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THE CLINICAL METHOD OF LEGAL INSTRUCTION: ITS THEORY AND IMPLEMENTATION *

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INTRODUCTION

During the past decade there has been explosive growth in the phenomenon commonly referred to as clinical legal education.¹ Despite this expansion, however, there has been a failure to sufficiently develop the theoretical dimensions of clinical legal education. The term, clinical legal education, has been used casually to describe a wide range of tenuously related educational approaches and processes.² This has resulted in a failure to isolate and identify the unique educational potential of the clinical method. The central concerns of this article, therefore, are definition of the clinical method, specific examination of its methodological framework, and implementation of that methodology.

This article assists the process of understanding the clinical methodology by analyzing the following premises.

1. The method of instruction termed "clinical" differs from the Langdellian appellate casebook method in only one respect—the clinical method collects directly experienced legal processes involving a third party (the client) as its core of material studied by the law student while the casebook method utilizes collections of vicariously or indirectly experienced two-dimensional material as its core of learning material.

2. Issues of what specific educational goals are selected by the law teacher, and the techniques of instruction (Socratic, lecture, discussion, videotapes, etc.) are not the clinical method but are questions confronted by all teachers in determining the best way to teach from the selected materials, whether clinical or non-clinical.³

³ The author wishes to acknowledge the much appreciated editorial assistance of Sheri A. Schoenberg and Sue Barnhizer, without whose constant assistance and recommendations this article would never have been completed.


¹ In 1975 there were 346 “clinical” programs listed by the 127 ABA approved law schools responding to the annual questionnaire prepared by the Council on Legal Education for Professional Responsibility, Survey and Directory of Clinical Legal Education 1974–75, May 1, 1975, at iii.


³ The specific processes of instruction, however, can to the extent they represented innovative approaches to law teaching contemporaneous with the initial thrust of clinical education, loosely be considered to have been originally part of the “Clinical Movement”. In that regard one can see the learning methodology defined herein as clinical as a specific subset of a broader process of reform that, for want of competition during the period of its expansion, was conveniently referred to as “clinical education” with that term being used to describe almost anything that seemed different from traditional legal education.
3. Although the clinical method can be adapted into educational models capable of attaining any of the goals of legal education, it is uniquely suited to facilitating learning in “professional responsibility”, and these results cannot be consistently achieved by other methods.4

4. For the clinical method to be used effectively in teaching professional responsibility, a much greater understanding must be achieved about program design, resources, and teaching.

Christopher Langdell launched the last major reform of legal education when he brought the education of lawyers into the university, established standards for curriculum content, insisted upon undergraduate education as preparation for law school, introduced the use of collected appellate decisions in aid of analysis, and initiated the use of the “Socratic technique” in instructing law students. In 1870 these reforms were necessary responses to deficiencies in the office apprentice-lecture approach to legal education. The reforms were also better fitted to produce lawyers able to cope with a shift in the nature and needs of the society served by the profession. Langdell's genius identified and developed the means to meet the needs of a changing society. Unfortunately, ensuing generations of law teachers failed to continue the dynamic process initiated by Langdell. This resulted, ultimately, in the stagnation of legal education for a lengthy period and the slow but steady growth of pressures for change. The process through which this pressure built is perhaps best described by Arthur Koestler.

The new territory opened up by the impetuous advance of a few geniuses, acting as a spearhead, is subsequently occupied by the solid phalanxes of mediocrity; and soon the revolution turns into a new orthodoxy, and ultimately, estrangement from reality. . . . The emergent orthodoxy hardens into a ‘closed system' of thought, unwilling or unable to assimilate a new empirical data or to adjust itself to significant changes in other fields of knowledge; sooner or later the matrix is blocked, a new crisis arises, leading to a new synthesis, and the cycle starts again. A. Koestler, *The Act of Creation*, at 225-6.

Clearly, legal education had achieved a state of rigid orthodoxy during the decades between 1920 and 1960. While isolated individuals called for reform both within legal education and the society, most legal educators remained unheeding.5 Law schools tended to adhere rigidly to a fixed curriculum focusing on the two major tenets serving as the symbolic shibboleths of law school—the learning of legal principles and “thinking like a lawyer”. These ill-defined phrases were nonetheless all that was needed to withstand the solitary attacks of a few courageous individuals. Existing law faculties, made up almost wholly of white males with homogenous social, economic, and educational backgrounds, determined who was hired, admitted to law school, and the suitability of subject matter and methodology for inclusion in the curriculum.

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4 As used throughout this article the term, professional responsibility, refers to a wide range of considerations including a process as basic as the understanding of specific ethical rules to institutional analysis and attainment of the knowledge necessary to defining one's own framework of lawyering role and individually acceptable behavior. This multi-faceted kind of “professional responsibility” is discussed in the first parts of this article.

During the 1960's, however, the fabric of American society was rent. Incredible pressures were focused on the nation's basic institutions and many of their most cherished premises were challenged. Attacks by civil rights groups, anti-war protesters, students and "radicals" of various kinds subjected the society to intense and sweeping criticism. Anyone who experienced those times understands that fundamental social, political, and economic beliefs were under attack and that many of the institutions could not justify their basic tenets. The universities and law schools were among the institutions hardest pressed. Pressure mounted from within legal education for a response to the assaults. These pressures, coupled with the efforts of a small group of law teachers who had been seeking reform, triggered the growth of clinical legal education. It must be recognized, however, that while clinical education has been the vehicle of reform, it by no means represents its totality. It does represent the means through which the "blocked matrix" of legal education was reopened and the process by which radical experimentation has been permitted during the past decade. This latter function cannot be underestimated in importance for much of the ultimate benefit from clinical education will be its generation of "spinoffs" of insights and processes of benefit to the whole of legal education and the profession.6

I. THE THEORETICAL FRAMEWORK

A. An Introductory Overview

The development of clinical education and methodology can be viewed as occupying four, partially overlapping phases. They are: 1) Reopening the matrix—the clash of value systems 2) experimentation 3) consolidation, reflection and refinement of the experimental findings and 4) clarification and assertion of the proper role of clinical education and methodology within legal education.

It may also be useful, when considering the needs served by these phases, to think of clinical "education" as a considerably broader process than clinical "methodology". For the purpose of this article, clinical education refers to the broad process of bringing about institutional change and reform within legal education. It is appropriate to view this as an all-inclusive macro-process that is working externally on the curriculum and is representative, not of a specific educational process but a philosophy directed toward fundamental reform. If we accept clinical education as representing such a generalized movement, it is possible to consider the clinical methodology as a separate process that operates within the curriculum and involves the processes of teaching and learning. Viewed in this context, clinical methodology can be varyingly related to the generalized reform purposes of clinical education but the intensity of the linking depends upon the specific goals selected by the law teacher.

The clash of systems. During the 1960's the primary role of clinical education was not a specific methodological one of how best to teach individual courses or curricula, but an often inchoate assertion of the need for reform

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6 Within recent years there has been tremendous growth in courses given impetus by the "clinical movement". While many of these courses, such as trial advocacy, existed in limited forms prior to the past decade it was the mood of change and experimentation that provided the framework for expansion.
of legal education. The generalized rhetoric of "professional responsibility" and "skills" training was thrown about because it represented the antithesis to the traditional, and also inchoately stated goals of traditional legal education. The dialogue, such as there was, occurred not on a rational and intellectual level but an intensely emotional one produced by the collision of what was perceived to be radically different values concerning the proper role of legal education.

The experimental phase. To this point, proponents of clinical education had only been presenting a theory about the special learning effects of what they loosely termed the clinical methodology. Some difficulty was created by the aggressive assertion that the theory was indisputable fact but, it was not until the onset of CLEPR that any real possibility existed for the experimental testing and/or validation of the theorem. The extremely rapid growth of an incredible variety of clinical programs over the next five years provided the opportunity to examine many of the articulated premises that underlay clinical education, to develop greater knowledge about educational theory and process, to develop beneficial relationships with the non-clinical faculty and curriculum, to identify the key factors necessary for different aspects of the implementation of the clinical method, and the development of materials useful in the teaching of both clinical and non-clinical courses. Through the dynamic of experimentation a data base and knowledge was developed making it possible to move to the third phase of the process.

Consolidation, reflection and refinement of the experimental findings. Clinical education is presently in the middle of this phase. Currently, and over the next two years, numerous clinical teachers who have been involved in thinking through the results of their experiences in various models of implementing the clinical methodology will be presenting their findings and conclusions. Already, the differences in content, insight and sophistication of understanding among many clinical teachers is discernible. Where only a few years ago discussions among clinical teachers seemed to be hours of treading water with only superficial exchanges, the dialogue now is on a considerably keener and more exciting plane. While there is still a healthy diversity of perspective, the overall understanding of theory, process and subject matter is greatly intensified. This will generate the fourth phase of the process.

Clarification and assertion of the proper role of clinical education in relation to the total curriculum. This essentially brings us back to the beginning with one critical difference. The fourth phase will represent a return to the premises of reform but it will be with specific data, concepts and knowledge about how best to achieve legitimate ends. It will also involve all kinds of law teachers for, at this juncture, many people exist within legal education who are willing and able to see the need and means to rethink legal education. This phase will see carefully reconstructed curricula, better use of teaching processes and a strengthened bridge between the law schools and the continuing needs of the society and the legal profession.

7 The Council on Legal Education for Professional Responsibility (CLEPR) was originally funded by The Ford Foundation in 1968. A private philanthropic foundation created solely for the purpose of supporting clinical legal education in the United States, it was almost wholly responsible for the initial growth of clinical legal education.
B. Definition of the Clinical Method

There is only one difference between the casebook method of law instruction and the clinical method. The Langdellian casebook method uses vicarious legal experience as its central core of educational material while the clinical method uses direct or “first-hand” legal experience. Due to the extremely volatile and emotional role clinical legal education has played, law teachers have confused questions of methodology, technique, personal and professional values, and educational goals. The result is that it is often difficult to have a rational discussion about clinical legal education.

Just as the Langdellian casebook method had, as its central rationale, the need to redirect the basic dynamics of the insufficiently analytical apprentice-lecture methods of law instruction, the clinical method rests on a commitment to expand the trust of legal education to include broadened conceptions of professional responsibility and technical legal skills. It is important, therefore, not to lose this sense of primary purpose amidst the confusion that has characterized considerations of clinical education. It is also important to recognize that, while this article takes the position that key aspects of the learning of systems of professional responsibility and lawyer skills are the unique and vital role of the clinical method, these elements are not part of the definition of that method, but specific educational goals that can best be achieved through a careful use of the clinical methodology. The definition of the clinical method in relation to use in specific law instruction remains simply the use of direct experiencing of the legal process as the educational core.

The law teacher’s responsibility is to use this central premise as a beginning point, select the specific educational goals to be served by the method, and construct the total and specific educational package that is best adapted to attaining the selected goals. This process will necessarily include: (1) analysis of the educational goals (2) selection of subject matter to be used as the focus of instruction (3) selection of the kinds of cases and clients that will best lend themselves to attainment of the selected goals (4) determination of the teaching techniques to be used to assist implementation of the method (5) determination of the mix of methods, if any, that would facilitate reaching the educational goals (6) selection of supplemental materials to be used in conjunction with the direct clinical experience (7) determination of the overall course and program structure including, inter alia, amount of credit, length of program, location of placement, type of case, nature of systems from which the experiences are drawn (8) the ratio, role and status of the teachers.

