevitably have an impact on the office.

Both alternatives have benefits and costs. The interns in the course the first year became very attached to the approach chosen, appreciating the opportunity to discuss outside the office boundaries some of the practice dilemmas they were facing. In particular, they felt they could discuss more freely the impact which relationships within the office, including relationships with and among supervising attorneys, had on their work with clients. It was helpful to their making use of the course that the consultant's promise of confidentiality was reinforced by a visible lack of opportunity to breach it. Of course, a cost of this approach is that some matters which needed to be worked on within the office may have been deposited in the Civil Practice course and left there (although in other instances interns may have taken their learning from the course with them to contribute to the office's work and culture). The alternative model turns this on its head, the security of the course group being lessened, but the consultant being able to work more directly to help clinic participants establish more productive working relationships and structures.

III. General Considerations

A. *Assigning PRIORITIES TO COURSES*

We can sort the pedagogical goals which are pursued in legal education into categories of cognitive learning (or knowledge), skills and professionalism. Recall the illustration which opened this discussion, in which a client's propensity to abuse alcohol leads to criminal prosecutions. Using such a case in pursuing knowledge, we could focus on matters of criminal law and administration or on the interdisciplinary interests of law and various social sciences. The case could also be an occasion to teach skills, that is, behavior effective to achieve determined goals. Thus, we

26. Compare Meltsner & Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978). The clinic they describe is similar to this latter model, except that Meltsner and Schrag combined the roles of supervising attorneys and consultants, which are kept discreet in the models herein. The similarity is not coincidental as Meltsner and Schrag have also been influenced by participation in "Tavistock" group relations training. See *supra* note 15.

could teach interviewing behavior effective to obtain information and engage client's trust, negotiation to obtain the most favorable results in plea bargaining, trial conduct to persuade judge or jury, and teach how these different phases of lawyers' activities affect each other in instrumental ways. Teaching skills involves delineating models of effective behavior and training the capacity to behave in accordance with those models. Professionalism, the third area, is making choices in professional roles and learning to recognize and cope with factors which influence lawyers' choices regarding, for example, allocation of decision making between lawyer and client, conflicting loyalties to the client, the legal system and the lawyer, and concerns that a client may have diminished social competence to choose what is best for himself.

While knowledge, skills and professionalism overlap, and while each is an aspect of every clinical event, in designing pedagogical devices, instructors give priority to some goals over others, consciously or not, in accordance to their interests and aptitudes and in response to students' needs and demands. Choosing priorities is a necessity because different tasks require different resources and technology. To illustrate this point, when knowledge of a substantive area is our priority, we choose all of our material from that area and add material demonstrating different aspects of it as students are ready to assimilate it, moving along at sufficient pace to include a complete enough coverage of the subject in the time available. In using experiential material of lawyers' operations for knowledge purposes, discussion of the experience will focus on what it contributes to students' substantive understanding. In teaching skills, in contrast, lawyers' operations would be separated into their component behaviors, and students would repetitively practice those behaviors until they can be reliably called upon. The parts would bit by bit be integrated into the completed operation, and then another operation might be addressed. For this purpose subject matter would not be central. In giving priority to professionalism, we might proceed as I have described in *Roles and Relations in Legal Practice*, allowing students to enact complete scenarios to discover the choices they are making and discuss with other students why they have done things differently and what their authority and responsibilities are in the circumstances. I have demonstrated the relation of goals to technology in a simplified way, but I believe the point is an important one.

In acting on these principles in my courses, I have chosen cog-

nitive learning as the priority in Understanding Clinical Experience and exploring professionalism in Roles and Relations in Legal Practice. As I have noted, however, knowledge, skills and professionalism are each aspects of every clinical event. While skills training is not the priority in these courses, skills issues cannot be ignored. For example, in interview exercises in Roles and Relations, students must be made aware of the behavioral possibilities in the lawyers' operations they have enacted, and that some of the options they have declined might have utility before exploration of why they have made their choices becomes relevant to them. Conversely, work in these courses may be useful background for skills learning elsewhere. For example, knowledge of clinical phenomena developed in Understanding Clinical Experience is helpful in delineating models of effective behavior. Skills training is not the priority in the courses I have described, however, because in my judgment the opportunities for learning in exploiting professional schools as clinics are greater in knowledge and professionalism and because I have adopted technologies suited to those purposes. Of course, these choices have also responded to my own aptitudes and interests.