II. ANALYSIS OF THE CLINICAL METHOD IN RELATION TO THE TEACHING OF PROFESSIONAL RESPONSIBILITY

It is a premise of this article that effective use of the clinical method is the only presently available means of consistently facilitating learning of
“professional responsibility” in a meaningful, internalized way sufficient to form an affirmative structure capable of guiding behavior in a manner consistent with the stated public norms of the legal profession. The teaching of such an affirmative system of professional responsibility at a point prior to graduation must be given priority within legal education. The strict adaptation of the clinical method presented below which serves as the analytical focus of this article is integrally related to this need to facilitate learning in areas of professional responsibility.

The exposure of law students to the experiences of client representation and responsibility is, in itself, neither a consistently valid nor predictably beneficial teaching method. It presents unjustifiable risks for clients and for students. While the clinical method begins with the tension of client representation as its central motivational dynamic, it must integrate three factors.

1. A substantial, but restricted, volume of actual client representation by the student.

2. The clear assumption by that individual student of “primary” professional responsibility for the process and outcome of that representation.

3. Begins from the determination that the teaching of key aspects of lawyer role, values, standards, and institutional analysis can only be consistently achieved through a careful use of direct clinical and client experience. There are three primary models of adopting the clinical method. See Barnhizer, Clinical Education at the Crossroads: The Need for Direction, Brigham Young Law Rev. (1977), which defines the models as being strict, specialized and complementary.

That positive learning of “professional responsibility” has been given only slight attention within legal education is beyond question. Whether the rationale offered in justification of this is based upon some variation of the “pervasive” theory of teaching ethics or simply the desire to avoid the subject altogether is probably not important—the result is the same.

See particularly Stone, Legal Education on the Couch, 85 Harv.L.Rev. 392, at 431-436 (1971). The primary dangers Dr. Stone perceives are a depersonalization or dehumanization of both the client and the student lawyer resulting in poor lawyer-client behavior patterns in future dealings with clients. He emphasizes therefore, the need for close “supervisory” attention for the students, as well as for structured human relations training.

See Bellow, supra, note 2, at 379. The definition offered by Bellow is theoretically similar to that presented in this article but I have deliberately narrowed the definition to focus upon the particular combination of methodological factors that are required to achieve substantial, “internalized” learning in concepts and systems of professional responsibility. In Section 1B below, there are set out seven specific goals of professional responsibility.

The actual volume of cases will vary depending upon the amount of time the student has available (generally a function of the amount of academic credit), the types of cases being handled, the experience, intelligence and lawyering ability of the student, and the amount of time the teacher can spend with the student. Specific data relating to these factors are presented in Section III below. Not only is it necessary to have a certain volume of cases, but those cases must be carefully selected to generate the kinds of experiences needed to enable the teacher to direct the student toward the professional responsibility goals.

Obviously the “primary” lawyering responsibility is shared with the teacher; however, the term is used to emphasize that the student must, to the extent possible, be given the immediate, on-line responsibility for what will happen to his client.
3. An individualized teaching relationship between the student and clinical teacher, using the student's clinical experiences as its focus.\textsuperscript{14}

For a course to be "clinical" within this definition all three of the elements must coexist. The absence of any element results in a program of instruction that can be termed "quasi clinical".\textsuperscript{15} It is important to recognize this distinction primarily in relation to the ability to teach the individualized systems of professional responsibility described as the fundamental purpose of the method. If the method is not properly implemented, the possibility of negative learning is substantially increased. The essence of this adaptation of the method is not simply involvement with real people and their legal problems but a complex educational process central to which is the individual acceptance of involvement in the total learning experience by the clinical student.

This conception of an adaptation of the clinical method capable of teaching professional responsibility permits a clear understanding of its general purposes. They are: (1) to assist the law student in developing a coherent and personalized system of professional responsibility; (2) to integrate and synthesize the diverse components of legal education; (3) to develop in the student the ability to make judgments; and (4) to learn basic technical skills.

A. The Methodological Rationale

As defined above, the adaptation of the clinical method is the culmination of the students' previous legal instruction in the basic curriculum and is an integral part of the total learning process. Not only does it enable the student to synthesize the previous educational experience of the law school; it provides a laboratory in which students are placed in a controlled educational environment where their mistakes and successes are formed into a positive learning experience that is not harmful to either themselves or their clients.\textsuperscript{16} In this setting they can, through their relationships with teachers and other clinical students, examine their abilities and attitudes in the context of the developing patterns of professional behavior that will guide them in the future. The experiences of employment and entry into the legal profession which confront students immediately upon graduation from law school

\textsuperscript{14} Everything the clinical teacher does is part of the total teaching process. The concept of "individualizing" the relationship—making the specific teaching actions at any given time relate to the learning needs of one student—is the challenge of the clinical teacher and reflects an extremely critical part of the teaching method.

\textsuperscript{15} The incompleteness does not render the particular mode of instruction invalid except within the context of education in internalized systems of professional responsibility. "Quasi-clinical" teaching techniques can be used quite effectively to enhance the student's learning in many ways, e.g. simulations, minimal involvement in actual cases in a "secondary counsel" role, observations of systems, and will often be more effective than the "clinical method" as defined herein.

\textsuperscript{16} This avoidance of irremediable harm to both clients and students is the first responsibility of the clinical teacher. Arguably, in most medium-to-large law firms and some government agencies this technical control is supplied to the new lawyers by experienced practitioners. Even assuming this is true on the technical levels in those settings, we should note that many law students do not graduate into situations where they can be brought along slowly and, additionally, commencement of a career may be too late to develop coherent, reflective learning in areas involving professional responsibility.
create intensely significant economic, political, and peer pressures to conform to prevailing standards. These pressures draw the students away from reflecting upon and understanding the new experiences and their own roles within them.\textsuperscript{17} The perceptions of professional responsibility become distorted in response to the particular legal environment in which they exist. It is difficult enough to withstand these forces if the individual has already developed a clear and strong understanding of his personal sense of responsibility and fundamental values. If the individual has not developed a workable system of responsibility, however, it will be virtually impossible to transcend the experiences. Because there are no standards by which to judge the rightness of professional behavior, the measure of responsibility will be that which is accepted generally.

It is one thing to work out a system that is primarily based upon what others have written and thought about. Theoretical systems can be related on an intellectual level but the real questions tend to be those of being. Can I be responsible? Can I be ethical? Can I act on my beliefs? Much can be achieved through a process that deals with the concepts at an intellectual level, but the traumatic impact of reality soon assaults much of the system that has been created, and most people do not develop a coherent, active system of responsibility on their own. Their standards more often tend to be confused and not developed to the extent that they form a means to govern conduct—an operative rationale for behavior.\textsuperscript{18}

\textit{The Role of the Methodological Elements}

\textit{A substantial, but restricted, volume of actual client representation by the student.} A substantial, controlled, amount of client representation thrusts the burden of professional responsibility for another person upon the clinical student. Inevitably the student will react to the experiences and this provides the beginning of the method. A substantial volume of client representation is required because less exposure will not consistently provide the content and scope of experiences needed for the student to develop coherent perspectives on systemic and personal values, lawyering judgment, and the range of technical lawyering skills.

\textit{The clear assumption by the individual student of “primary” professional responsibility for the process and outcome of that representation.} The pressures of professional responsibility, combined with the other elements of the method, enable and compel the student to confront his own professional behavior and reaction to responsibility. Acceptance of this burden of respons-

\textsuperscript{17} The new lawyer will be subjected to extremely intense pressures to conform. He has confronting him the fact that he wants to be a part of the legal profession and has sought that end for at least three years and often much more. Once he has been admitted to the bar the future holds out the promise of prestige and social status, economic wealth and security, and often political power. How many will not choose to fit comfortably into a system that offers so much they have sought?

\textsuperscript{18} I am not saying that clear evidence can be produced to show that the clinical method can make fundamental alterations in the attitudes and behavior of lawyers within the context of professional responsibility. The judgment is still largely subjective. However, what I can offer is a rational educational system with my own observations of students as they progress through this method of instruction, and the recognition that several of the goals of professional responsibility as defined in Section 1B can certainly be achieved through this method of instruction.
sibility compels the examination of personal ethics, morality, individual conceptions of professional role, legal institutions, political and social aspects of the justice system, and the need for systemic reform. Non-clinical methodologies cannot place the burden of responsibility and outcome squarely upon the individual student. They thus permit him to stop short of the reality of personal value systems and professional behavior, and allow the idealization of projected individual attitudes and professional responses. Important questions of professional responsibility are reduced to dialogues of “What would you do if . . . ?” rather than “This is what you did, Why?” The opportunity to internalize an understanding of personal behavior is part of the essence of the clinical method and, without the initial, clear assumption by the student of professional responsibility, generally cannot be provided.

An individualized (one-to-one) teaching relationship between the student and clinical teacher, using the student’s clinical experience as its focus. The preceding two elements of the clinical method create the motivational dynamic and provide the necessary learning experiences. The educational purposes of the method, however, are not achieved simply because the student undergoes the experiences of client representation. It is the teacher’s function, within the individualized teaching relationship, to structure each student’s learning experience and to participate in it at critical junctures to open up to the student implications of the experiences that might not otherwise occur to him.

The one-to-one relationship enables the teacher to see the attitudes, values, sense of professional responsibility, skills, needs and strengths of each student. In non-individualized teaching situations, the student may easily “turn-off” his involvement and the teacher may be unaware or unable to respond. The teaching essence of the clinical method is that the teacher can observe, participate, counsel, advise, reflect, review and criticize the student at the key points where the student must make the decisions, deal with institutions and adversaries, and perform the lawyering tasks which make up professional competence. The teacher can then create a clinical experience specifically adapted to individual student needs, adding a critical perspective to those experiences.10

B. The Specific Educational Goal Structure

The specific educational goals outlined below can themselves be further subdivided. Only parts of these goals have been systematically approached through legal education, with many of them being either entirely excluded or treated so casually or haphazardly as to make their teaching ineffectual or superficial. At best only a small proportion of law students have been involved in their implementation.

The choice of the educational goals to serve as the primary focus of a specific application of the clinical method significantly affects and is affected by a wide range of resource factors. These factors, dealing with both the

10 The emphasis on a one-to-one teacher-student relationship does not mean that is the only format within which the teaching occurs, but that it must be the primary Instructional vehicle. For some aspects of clinical teaching ratios of one teacher to two or three students are appropriate and when the teacher’s educational goals shift away from individual values and behavior in the context of professional responsibility toward specific subject matter the need for the constant individualized attention lessens.
Technical and economic aspects of program implementation and the "clinical environment" from which the substance of the students' lawyering experiences can be structured, are considered extensively in the final sections of this article. It is important to understand, however, that choices of goals have little validity unless care is taken to use resources creatively to construct an educational mechanism directed specifically toward the realization of those goals. They do not automatically happen simply through the process of turning an ignorant student loose upon an unsuspecting client.

Educational Goals Involving Elements of Professional Responsibility

Included in this overall category are the concepts of the responsibilities owed to clients, to the institutions of justice, and to society. Broadly defined, it encompasses considerations of legal ethics and ethical philosophy, professional competence, the roles of the lawyer, economics, the political system and social attitudes and duties.

*The system of ethical proscriptions.* The focus of legal ethics is the system of proscriptions applicable to lawyering conduct including the duties and responsibilities found in the professional codes, their interpretations, and the effect of their non-enforcement.

*Ethical philosophy.* The philosophies of ethics and responsibility to society, individuals and institutions provide insight into the beliefs of the individual and the manner of approaching those responsibilities.

*Personal morality.* Personal morality is the individual's personal system of values and ethics. It includes the individual's beliefs about people and groups including biases related to those beliefs. Of special significance are the person's views and beliefs and their effect upon the quality of representation given to clients.

*Professional role.* Considerations of the effects of professional roles on the attorney involve both definitions of what those roles involve and their effects upon the personal and professional existence of an attorney. These issues consider primarily the non-systemic advantages and disadvantages of the lawyer role and the various conforming pressures of that status.

*Institutional analysis.* The institutional fabric of our system of justice includes courts, the police, practicing lawyers, bar associations, agencies, legislatures and the supporting bureaucracies behind these various interests. The relationships among these institutions obviously have profound effects on the manner in which justice is devised and rendered at all stages, including the recurring distortions created by economic, socio-political, and racial interests.

*Social consciousness.* Closely related to the study of institutions is the need to understand the methods through which those institutions discriminate against members of racial, ethnic, social, and economic groups through the combination of influence of the economic and legal systems, and the effects those discriminations have on the theory and reality of justice.

*Systemic reform.* The issue of systemic reform involves the fundamental question—now that you see the problems, what do you do about
them? The law student (and teacher) must somehow be confronted with these issues, including whether there is a special duty of the legal profession to reform inequities and the best means of accomplishing those ends.

**Educational Goals Involving Judgment and Analysis**

*Issue recognition and analysis.* Legal education attempts to develop the student's ability to develop and examine a set of facts, relate them to applicable legal principles, and through that synthesis, to develop claims, defenses, and supporting arguments. These analytical skills are an essential part of the legal thought process and their development is a necessary focus of legal education. In addition to an understanding of the patterns of basic logic they require the ability to comprehend the full range of issues and possible directions and to predict consequences.

*Understanding of strategy, tactics, and decision-making.* The abilities involved in issue recognition and analysis are important in the initial phases of developing legal and factual alternatives in the individual case. However, a lawyer must also be able to choose between the issues and alternatives and select those most appropriate for obtaining the most beneficial consequences for the client. What is required in this type of analysis is implementation, i.e., deciding what to do with what is available.

*Understanding of process and procedure.* Although the rules and issues of civil, criminal, and administrative procedure are often included in legal education, they represent only one formalized component of the legal process. Knowledge of the formal and informal aspects of that process is a creative, tactical weapon in the hands of an attorney and involves far more than the textbook rules of criminal, civil, or appellate procedure. It includes the informal, generally unwritten rules and processes that often have significant roles in obtaining a favorable resolution of the client's case.

*Synthesis.* Legal education is presented in many separate subject-matter compartments, divided more by tradition and the particular preferences of individual teachers than through any attempt to reflect the realities of the lawyering process. These arbitrary separations will result in very many students not comprehending the integrated nature of the law but instead viewing it as a series of unconnected sets of half-understood principles. The clinical setting permits the development of methods through which these artificially separated components can be brought together.

**Educational Goals Involving Substantive Law**

*Substantive law.* Legal education has, as part of its educational mission, concentrated upon familiarizing its students with an enormous volume of information, providing an extensive, issue-related framework for the generalist attorney in the many areas of legal subject matter making up the curriculum.

**Educational Goals Involving Technical Lawyering Skills**

*Client interviewing.* Conducting the initial contact with a client and the resulting professional relationship, together with controlling the
quality of the information acquired through the interview, are essential legal skills and should be a basic part of legal education.

**Investigation.** Developing a complete factual basis in individual cases is essential to any professional representation of clients. This is one of the single most significant skills of the advocate and counselor.

**Client counseling.** In almost any situation involving legal representation the client has come to the attorney seeking specialized legal advice. The professional relationship will typically involve additional services, but client counseling is the foundation role of the lawyer. Therefore development of the skill and of an understanding of the special responsibilities that providing legal counsel entails should occur within legal education. Counseling is the process of communicating with the client accurately and effectively the validity and condition of the case, its strengths and weaknesses, alternatives and consequences, and the ability to lend this professional guidance while enabling the client to make the essential substantive decisions about the case.

**Negotiation.** A high percentage of all cases are ultimately resolved by negotiation rather than litigation and the understanding of the principles and methods of negotiation is critical. Much of this knowledge can be developed through methods within legal education, including clinical and nonclinical.

**Legal research.** An equally fundamental skill is legal research. It supports and is integrally linked with many of the other skills and goals of legal education. Developing the scope and quality of the student's research while at the same time ensuring that there is not a substantial degree of wasted time due to poor research patterns is invaluable and improves the quality of the student's total analytical process.

**Legal writing.** The skill of clearly, effectively, and persuasively communicating ideas in writing is an ability that has been largely ignored by legal educators. Like legal research, it is generally unexciting, demanding, and often a tedious process to teach and learn. The "law-review" writing style very often required of law students is only one form of legal writing; they seldom have the opportunity to develop the skills of advocacy-oriented expression.

**Trial advocacy.** While only a minimal percentage of cases are actually litigated through trial, the abilities involved in representing clients in court are significant. A believable threat of effective litigation is a significant force underlying many negotiations and provides a powerful weapon in the hands of the competent lawyer. The understanding and effective use of the skills of trial advocacy, (including voir dire, oral argument, case presentation through introduction of documentation and physical evidence, and witness examination) and/or understanding of trial tactics and strategy, are essential to the development of the total lawyer.

**Appellate advocacy.** The ability to communicate one's ideas persuasively through oral argument to an appellate court is a special form of advocacy and one for which current legal education generally prepares the student. Most students even prior to graduation can effectively fulfill the role of the appellate advocate, due primarily to the concentration
The following is a brief outline of the initial developmental phases of the clinical legal program at Cleveland State University followed by a statement of the problems that were encountered. It is presented here to provide context for the remarks that are contained in the subsequent portions of this article.

The basic clinical program was first established in 1972 with a grant from the Council on Legal Education for Professional Responsibility (CLEPR) and consisted of a two-academic-quarter, eighteen credit hour course with the students representing persons charged with criminal misdemeanors. The program was located in the law school, and two faculty members were responsible for both teaching the classroom elements of the course and for providing the individualized teaching and case supervision. Between sixteen and twenty-four students participated in this course at any particular time.

Two additional faculty members were hired, and a separate civil clinical course was begun during the second year of the clinical program (1973), with the two clinical courses operating simultaneously and independently. The students participating in the civil course earned ten academic credits equally divided over two quarters and were “farmed out” to legal services offices rather than working from within the law school. Primary case supervision and individualized teaching was provided by staff attorneys of the neighborhood legal services office. Between twelve and twenty-three students participated in the civil course each quarter.

The experiences of the clinical teachers in these two courses generated a growing base of knowledge about the clinical method of instruction. Initially, it was difficult to derive a firm understanding of the best means of implementing the clinical method, but as the experiment continued the importance of certain specific factors became apparent. These are contained in the problems outlined below and each is dealt with more extensively throughout this article.
(A) Problems Leading to the Development of the Present Clinical Model

(1) The educational commitments of the legal aid attorneys involved with the civil course were not those of teachers. Their roles were confused in that they were committed to the primary needs of the legal aid offices by which they were employed full-time. This greatly reduced the effectiveness of the individualized teaching the students received and raised an inherent conflict between the theoretical and practice oriented components of the program. At the same time, the technical models presented by the legal aid attorneys were often inadequate.

(2) It became apparent that the quality of the students' clinical experiences was substantially dependent upon their lawyering content and that this required close attention to both the type and the volume of cases they handled. The entire program was therefore brought within the law school under direct "in-house" administration to enable greatly enhanced control of these factors. With this change it became possible to ensure a constant but controlled flow of activity with better teaching feedback, and to more creatively mix the case experiences of the students in order to prevent "routinization" and to encourage generalization of the professional knowledge they were gaining.

(3) The length of the actual clinical experience was too short in the criminal course. The two-quarter representational sequence of the

20 The individualized teaching relationship within the clinical method requires the complete commitment of the teacher. The idea of a mode of instruction premised upon lack of preparation, incoherent educational goals, and a superficial treatment of the material with haphazard contact between the teacher and students would be completely unacceptable to law faculty, but it is just what has been forced to exist under the heading of "clinical education". The low quality of educational effect characterizing much of clinical education is totally predictable given minimal resources, inadequate structures and non-professional teaching. When we accept the individualized teaching function within the clinical method as a virtually pure form of mixed socratic and creative instruction we can then begin to perceive the dimensions of the total teaching process and the need to create educational vehicles to facilitate that process.

21 The legal aid and public defender offices needed the law students for service purposes, and could not afford to invest the secretarial and administrative time necessary for the educational manipulation of student caseloads.

22 We wanted the students to see a range representative of the basic lawyering process rather than simply to make them good (or excellent) at a specialized part such as domestic, landlord-tenant, criminal misdemeanors, etc. Therefore, the student caseloads were substantially varied, with the students handling cases involving criminal matters, consumer, domestic, landlord-tenant, personal injury and other tort actions, administrative, civil rights actions, bankruptcy, immigration, etc. The students also had the opportunity to be involved in virtually every type of court and administrative system, both in Ohio and in the federal courts. This limited "smorgasbord" enables students to see the overall coherency of the legal process and to transfer learning between systems. Its primary deficiencies are that the students never obtain enough knowledge in any specific substantive area to be "experts" at what they are doing, and the need to be conversant in multiple areas places heavier demands upon the teachers.
civil course was deemed more educationally effective. The amount of credit (see the statistical analysis of the clinical program) was too great in the criminal course (12 credits) and inadequate (5 credits) in the civil course. Therefore, the restructured program modified both the course length and the amount of credit.

(4) The students in the criminal course represented misdemeanor defendants, both in Cleveland and the suburban municipal ("police") courts, while the civil students handled an almost exclusive diet of legal services overflow cases. It seemed preferable for the students to see a wider range of court systems, clientele, and adversaries in order to give them a clearer understanding of the levels of law practice. The effort was made to expose them to both the good and bad sides of law practice, so that they could contrast the way different systems functioned while still recognizing that any system is imperfect.

(5) The technical functioning of the legal aid offices, as law offices, presented an imprecise model for the civil students that very often encouraged lesser standards of quality than was thought necessary. This was an important reason for the total program's transfer into one centralized office.

(6) There was substantial resistance by the students to attempts to bring in seemingly theoretical approaches to the practice of law while they were attempting to represent actual clients. This conflict tended to make the learning of each part of the process less effective. Thus, a preparatory course was structured into the present program.