In my view, skills training, as I have defined it here, should have its own place in a complete clinical program, where skills are the priority and the technology is suited to the purpose. Without launching in an extended way into the debate over the extent skills should be taught in law school, I will state my view that acquiring the models of behavior and the attitudes necessary to support skills development is a complicated business, and that the work is best commenced in a protected context under the guidance of individuals who understand and can facilitate the requisite learning processes to bring students to the stage where they have sufficient understanding and ability to continue the process in practice. Further, students will require sufficient skills to make clinical education possible for the variety of goals we have surveyed. What can be accomplished in any course is constrained by the knowledge, skills and professionalism which students bring with them.

The importance of designing subtask systems in an overall enterprise designed to accomplish particular tasks and of maintaining clear boundaries is a lesson for all clinical work, including law practice and legal education. In my view, the central, inhibiting defect in legal education has been "all-purpose courses," in which all pedagogical goals are to be pursued pervasively in all courses using

a single methodology. The result may be that nothing has been done very well. Further, although different teachers do develop somewhat different methods and have their own priorities, living by the myth of the all-purpose course prevents planning by which students systematically get a coherent and complete legal education. In turn, every experiment and reform in legal education, including Langdell's, has seemed to have as its ambition the curing of all legal educations' ills. In my view, we have tried to develop all-purpose clinics which have tended to fall into the same trap. (Law professors, I think, must have problems with issues of omnipotence.)

It is in fieldwork courses, where choices tend to be dominated by the needs of immediate clients and by survival problems of the clinic, that it is most difficult to assign priorities. Fieldwork clinics can be organized to pursue a variety of pedagogical priorities, by control of the office setting and case intake and by disentangling case supervision from an academic component. Fieldwork clinics can be especially suited, however, to the task of putting it all together, that is, of integrating aspects of clinical work in the field where the necessities of practice dominate. But, as I have learned in my Civil Practice Clinic, this goal is constrained where antecedent work has not laid the foundation by work on the constituent elements.

B. Teaching STYLES AND TRAINING FOR CLINICAL TEACHING

In much of the work I have described, I have adopted a nondirective, facilitating style of teaching. This has two aspects. One is never telling students how they should enact their roles or what they should learn from their experience. The other is facilitating rather than directing group discussion. Ultimately, students must discover their own learning, and these styles of work help students to utilize the resources and competencies of the group and not unrealistically rely on the limited experience of one authority figure.²⁷

This is a style of educational leadership to which we are unaccustomed, and one factor which has inhibited our work is the limited models which we have experienced as students ourselves. Legal educators talking to each other is helpful, but I hope we can

27. Compare Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981).

begin to make greater use of experience outside of legal education. I, at least, have found my work with other disciplines very helpful.

C. *Faculty as* ROLE MODELS OF RESPONSIBLE PROFESSIONALS

The courses I have described invite consideration of faculty role modeling, as helping professionals, as ones who design and take responsibility for structuring helping situations, and as individuals who have been resourceful in seeking the learning and help necessary for their work goals. Clinicians in all fields tend to see themselves as confined by structures given by tradition, by rules of the profession, or by other social and economic necessities. In courses such as these, students can experience faculty as professionals acting resourcefully within established structures, working as team members within a clinical service institution, as able to bear some risk in order to accomplish valued goals. Of course, as clinical courses themselves become established traditions, we can learn to play it safe within that framework, losing this learning opportunity.

The educational relationship dominates students' present experience. Even when engaged as interns in a fieldwork clinic, legal education is the clinical experience in which students are most heavily invested. Students are our clients, and there will be no better occasion for them to begin examination of the structure and dynamics of clinical experience than in the present, legal education context. Students (and faculty) may deny the relevance of their present experience, but such denial is part of the present experience available for clinical examination.