The new clinical course was structured upon the analysis of these problem areas. In this new program the separate courses were combined into a single clinical experience; this enabled the law students to represent a varied clientele which posed a wide range of problems including both civil and criminal matters. The classroom teaching and individualized clinical teaching focusing on the case experiences are performed wholly by five clinical teachers employed by the law school. The student may elect to take from two to three academic quarters. The credit hour sequence was altered, with the first quarter (4 credits) devoted exclusively to preparatory instruction to develop an overview of concepts in the areas of professional responsibility and the legal process (interviewing, counseling, investigation, negotiation and trial advocacy). The first actual quarter of client representation was fixed at nine

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23 One purpose of bringing the clinic within the law school was to increase our ability to develop our own case intake patterns. Even though many of our clients still had "legal aid" type problems, we have been able to develop additional types of cases to enrich the process.

24 When students are limited to one or several legal systems, they tend to form their perspectives on legal institutions solely on the basis of those systems. It is better that they see the contrast between multiple levels of the process so that they can deal with the reasons for the differences, and see what is wrong with even the "good" systems.

25 The topical sequence of the introductory course is a) interviewing and counseling, b) investigation, c) negotiation, d) trial advocacy and e) professional responsibility. Of the forty hours of in-class instruction, approximately eight are devoted to interviewing, four to investigation, four to negotiation, fourteen to trial advocacy.
(9) credits since experience had shown that substantial time and involvement is necessary for the initial part of the educational experience, while five (5) credits are appropriate for the process of bringing together the final learning. An office manager was hired to improve the effectiveness of the law office administration, to increase the clinical teachers' ability to obtain more immediate, specific knowledge about their students' clinical experiences, and to enable the teachers to focus upon the teaching function itself with less time spent on administrative paperwork.

(B) The Role of the Introductory Course

A primary reason for the separation of the initial phases of non-clinical academic considerations from the period in which the students are heavily involved in client representation, is to take advantage of differing student motivations at different points in the educational process. It has been generally assumed that the actual clinical experience creates a motivational dynamic which automatically makes students open, eager, and reflective through their participation in the suddenly "relevant" process of clinical education.

As they enter the clinical program, students expect to represent clients and otherwise to participate in the practice of law in preparation for their impending entry into the legal profession. Many students anticipate that the experiences in which they participate will be a relief from the patterns of theory and analysis they have either overtly rejected or found tiring after twenty years of formal education. It is a shock for these students to be propelled upon arrival into a situation which they perceive as undesirably dissimilar from the one expected. Added to this expectational trauma is the seeming tenuousness of the links between a theoretical approach to clinical education through client representation and virtually anything they have previously learned about the practice of law. Therefore, our response has been to place the introductory theories of the clinical experience at a point prior to actual client contact so that there will be no predominant competing motivations interfering with the effectiveness of teaching this framework.

The premises and goals of the total clinical course are reflected in the structure of the introductory course. It provides a preview of the experience to occur in the actual representational periods. This "set", or way of looking at the experiences to come, is the initial stage for the implementation of the selected clinical goals. The educational process makes these concepts an integral part of the professional decision-making of the students.26 Participation and ten to professional responsibility. An additional twelve hours are required outside of the scheduled class to attend pretrial conferences in simulated cases, conduct negotiations, investigate, and try the case. The teaching techniques used range from simulations and the extensive use of videotapes, to lectures, roleplaying, and socratic discussions.

26David Ausubel first presented for me the idea of a cognitive conceptual structure. See, Ausubel, "Cognitive Structure and the Facilitation of Meaningful Verbal Learning", in Contemporary Issue in Educational Psychology, (198). The logic of Ausubel's theory of learning is compelling to a lawyer.

... Existing cognitive structure, that is, an individual's organization, stability, and clarity of knowledge in a particular subject matter field at any given time, is the principal factor influencing the learning and retention of meaningful new material. If existing cognitive structure is clear, stable, and suitably organized, it facilitates the learning and retention of new subject matter.
tion in the introductory course is intended to develop in the students a cognitive structure or framework for the experiences they will have in the actual clinical quarters. This cognitive framework enables them more readily to perceive the relevance of the experiences they are having and to fit each of those experiences into a conception of the overall process, rather than see them as a series of isolated or unrelated events. This learned “sense of the significant” permits the students to gain the greatest amount of understanding from the beginning of their clinical experiences, with much less of the substance of those experiences going “over their heads”. The individual clinical teacher can then generally predict the level of sophistication of each student and can make certain assumptions about the prior dialogue on issues of professional responsibility in which the student has engaged. The ability of student and teacher to communicate within the same general frame of reference facilities the clinical teaching process and enables the student to step into the clinical experience and function more effectively. This provides continuity in the specific educational goals selected for the program, as each successive stage of the process deals with different dimensions of the same premises, beginning with the use of relatively traditional classroom methods and continuing through the methods of supervised client representation.

IV. A STATISTICAL ANALYSIS OF THE CLINICAL ACTIVITIES OF SIXTY-TWO LAW STUDENTS

This study was undertaken to develop specific knowledge concerning the functioning of the clinical method of instruction and to thereby gain a better understanding and ability to adapt the structures of clinical programs and the design of the students’ clinical experiences. Information was sought about: (1) The details of the actual clinical experiences of the students and how those experiences can be controlled to generate a consistently high and predictable learning potential related to the selected educational purposes of the clinical course (2) The nature and intensity of the demands made upon the individual clinical teacher. This knowledge was considered critical to development of a better understanding of the dimensions of that role and the means by which it could be made more effective. (3) The general design of the clinical experience, focusing primarily on variations in the amount of credit hours awarded, the caseload for which the students were responsible, and the types of cases handled. By examining these different aspects of clinical experiences and making some admittedly subjective judgments about their quality, it was hoped that insights could be gained about the best means of structuring a clinical program.

The sample group consisted of sixty-two students participating in the basic clinical program at the Cleveland State University College of Law during the period June 1974 to June 1975. Each student, during the period of his participation in the clinical program, submitted a detailed daily record of his clinical activities. The raw data, contained in approximately 3,000 daily

If it is unstable, ambiguous, disorganized, or chaotically organized, it inhibits learning and retention. Hence it is largely by strengthening relevant aspects of cognitive structure that new learning and retention can be facilitated. When we deliberately attempt to influence cognitive structure so as to maximize meaningful learning and retention we come to the heart of the educative process. (at 199)

27 See Appendices A and B.
logs, was tabulated bi-weekly both for the individual students and for their particular credit-hour subgroups. The students were enrolled in three different credit-hour arrangements; twelve students received twelve credits for any academic quarter, eighteen received nine credits, and thirty-two students received five credits. The daily time charts contained fourteen separate task categories chosen to reflect specifically identifiable clinical activities in which the students had been involved. The categories are:

1. Client interviewing and counseling
2. Negotiation or plea bargaining
3. Investigation
4. Legal research
5. Legal writing
6. File keeping
7. Interactions with clinical teachers
8. Conferences with other interns
9. Trials
10. Court hearings
11. Travel time
12. Time spent waiting in court
13. Clinical seminars
14. Miscellaneous activities

As these data were accumulated and tabulated, tentative hypotheses were formed and reformed. At the end of one year a sufficient base of information had been developed to support the following series of conclusions about the process of clinical education.

1. There are significant educational benefits in awarding between 50% and 80% of a student’s academic credit for the period in which he is enrolled in a clinical course. With the average total quarterly or semester credit load being 14-16 credits, this means a range between 7 and 12 academic credits for clinical work. However, there is a point above which the grant of credit, and therefore the increase in student time available for clinical work, requires greatly increased amounts of teacher input to produce relatively minimal added educational benefits. Conversely, there is a lower threshold of academic credit below which predictably satisfactory educational experiences cannot be expected to occur.

2. The individual clinical teacher’s ability to teach is substantially affected by the randomness, frequency, and volume of time-and-task demands, with these factors operating primarily in relation to the number of students for whom he is responsible, the type and volume of caseloads, and the amount of academic credit the students are receiving.

3. A teacher devoting his full time to individualized clinical teaching can effectively teach no more than eight clinical students, with the preferable ratio being between four and six students.

Perhaps if our teaching skills were better developed, the added time could be translated into a more substantial experience for the student and a direct linear relationship would continue undiminished between time and learning. That is not the situation at this time, however, and additional time would probably only change the degree of the problem.

This, of course, assumes a course and program model relatively similar to that developed at Cleveland State University. As you shift educational goals from those of professional responsibility and institutional analysis toward those of discrete or specialized subject matter and/or alter the program structure to a format more	

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29 This, of course, assumes a course and program model relatively similar to that developed at Cleveland State University. As you shift educational goals from those of professional responsibility and institutional analysis toward those of discrete or specialized subject matter and/or alter the program structure to a format more
4. A student caseload consisting primarily of criminal cases increases the number of adversary functions, resulting in a predictably more intense and productive learning experience. However, such a caseload significantly increases the pressures upon the individual teacher.  

5. The ability of the teacher to “individualize” the learning experience for each student can be aided by a process of constant monitoring or “tracking” of those experiences as they occur, as was done in this study.  

6. The clinical teacher conducts much of his teaching through “spontaneous” teaching interactions of generally brief duration that cannot be scheduled in advance.  

(A) *Comparison of the Students’ Clinical Experiences as a Function of Academic Credit*  

Table 1 compares the time framework of the different clinical experiences of the sixty-two students. It reveals a dramatic reduction in the degree of student involvement in clinical activities as the amount of credit hours earned for the ten-week period diminishes.  

<table>
<thead>
<tr>
<th>Total No.</th>
<th>Total Days</th>
<th>Total Hours</th>
<th>Hours per Days</th>
<th>Days per Week</th>
<th>Hours per Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 Credits</td>
<td>44.9</td>
<td>233</td>
<td>23.3</td>
<td>4.5</td>
<td>5.15</td>
</tr>
<tr>
<td>9 Credits</td>
<td>41.1</td>
<td>190</td>
<td>19.0</td>
<td>4.1</td>
<td>4.6</td>
</tr>
<tr>
<td>5 Credits</td>
<td>38.4</td>
<td>124</td>
<td>12.4</td>
<td>3.8</td>
<td>3.2</td>
</tr>
</tbody>
</table>

The average caseloads for which the students were responsible were 10 cases (12 credits), 11 (9 credits), 8.5 (5 credits). The students receiving twelve credits handled exclusively criminal cases, while the other groups participated in fewer criminal cases as the amount of academic credit declined.  

The substantial variation in time commitment to the clinical experience is reflected in the content of the experiences of each student. (See Appendix A) During the 23.3 hours a twelve credit student actually spent in clinical activities each week, he conducted an average of two interviewing and counseling sessions with his clients. The nine credit student conducted the same number of interviews each week, in contrast to the student receiving consistent with those simpler sets of educational goals you also vary the number of students the teachers can effectively work with.  

30 Perhaps the most important feature of criminal cases, however, is not the adversariness but their potential for generating a wide ranging perspective on professional responsibility and insights into the effects of personal value systems on professional behavior. It is in the criminal case context that the gap between systemic ideals and real behavior is widest. The behavior of judges, clients, opponents and police inevitably generate a wealth of clinical experience that can provide critical insights into why the system functions as it does.
five clinical credits who averaged only one interview. The twelve and nine credit students were able to spend twice as much time per week investigating their cases as the five credit student, and between 6 and 7 hours in research and writing, compared with approximately 4 hours by the five credit student. The twelve credit student met formally with the clinical teacher on an average of two and one-half times each week; the nine-credit, three times; and the five credit student, approximately twice each week. Substantial differences appear in the opportunities each student had to appear in court, with the twelve credit student conducting an average of five trials and 3.3 hearings during the quarter; the nine credit student, two trials and four hearings, and the five credit students handling only one trial and less than three hearings during the entire period.

While volume of experience by itself does not inevitably translate into educational quality, these data do provide a basis from which some findings can be generalized. First, there is an optimal range of time involvement in clinical lawyering activities.

Academic credit is the means by which time is provided to the student to invest in any particular academic activity. This factor was experimented with in conjunction with examining the role of caseload volume, type, and "liveness" in determining the quality of the clinical experience. The clinical method depends upon the participation by the teacher and the student in a process of reflection and teaching interaction related to the student's specific experiences. The purpose of this relationship is to enable the student to gain insight into the experiences that go beyond the technical representation of a client and the development of legal skills. It teaches the student constantly to question the legal process and his role within it. However, as total time involvement declines, the daily needs of the clients predominate, and attention to other concepts is subordinated to the dominant interest of client representation. This certainly occurred as the time involvement dropped from 23.3 hours (12 credits) to 12.4 hours (5 credits). The students receiving five credits focused almost completely on the immediate necessities of client representation with greatly reduced opportunities to engage in inquiry about professional and systemic responsibility. The five credit clinical experience is therefore much less effective than either the nine or twelve credit course in facilitating student learning in the areas of professional responsibility.

At the other end of the credit spectrum, the twelve credit course had problems relating to the amount of time the students devoted to the clinical activities. It cannot be determined to what extent those problems were caused by the greater availability of student time or by the requirement that those students could not elect other courses or participate in outside employment during this, theoretically, full-release clinical experience. In any event, even with the ratio of one teacher to six students that was used in the twelve credit course, the educational justification for the full-release program was questionable. Although the students handled an exclusively criminal caseload which, as will subsequently be discussed, should be much more demanding than civil cases, the tendency was still for the students to have excess time. This became increasingly clear as time passed and forced a reconsideration of the basic premise. It was believed there was a direct relationship between the quantity of time a student spent on clinical activities and the quality of
the total learning experience and, therefore, the best clinical course was one awarding a very large volume of academic credit to engage in full-release client representation. It became obvious that while a direct linear relationship did exist, it held true only up to a point; beyond that variable point, the commitment of additional clinical resources (credit, student time, teacher time, etc.) generated only minimal educational returns and may have in some instances produced negative results. This phenomenon was caused by the students’ initial lack of sufficiently developed cognitive legal structures to enable them to comprehend the theoretical and technical totality of the experiences they were having. It is the facilitation of growth and maturation of this intellectual cognitive process that is the desired final outcome of the clinical method; the role of the teacher is to assist the students in development of this ability. During parts of their clinical experience the students were simply not yet ready to deal with the subtleties of the process. From its inception, the clinical experience must be highly structured with a great amount of teacher input and feedback, with the examination of values, roles, systems of justice, ethical standards and technical processes being directed and forced by the teacher. As the student begins to integrate these concepts and forms them into a cognitive structure enabling him to become increasingly aware of his total legal role, he must then be “weaned” from the highly controlled situation into one in which he takes substantially increased responsibility for his learning. In the twelve credit program, with more student time available and an intense criminal caseload, the teacher had to spend more time than was feasible in attempting to generate student learning that often was not yet ready to occur. A part of the time invested by the teacher was simply “out of phase” with the student’s ability at that point.

Additionally, the time differences produced a much-altered content of the legal experiences. The ten criminal cases handled by the twelve credit students created a rich and varied mixture of experiences from which the method could function. The 11 cases handled by the nine credit students were generally between 50% and 75% criminal, with civil cases adding additional perspective. This caseload was able to create an intense and positive learning environment even though the adversary involvement of the students was reduced. The 8.5 cases handled by the students receiving five credits tended to be predominantly civil with fewer court appearances, less contact with clients, a reduced number of interactions with the teacher and other students, and less preparation and research time for each case. Arguably, the caseload could have been further reduced, to perhaps 4–5 cases, but it was felt that this number of cases would be insufficient to consistently produce an adequate range of experience for the students. It is necessary that the caseload volume be sufficient to enable the students to generalize and transfer their learning and to avoid “dead time” during periods of inactivity on some cases.

In view of these findings and those which follow, the clinical courses at Cleveland State University College of Law were restructured to set the maximum amount of credit hours per academic quarter at nine, with a resulting

31 With perfect advance knowledge the instructor could reduce the caseloads to three or four cases, but unfortunately he never knows definitely how a case is going to develop—it is too much a matter of the moment. Therefore, to ensure sufficient experiential content, more cases must be handled.
reduction of total student time involvement from 23.3 to 19.0 hours per week. The reduction in credit hours intensified the students' clinical experience; while there was still an ample amount of time for clinical work, including reflection and analysis, there was little non-productive or wasted time.

(B) The Dimensions of the Clinical Teaching Experience

Just as time is a critical factor in the students' learning process, it is also critical for the clinical teacher. Unless the time demands upon the teacher can be kept within functional limits, the quality of teaching suffers. This study, therefore, was intended not only to increase understanding of the students' experiences but, through such knowledge, to gain insight into the individual teaching process. Through identification of the specific factors affecting teacher time, adjustments can be made to better control the situation and to improve the teaching environment for the clinical teacher. The following three tables (Tables 2, 3, and 4) illustrate the volume and source of time demands upon the clinical teacher. The figures are based upon a 1:6 teacher student ratio. The tasks for which these data were compiled are limited to (1) individual teaching interactions, (2) trials, (3) court appearances other than trials, (4) travel time to court, (5) time spent waiting in court and (6) seminars. There are other tasks in which the teacher should participate, e.g., interviewing, negotiations and some investigations, if he is to give critical feedback to the student, but those are not included below.

| TABLE 2—Teacher Time and Task Frequency |
|-----------------|-----------------|-----------------|
| Demands for Six Clinical Students | Each Earning 12 Academic Credits |

<table>
<thead>
<tr>
<th>Individual Teaching Sessions</th>
<th>Total No. Sessions</th>
<th>Total No. Hours</th>
<th>No. of Sessions per week</th>
<th>No. hours per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>146</td>
<td>112</td>
<td>14.6</td>
<td>11.2</td>
<td></td>
</tr>
<tr>
<td>Trials</td>
<td>25</td>
<td>27</td>
<td>2.5</td>
<td>2.7</td>
</tr>
<tr>
<td>Court Hearings other than Trials</td>
<td>19</td>
<td>18</td>
<td>1.9</td>
<td>1.8</td>
</tr>
<tr>
<td>Travel to Court</td>
<td>67</td>
<td></td>
<td></td>
<td>6.7</td>
</tr>
<tr>
<td>Waiting in Court</td>
<td>81</td>
<td></td>
<td></td>
<td>8.1</td>
</tr>
<tr>
<td>Seminar</td>
<td>10</td>
<td>15</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Total Hours Per Week</strong></td>
<td><strong>33.0</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

32 The individual teaching interactions tabulated here are those sessions engaged in by one teacher and one student with a specific educational purpose. They do not include the “spontaneous” contacts discussed, nor the time spent together in court or in a specific lawyering task (negotiation, interview, etc.), although obviously these functions are a part of clinical teaching and the teacher is generally involved, at least as an observer.
TABLE 3—Teacher Time and Task Frequency
Demands for Six Clinical Students
Each Earning 9 Academic Credits

<table>
<thead>
<tr>
<th></th>
<th>Total No. Sessions</th>
<th>Total No. Hours</th>
<th>No. of Sessions per week</th>
<th>No. Hours per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Teaching Sessions</td>
<td>162</td>
<td>91</td>
<td>16.2</td>
<td>9.1</td>
</tr>
<tr>
<td>Trials</td>
<td>10</td>
<td>5</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td>Court Hearings (other than Trials)</td>
<td>27</td>
<td>33</td>
<td>2.7</td>
<td>3.3</td>
</tr>
<tr>
<td>Travel to Court</td>
<td></td>
<td>32</td>
<td></td>
<td>3.2</td>
</tr>
<tr>
<td>Waiting in Court</td>
<td>31</td>
<td>1</td>
<td></td>
<td>3.1</td>
</tr>
<tr>
<td>Seminar</td>
<td>10</td>
<td>10</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Total Hours Per Week 20.2

TABLE 4—Teacher Time and Task Frequency
Demands for Six Clinical Students
Each Earning 5 Academic Credits

<table>
<thead>
<tr>
<th></th>
<th>Total No. Sessions</th>
<th>Total No. Hours</th>
<th>No. of Sessions per week</th>
<th>No. Hours per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Teaching Sessions</td>
<td>111</td>
<td>72</td>
<td>11.1</td>
<td>7.2</td>
</tr>
<tr>
<td>Trials</td>
<td>6</td>
<td>8.3</td>
<td>0.6</td>
<td>0.83</td>
</tr>
<tr>
<td>Court Hearings</td>
<td>17</td>
<td>12</td>
<td>1.7</td>
<td>1.2</td>
</tr>
<tr>
<td>Travel to Court</td>
<td></td>
<td>31</td>
<td></td>
<td>3.1</td>
</tr>
<tr>
<td>Waiting in Court</td>
<td>24</td>
<td>1</td>
<td></td>
<td>2.4</td>
</tr>
<tr>
<td>Seminar</td>
<td>10</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

Total Hours Per Week 15.73

The total teaching hours per week with six students (tables 2, 3, 4) are 33.0, 20.2, and 15.7 for twelve, nine, and five credit hours respectively. These hourly totals reflect only the absolute minimum volume of time spent by the teacher. They do not portray two major difficulties of clinical teaching—the number of separate teaching tasks and the random or unscheduled manner in which they occur. For the teacher responsible for six students within each credit-hour category, the number of separate tasks in which he must engage each week is 20.4 (12 credits), 20.9 (9 credits), and 14.4 (5 credits). A lower task volume but higher time commitment was required however by the twelve credit students in relation to the nine credit students. This is caused by the heavier trial docket handled by the students receiving twelve credits. The randomness, or inability to effectively schedule all the particular tasks, is as important a factor in its effect upon the efficient use of clinical teacher time as are the total time and number of tasks. Again
there is a direct relationship between the amount of academic credit, the type and volume of cases and the increased randomness or nonschedulability of the task and time demands. The reasons for this are obvious. Students who are spending more time in an office setting near the teacher will make increased demands on that teacher. The heavier the caseloads handled, the more activities must be dealt with by both the teacher and student. The decision to concentrate upon criminal cases presents significantly more courtroom opportunities whether for trial, suppression hearings, arraignments, etc., and many criminal courts do not provide sufficient advance notice for appearances. All these factors combine to push the clinical teacher beyond the limits of effectiveness for sustained periods. The frustration of being forced to function at a level of quality so far removed from a clearly-recognizable ideal is one of the central problems for the clinical teacher. Obtaining knowledge about what specifically causes ineffective clinical teaching was one purpose of the study. The identifiable causes can then be manipulated to make better teaching possible.

(C) Control of the Time and Task Frequency Demands Upon Individual Clinical Teachers

There are several factors which can be manipulated to make the teaching environment more conducive to effective teaching. These include: (1) the number of students taught, (2) the percentage of teaching credit received by the clinical teacher for his involvement in the clinical course, (3) the percentage of clinical time devoted to the classroom phases of the clinical course, (4) the amount of academic credits earned by the students, (5) the number of cases handled by the clinical students and (6) the types of cases handled by the students. Assuming the first three factors are largely self-evident, the final three are dealt with in the subsections which follow.

Adjustments in the amount of credit hours received by students.

The data clearly reveal that reducing academic credit, and therefore the amount of time committed by the students to the clinical course, will substantially lessen the time demands upon the clinical teacher. There are qualitative problems with too little credit; nonetheless, credit adjustments do provide an obvious means of assisting the clinical teacher. Lower credit clinic can be better adapted to control total teacher time and task volume than the higher credit clinical courses. For example, a teacher responsible for six students receiving five credits must spend a minimum of 15.7 hours weekly and be involved in 14.4 separate tasks. If that teacher's responsibility is increased to eight students, the average figures would increase to 20.9 hours and 19.2 tasks each week. This compares with the 33.0 hours for 20.4 tasks, and 20.2 hours for 20.9 tasks for only six students in the twelve and nine credit categories respectively. Thus, by reducing academic credit a program may insure that the teacher will either have more time to teach or will be able to assume teaching responsibility for more students.

33 We have increasingly assigned less time to clinical seminars and meetings, choosing instead to rely upon the individual teacher. The ability to do this may be partly dependent upon the considerable experience of our clinical teaching staff, but there is room for effectively-done seminars and we plan further experimentation with the proper mix.
Another method of making the situation more manageable for the teacher, is to assign a mixed group of students, with teaching responsibility for perhaps three students receiving nine credits and three receiving five credits. Such a mix would indicate a total of 18.95 hours \((11.1 + 7.85)\) and 17.65 tasks \((10.45 + 7.2)\) per week.

Experimentation with responsibility for a range of two to twelve students leads to the conclusion that the upper limit of effectiveness falls within the range of five to eight students per teacher. This depends, however, upon a variety of factors, one of which is the amount of credit received by the students.

**Adjustments in the volume and type of caseload.** Control of the case volume and type is another means of manipulating the demands upon the clinical teacher. As the number of cases for which the student is responsible is reduced, so is much of the required time involvement for the teacher. Criminal cases are the most demanding type of caseload for both teacher and student. The criminal case is potentially the most rewarding from the perspective of the student's learning experience. It creates a dynamic pressure generated primarily by the immediate deadline responsibility of court appearance, negotiation, and clearly impending consequences for the client.

The handling of criminal cases by clinical students serves several other significant purposes in the clinical experience. The criminal process is adversary oriented and can always be expected to raise essential questions of professional responsibility. These questions include those of acceptable legal competence, quality of judiciary, the system of criminal justice, the quality of the bar, systemic abuses of power, and virtually any other concept related to both professionalism and responsibility. The criminal caseload also offers a likelihood that the complete representational process from intake through court disposition will take place during the student's involvement, so that he may experience the unity of the process. Thus, in the criminal law setting, the student will have to use the complete range of basic concepts and skills on one case from start to finish, i. e., interviewing, counseling, investigation, research, drafting, negotiation, trial, oral argument, and sentencing. Throughout these activities the constant need for analysis, decision-making and development of strategy operate to create a fuller clinical learning experience.

In this study, the time dimensions of clinical teaching are computed as functions of the primary categories of supervisory sessions, trials, motion hearings, travel, and time spent waiting on court dockets. (See Appendix B) In each of these categories (except supervisory teaching interactions) the time spent is primarily a direct function of the criminal component of the students' caseloads. For the purpose of analysis it can be assumed that for each credit hour category, eighty percent of the time spent by students in the four basic categories of trial, hearing, travel and waiting on dockets is a direct function of the criminal part of the students' caseloads. The time spent per week in these categories totalled 20.3 hours (12 credits), 10.1 hours (9 credits), and 7.5 hours (5 credits) and with the assumption that 80 percent of this time is a direct function of the criminal nature of the caseload, 16.2 hours (12 credits), 8.0 (9 credits) and 6.0 (5 credits) are each week directly attributable to the criminal aspect of the caseload. If the caseload were entirely made up of general civil matters, then, for the same six students in
each credit category, the total weekly average time for the teaching involve-
ment with these students would be reduced. This reduction would be from
33.0 to 16.8 hours (12 credits), from 20.2 to 12.2 hours (9 credits) and from
15.7 to 9.7 hours (5 credits).

(D) Additional Observations

"Spontaneous" Clinical Teaching

Although this is intended to be a detailed study, an important element of
the clinical experience was omitted. Each day a clinical teacher "fields" many
specific questions from students. These interactions arise spontaneously and
often consist of one or two questions, with the entire teaching transaction
lasting generally from thirty seconds to a few minutes. The pedagogical
importance of these "spontaneous" exchanges is that they occur at critical
moments in the students' experiential processes when their interest and moti-
vation to learn is at a high point; if these are dealt with properly the learn-
ing can be carefully directed toward the chosen educational goals.

Due to the extreme difficulty of tabulating these hundreds of brief inter-
changes they are not included in this study. Nonetheless, they do have a
major effect upon the ability of the clinical teacher to function efficiently.
Disrupting though they may be, spontaneous teaching interactions are of
such importance that the opportunity for them must be built into the struc-
ture of the clinical program.

Monitoring of the Students' Clinical Experiences

As the data were tabulated for each student, clearly identifiable patterns
developed. These patterns provided information about the students' basic
strengths and weaknesses, particular tendencies in the approach to the legal
process, and deficiencies in each particular student experience. The teacher
now had access to a detailed source of information about each student for
whom he was responsible. This could be used in adjusting and directing
the students' clinical learning experience as it was occurring. This knowl-
edge greatly increased the students' learning while, at the same time, the data
patterns served as a "check" upon the teacher and as an "early warning de-
vice" for students who were experiencing a great deal of difficulty or con-
fusion, or attempting to slide through the clinical course for substantial credit
without sufficient input.

V. CLINICAL RESOURCE FACTORS CREATING
THE LEARNING ENVIRONMENT

Clinical resource factors can be divided into two primary categories. They
are (1) resources of the legal environment and (2) technical resources, in-
cluding cost consideration, needed for a clinical program. The manipula-
tion of these sets of resources into a structure adapted to the selected educa-
tional goals is clearly related to the quality of the students' learning. The
effectiveness of the clinical teacher depends in part on his ability to control
these resources. The analysis and control of the resource factors must occur
on at least two levels. These are, the overall structural level at which the
framework of the entire program and course is developed and the implemen-
tational level involving specific discussions made by each clinical teacher to
adjust the overall theory to the individual needs of each student.
Resources of the legal environment are those factors making up the potential experiential material from which the students' clinical material can be formed or, in the case of student practice rules, dictate what kind of experiences the students are able to have in a professional lawyer role. These resources include the type and volume of cases, types of clients, the court and/or administrative systems available for student practice, and the scope of the applicable student practice rule. Law schools differ radically in the richness of the legal environment in which they are located with urban schools generally having a particularly rich environment from which the clinical experience can be formed while other law schools in rural or suburban settings find themselves considerably more limited in their ability to generate an adequate clinical base for students.\textsuperscript{34}

The technical resources needed to make the clinical method function involve economic considerations. These resources primarily involve teaching, administrative and law office resources (teacher-student ratios; administrative and secretarial staff; location, extent, and quality of the clinical offices; library facilities, videotape capabilities, academic credit, etc.).

(A) Resources of the Legal Environment

Design of the total legal setting for the clinical experience depends primarily upon five factors. These are (1) the degree of lawyering responsibility afforded the students by state and federal rules governing the practice of law by law students; (2) the types of clients available for student representation (socio-economic, racial and ethnic, individual-corporate-governmental, etc.); (3) the court or administrative systems; (4) the type of lawyering adversary against whom the students must practice; and (5) the types of cases they handle.

Student practice rules

The essential dynamic of the strict adaptation of the clinical method requires the grant of professional responsibility to the students. Therefore, the scope of the student practice rule in the jurisdiction is extremely vital in designing and operating a clinical program. Within the past several years, as clinical education has gained increasing support, the state and federal courts have greatly expanded the scope of rules permitting extensive legal practice by law students. These steps are essential if the clinical experience is to be more than a vicarious involvement in a few cases. Such rules enable the students to learn from the experience of functioning as lawyers under the heavy pressure of professional and ethical responsibilities.

The effect of client-type

The choices of specific program goals also have effects upon the types of clients the program represents. A clinical program that has chosen social reform and public service as its mission will differ dramatically from a program with priorities directed toward the development of technical lawyering

\textsuperscript{34}The implications this carries for many rural or non-urban law schools may be that they must either rely on simulations, form working relationships with urban law schools for clinical placements of their law students, or offer an extremely limited "clinical" program. The urban law school may eventually find itself in the business of providing a clinical third year to law students from other institutions that cannot themselves generate the necessary legal environment needed to sustain a substantial clinical program.
skills and simple understanding of the application of the code of responsibility, or the program involved in massive, law-reform public interest cases rather than the day-to-day basic practice skills. The primary meaning of client type for clinical education is in the role the clients play in defining and creating the environment of the practice experience for the students. The students are no longer able to view law as a series of words and issues in an academic vacuum. It is suddenly an alive world where people and personalities have at least as much to do with what occurs as do statutes, rules, and appellate decisions; where what those students do on cases in some way affects part of the future of the individual clients. This immediately personalized legal environment with its special problems will, for many of the law students, provide their first impressions about what the practice of law involves and what their roles and responsibilities will be in that system. Prior clinical programs, with their necessary reliance on legal aid/public defender cases representing indigent persons, have in the past offered a distorted version of law practice. Most attorneys, upon entrance into practice, will not have contact with these types of clients or cases, or if they do, it is probable that they will do so in an adversary role.

This reality of client and case type in the clinical setting has been affected generally by three factors. The first is the political resistance of the bar to any free service which threatens to siphon off their paying clients. A second is the general preference of the law schools to use legal services/public defender offices as “farm-out” clinical placements due to the lower costs of that program format. The third is the background and motivations of many clinicians, who possess a definite bias in favor of a public interest law practice. The result of these factors is a predominance of client and case type in which a “political” environment arises where competing considerations take priority over the individual learning process. The representational process then becomes politicized and creates a distinctly different type of learning experience.

Many students begin their clinical practice with romanticized ideas about their clients, projecting some of their own values and expectations upon them. Other students come into the clinical process with preconceived negative stereotypes regarding types of clients and/or cases. In the first setting, when the clients do not respond to the students’ defined frames of political and social consciousness, resentment, rejection or a rationalized depersonalization of that particular client or group can occur. Students coming into this specialized educational experience with strongly developed racial, ethnic, educational and social prejudices will, when left solely to naked experience, find many reasons for affirming these stereotypes through cross-cultural contacts. In terms of social consciousness and the fairness of the system of justice, the end result can be a reinforcement of negative stereotypes rather than a positive learning experience.

Court systems

Just as the types of clients and cases play major roles in establishing the specific environment of the clinical experience, another significant determinant is the court systems in which the students practice. This factor is most significant in programs containing a substantial component of trial work. The judges and court personnel with whom the students deal have a tremendous impact on initial impressions of the reality of our institutions of
justice. The immense gap between the theoretical formalities of justice presented by the law school version of the appellate-case method of instruction, and the reality of the lower courts, creates anger, frustration, and, ultimately, defensive cynicism in many students. The sterility of classical legal education leaves most students unprepared for either the theory or implementation of actual practice. In many instances, previously sheltered students undergo a traumatizing experience as they enter the court systems for the first time. One immediate effect may be an increase in self-confidence; students quickly understand that they cannot present a poorer image in court than many of the attorneys they see performing. A price is paid, however, for this "instant confidence." That price too often can be in a failure to develop a clearly defined sense of professionalism, or a growing contempt for the system of law and the people who are part of it. The duty of the teacher is to help the students through a process of evaluating both their own standards of professionalism, including the kind of lawyer they hope to become, along with demonstrating paths to possible systemic reform.

Type of adversary

The professional competence of the lawyers against whom the students are practicing must be considered in creating the clinical experience. Given the court systems, types of cases, clients, and adversaries, the lawyering models provided cause some clinical students to perceive the demands of the clinic teacher as "ivory tower idealism." The students are too often exposed to the message that it is not all that difficult to practice law, or necessary to prepare for the experience. There is a danger that students will decide they do not need the extra work represented by the teacher's demands. Such demands can rapidly come to be viewed as busy-work or academic flagellation lacking any relevance to the actual practice of law. This situation is potentially destructive and imposes additional burdens on the teacher, requiring different approaches to the teaching relationship. One means of protection against these negative influences is the structuring of the program to include diverse systems, lawyers and judges, so that clear comparisons can be drawn.

Caseload restrictions

A major problem confronting the clinical teacher is the management of individual student caseload. A balance must be struck so that the student can participate in the clinical experience without being overwhelmed by inordinate caseload pressures. Alternatively, too few cases will result in inadequate content from which to build a learning base. Many factors determine the desirable number of cases, including the individual capacity of the student, his prior legal experience, maturity, and time devoted to clinical work. These factors however, are only a part of the decision-making process the clinical teacher must undergo in determining the proper caseload to be carried by the student. Additional factors to be considered relate to the caseload itself, and include case load volume, type, quality, and "liveness."

Case-type. Case-type deals with the nature of the case defined as criminal, civil, appellate, federal, litigation, and non-litigation, and the subsets of case-type within those categories. The importance of such compartmentalizing lies in differing rates of development among types, and the varying kinds of demands attributable to different categories of cases. Criminal cases generally develop rapidly with only brief periods of inactivity. With
new statutes in many jurisdictions compressing the time periods within which an accused must be brought to trial, criminal cases now develop within an accelerated time environment from beginning to non-appellate conclusion. A clinical program specializing in criminal matters might have the students handling fewer cases (relative to civil case-types), at any one time, but, due to the accelerated criminal process, handle a substantial number of cases over the entire length of the clinical experience. Some types of civil cases also have relatively brief periods of initial development, primarily eviction and some consumer cases, and many of the conclusions drawn concerning criminal caseloads are applicable here. However, much of civil and/or appellate representation of clients involves lengthy periods of "downtime" when virtually nothing is occurring on the cases. This requires attention to the overall nature of the caseload in the planning of a clinical program. Several approaches are possible. One is to increase the total volume of this "drawn out" type of case and to stagger the timing of the case intake so that the activity will be occurring throughout the clinical period. Another is to develop an intake mechanism that provides a mix of cases with different, but generally predictable, life spans in order both to broaden the students' range of legal experiences and ensure constant case "liveness" throughout the students' clinical experience. A third method of ensuring an excellent clinical experience is to blend both criminal and civil cases to create a fuller range of legal experience, to generalize the skills of client representation, to retain the motivational tension the student initially brings to the clinic, and to protect against the dangers of a routinized caseload.

**Quality of caseload.** The quality of a case relates to the amount of effort, types of issues, and lawyering activities required. Some cases simply have more content and provide a richer learning experience for students. The overall quality is determined by the case's relation to the selected educational goals of the clinical program as well as the particular emphasis of the individual clinical teacher. Examples are those cases which require extensive interviewing, investigation, negotiation, or other pretrial skills in a program committed to the development of such lawyering abilities. Other cases add the elements of motion hearings or trial advocacy. Certain cases contain traditional issues of legal ethics, while others will force students and attorneys to confront even more troublesome issues involving the need for the client to accept treatment of one form or another.

(B) **Technical Clinical Resources**

**The Cost of the Clinical Method**

One reason for the explosive growth of clinical legal education programs in the late 1960's and early 1970's was that it was perceived as a response to student demands for more relevant legal education. A great deal of the rhetoric of that period has ebbed however and the proponents of clinical education will be forced to produce viable justifications for its comparatively expensive existence. Historically, legal education, with high student-faculty ratios made possible by frequent use of the lecture and "Socratic" techniques of instruction applied to extremely large classes, has been an exceedingly inexpensive form of professional education.35

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35 See Swords & Walmer, *Costs and Resources of Legal Education*, CLEPR. 187—.
The resources that have been diverted to clinical education have not yet been seen as significant for two reasons. Millions of dollars in foundation grants from CLEPR have greatly reduced the overall cost to the law schools of developing clinical programs. But the total number of clinical programs has increased enormously and CLEPR grants will now be able to defray only a small percentage of the total costs, thereby placing the financial burden squarely on the law schools. An equally important cost-control mechanism has been the use of the external or "farm-out" clinical program. This model is characterized by placement of the students in the offices of outside agencies with the case supervision provided by attorneys employed by those agencies. Although the "farm-out" model has kept down the costs of clinical education to law schools, it has resulted in what has often been a negative learning experience. What has been conserved in dollars has been surrendered in quality. It is now clear that the basic clinical teaching must come from a staff of professional clinical teachers fully committed to, and able to concentrate upon, developing the student's learning. This obviously means the law schools must bear the costs of these teachers and, for reasons suggested at a later point in this section, legal education must also accept the burden of staffing and maintaining teaching law offices, preferably located within the law schools. As these premises are increasingly accepted, clinical education will be faced with substantial challenges to its right to share extensively in the limited financial resources available to law schools. This makes it critical that we identify the actual costs of the clinical method to permit more precise planning of the future resources needed. The primary costs of the clinical method arise from the law student-faculty ratios necessitated by the individualized teaching format, and by the resources required to administer, staff, maintain and supply a clinical "teaching law office".

Specific program costs. The basic clinical program at Cleveland State University had a total budget of $99,347.00 in fiscal 1975 and $110,000.00 for fiscal 1976. Of the fiscal 1975 budget, $61,068 was expended for the clinical share of instructional salaries and $17,287.00 for secretarial and administrative costs. Fringe benefits, including retirement contributions, workmen's compensation, and health, life and accident insurance policies added $8,029.00 to faculty costs and $2,663.00 to secretarial and administrative expenses. The personnel costs, for fiscal 1975 totalled $89,047.00 (almost 90%) of the total program costs. The remaining $10,000 was spent for telephone ($3,000.00), xeroxing ($2,600.00), travel ($650.00), postage ($125.00), new and replacement equipment necessitated by staff expansion ($2,500.00), and office and laboratory supplies ($375.00). Subscriptions to legal newspapers, U.S. Law Week, Criminal Law Reporter, current services for the clinic's set of state and federal statutes and practice treatises, and purchases of new and replacement books and manuals, certainly have a value in excess of $2,000.00, but these costs were borne by the law library and are not reflected in the clinical program budget, (although they could properly be included in program cost). It should be noted that these expenditures are computed on the basis of a full twelve months, rather than on a nine-month academic year. Additionally, since the program functions from within the law school, there is no provision in the budget for either utility costs or office rental for the ten offices making up the clinical suite. If these needs were made part of the clinical budget, an additional $7,200.00 per year for
office rent (at $600 per month), and $1,200.00 per year for utility expenses (at $100.00 per month) could be included.

The clinical program had the teaching participation of five faculty during each of the four academic quarters reflected in the budget. That faculty consisted of the program director (100% clinical), an instructor (100% clinical), and three faculty who received 50% of their teaching credit for clinical work and 50% for teaching non-clinical courses. The staff also included a full-time office administrator and a secretary. The faculty member serving as program director was responsible for overall program administration and teaching of the four credit hour introductory course that preceded the students' actual clinical experiences, in addition to his participation in the individualized clinical teaching. Therefore, the total teaching staff involved in one-to-one clinical teaching, at any time, consisted of five individuals, four of whom were expected to devote 50% of their time to individualized teaching, and one, 100%. In budgetary terms, this teaching staff was the equivalent of three full-time faculty. The number of students participating in the clinic varied between 16 and 30 each academic quarter, resulting in apparent student-faculty ratios from 5.3:1 to 10:1. The actual ratios, however, for the clinical teachers receiving 50% teaching credit, ranged between 3 and 7 students per teacher depending upon total student enrollment for the period. Type of caseload, amount of academic credit received by the student, and the competing non-clinical demands to which the teacher was subjected were also factors. The full-time clinical instructor was responsible for 4 to 8 students each quarter.

The clinical teachers receiving one-half of their teaching credit function effectively at ratios of 3-4:1 with students involved primarily in criminal representation, and 4-5:1 if the students are engaged primarily in civil representation. The full-time clinical teacher is effective in the range of 5-8:1 depending upon the same variables. This teaching staff is capable of effectively teaching between 18 and 24 students each academic quarter; the average total number of students in the program over the period of four quarters has been 84.

Projections of the costs of clinical education. Some tentative conclusions can be derived from the above data permitting projections of the potential costs of clinical education. First, however, it is necessary to state a basic assumption. The program model used to implement the clinical method will be similar to that described previously in this article in terms of ranges of academic credit, duration, program location, teacher-student ratios, and supporting staff.

Using its existing format and resources, our clinical program teaches about 84 students each year and, assuming an equal distribution of students over the entire period, could teach a yearly maximum of 96 students. Although some students are counted twice due to their enrollment in multiple quarters of the program, the "student-flow" capacity is approximately 96 students per year. This total represents 96 separate students or 48 students taking two academic quarters of the program and therefore counted twice, or some other variation. This latter issue becomes important in cost projections when two additional factors are taken into account. The first, dealt with subsequently, is whether either a ten week academic quarter or a 12-13 week semester is sufficient to generate a totally satisfactory student learning experience; if
it is not, to design a program with a single quarter or semester limitation on
the student's experience significantly restricts the total quality of learning.
The second factor relates to requiring participation in a clinical program for
all students prior to graduation from law school, with the obvious cost con-
sequences arising from that decision.

If a law school similar to Cleveland State University were to require a
one-quarter clinical course to be completed by each graduating law student
during his third year, the total annual costs would be substantial. Assuming
a graduating class of between 180 and 200 students, the total program costs
would approximately double. Additionally, the ability to control the stu-
dents' clinical experiences in terms of caseload volume and variety, court
system and client-type would diminish drastically as the total student demand
for cases exceeded the supply. Additional factors must also be considered
including the needs of the private bar, competition for clientele with legal
services and public defender offices, and the recognition that in many in-
stances cases do not require an attorney. With enormously expanded student
participation, the ability to maintain qualitative control over client representa-
tion might suffer through increasingly rapid student turnover. Moreover,
as enrollment increased there would be the added danger of depersonalization
of the office climate. This could result in a change from an intimate teach-
ing environment allowing substantial interpersonal communication, to one of
mass-produced clinical education in which a key humanistic and professional
element disappears as the clinical bureaucracy grows.36

Even if these problems can be effectively controlled, the question of cost
will remain. It will cost more than $110,000.00 to provide this clinical ex-
perience to approximately 90 students in 1976. To provide the same ex-
perience to all 180–200 third year students during that same period would
double the costs of the program to at least $220,000.00, assuming that each
student will be permitted to take only one academic quarter of the clinical
program. For most students however, a ten-week quarter or a thirteen week
semester is not enough time period for the full learning process to occur. If
the students were not limited to taking one academic quarter, and were
either permitted optionally or required to take two quarters, there could be
the equivalent of 360 students per year, or 90 students per quarter. This
would raise the total program costs to nearly $400,000.00 for the year. The
increase in costs would be primarily in staff salaries and office overhead.
The equivalent of three faculty can now effectively teach a maximum of
24 students per quarter. This indicates that a maximum permissible stu-
dent-teacher ratio is 8:1, and for each enrollment increase of eight students,
the equivalent of one additional full-time faculty member would be required.
In addition, it is reasonable to assume that the administrative and office
staff must expand as the program grows in size and the demands on staff
time increase.

36 It is clear that the reform of legal education will ultimately not result in turn-
ing law schools into "clinical lawyer schools" but instead a balanced approach to a
coherent and well structured curriculum. This will include some direct clinical ex-
perience for all law students but will rely on a restructured and better integrated
and taught curriculum with expanded techniques of instruction. Even if there were
enough financial resources to develop major clinical programs throughout all law
schools, there are not enough cases available with sufficient quality of content.
The purpose of making such a predictive cost analysis is twofold. First, many of the qualitative “failures” of clinical programs have resulted from inadequate funding, which caused inadequate staffing at both the teaching and the support levels. The clinical method is not inexpensive. Unless legal education is willing to pay the costs of properly applying the clinical method, it should be warned not to waste a great deal of effort on mediocre programs; the educational results of misapplications of the clinical method can be more harmful or meaningless than educationally worthwhile. The second purpose is to demonstrate the costs of expanding the method to reach a substantially larger proportion of law students prior to graduation. There is little reason to use the clinical method unless it is to be used properly, and to do so will require a substantial and long-term commitment of resources that many law schools will not be able to afford. Perhaps it is better, therefore, to limit the expansion of clinical programs within their qualitative limits, and, at the same time, attempt to develop additional sources of funding for legal education. Presently, the resource base of legal education is exceedingly narrow, with nonexistent federal assistance, inadequate alumni contributions, and university administrations that are often quite satisfied to skim off the top of a law school’s resources. Legal education must begin to expand its sources of funding to include the federal government, the private bar, and to seek to retain a larger share of the income generated from tuition revenues.

Program Location
The academic environment of the law school is a continual reminder that our primary purpose is to teach. When clinical offices are not part of the law school, the teaching mission can be overridden by other, powerful factors inconsistent with the best path to student learning. This can occur whether the teachers are employed by the law school or outside agencies.

Time efficiencies for clinical teachers and students. Centralizing clinical resources (i.e., teachers, students, research facilities, offices, etc.,) yields a substantial increase in the efficiency of time use for both teachers and students, with a potential corresponding increase in the effectiveness of the clinical teacher. Concentrating resources ensures students better access to the clinical teacher and permits more of the frequent advice-seeking consultations that are so vital to the model. Significantly, it enables teachers to be constantly aware of the activities of the students in order to better control the learning and representational process.

Office administration. A public agency is very often overloaded with cases and committed to producing “volume” client representation. Its primary commitment is to service and not to producing the best possible educational experiences for law students. It cannot afford to divert substantial administrative resources to that educational effort. The law school teaching law office, with education as its primary goal, can better direct resources to educational purposes and give constant attention to the quality of students’ experiences. This can include tracking the nature of each student’s experience as it develops, adjusting caseloads and types of cases, and ensuring proper scheduling for better use of clinical time.

Visibility of clinical program. Location in the law school increases the total visibility of the clinical program. It is no longer a little known entity
hidden somewhere in an outside agency, but a clearly functioning part of the law school environment. To the extent that it is conducted effectively, a clinical program will substantially increase the credibility with which the method and its purposes are viewed. The program's contacts with other faculty will increase, with the clinic providing a vehicle through which other faculty can become involved in clinical teaching, or serve as valuable resources for clinical needs.

**Academic Credit**

The experiences in which a clinical student must participate for the most effective implementation of the clinical method require a substantial amount of time, and academic credit is the means through which the needed time commitment is made possible. If the amount of credit hours granted for the clinical experience is insufficient, the students face a conflict of time demands. They must either devote a disproportionate amount of time per credit to clinical activities or they must spend a greater amount of time on the courses taken concurrently in order to meet academic credit requirements. Some law students are so committed to the needs of their clients that they will commit an extraordinary amount of their time to a clinical course even if they are receiving an insignificant amount of credit. When such an expectation is built into the design of a clinical course, it is neither fair to students whose other law school activities will suffer due to the disproportionate time they are giving to the clinical course, nor to students who would benefit educationally from more clinical involvement but cannot afford the greater commitment of time without additional credit.

The quality of representation being received by clients is also substantially dependent upon the time students can reasonably spend on the cases. The needs of clients require a certain minimum amount of time, and with too many competing factors, the student cannot consistently give the time needed to protect clients' interests.

Failure to provide reasonable academic credit has an effect on both students' and teachers' perceptions of the validity of a clinical course. If the clinical experience is extra-curricular or receives minimal credit, it risks a professional and general student judgment that it is inconsequential. To avoid such a judgment, and provide the opportunity for a substantial and reflective clinical experience, the students should be able to earn a reasonable amount of credit (at least one-third of the credit for an academic period) for participation in a clinical course.

**Length of the Student's Clinical Experience**

The length of time over which the student's clinical experience extends is as significant as the total amount of credit earned. Many of the basic skills and concepts that are part of the educational goals of clinical education cannot be immediately grasped by students. The experiences initially occur too rapidly for the result to be anything other than the development of superficial understanding. A longer period of clinical experience, however, permits students sufficient time for a fuller range of experience and the opportunity for a deeper, more reflective understanding of the many elements of the representational process. While the timing of students' development depends upon individual levels of student sophistication, it is a process gone through by each student. All students typically go through three phases in
their clinical development. The first may be filled with fear or eagerness; it is primarily characterized by the students' gaining a base of understanding of the applicable laws, concepts and processes. Until this foundation is created, unsteady and uncertain as it may be, each experience is almost totally unique. The students generally have no coherent frame of reference into which the new experiences can be placed. It is the creation of this sense of context and significance that is sought and that the teacher must facilitate. It is during this time that the process of clinical teaching is most critical, because each student becomes more receptive and malleable by the nature of the experiences he is undergoing. During this phase of the students' development they are often confused, uncertain, defensive, afraid of external judgment, embarrassed by their ignorance and, importantly, seeking consciously or unconsciously for a way to bring meaning to the experience.

The length of this developmental phase depends upon the student, the teacher, and the nature of the experiences the students are experiencing. However, it is largely completed between four and seven weeks after the students begin the clinical course.

Sometime during that span of weeks the students enter the second phase of their development. They have now begun to discover meaning in what they are doing and are able to understand the framework of the parts of the legal system in which they are working. They have by this time seen and experienced enough of lawyers' roles that, through the mediation of the teacher, they have formed tentative judgments about those institutional sub-systems and their own roles within them. Their initial "student fear" has generally disappeared and they have learned how to accomplish some lawyering tasks. At this time they have developed a rough framework for the legal process and can see the relevance of many of their experiences. Their self-confidence and understanding of their abilities is steadily increasing. This second phase lasts between four to six additional weeks.

The third and final stage is the students' development into lawyers. Obviously, this is a process that is never complete, but the teacher can see it as it begins. In our clinical program this can occur toward the very end of the first quarter (10 weeks) in some instances, but more often happens within the first several weeks of the second clinical quarter. A significantly important part of this process may be the period of time between quarters, when the students engage in little clinical activity. It is at this time that the students are first able to step back and gain fuller perspective upon the experiences they have undergone. At this point the often fragmented learnings seem to coalesce and most of the students take critical conceptual

37 A number of writers have examined the creative process in humans. One characteristic of that process seems to be that the human mind often achieves its deepest insights not during a period of intense efforts but following it or after putting the work to one side for a time. Rollo May describes this:

the fourth characteristic of this experience is that the insight comes at a moment of transition between work and relaxation. It comes at a break in periods of voluntary effort. . . . [T]he insight often cannot be born until the conscious tension, the conscious application, is relaxed. Hence the well-known phenomenon that the unconscious breakthrough requires the alteration of intense, conscious work and relaxation . . . Rollo May, The Courage to Create 59, (Norton & Co., New York 1975).
steps. Typically, this understanding is then tested at the beginning of the next quarter, and that testing experience is the basis for further development in areas of weaknesses and strengths.

A longer clinical experience also increases students' development of attitudes of professionalism in client representation. Too brief a clinical process, with students rapidly moving in and out of the program, will often force the clients to suffer through a seemingly constant shuffling of their cases from one student to another. The end results are additional demands placed upon the clients, loss of the "feel" for a case by the changing students, and reduced commitment by students, who are naturally less willing to invest time in cases the outcomes of which they will never see.

The actual length of time needed to maximize the educational experience of students and to ensure the proper level of client representation varies with the types of cases being handled and the educational goals sought by the clinical program. In addition, the decisions on program length are dependent upon whether the particular academic period used by the law school is the semester or quarter. At least one academic quarter (10 weeks), when the concentration is upon criminal cases, and a minimum of either a semester or two quarters in primarily civil programs, is required if the students are to benefit from continuity and to be involved in a sufficiently broad range of experiences. As previously noted, an important distinction can be drawn between criminal and civil cases, based upon the rapidity with which criminal cases develop and allow an immediate projection of the student into the full range of the legal process.

Preferable in the longer-term clinical programs is a diversity in the types of cases handled by students. In theory, each case represents a rich and unique learning device. The constant repetition of tasks however, in a non-varying caseload, can result in students' thought patterns and conduct becoming "routinized". When this occurs, it decreases the quality and depth of the learning. Such conduct by students, indicates that they have learned all they deem useful or significant from the particular type of case and will resist further efforts to utilize it as a learning device. While it may well be accurate to state that much more is involved in a particular case than students are willing or able to see, the constant prodding required to approach these standards can be a counter productive use of the teacher-supervisor's time.

The more desirable goal is to achieve a substantial blending of experience for each student. One important tendency of such variety is to enhance the probability of transference of learning between experiences, as the students find themselves using the same processes to solve what initially seem to be radically dissimilar types of problems.

VI. INDIVIDUALIZED CLINICAL TEACHING

The process of individualized clinical teaching has generally been referred to as clinical "supervision". That term, however, tends to be too simplistic in its implications, eliciting the image of an attorney watching over the activities of students to ensure they do not commit any grievous representational errors. The potential fullness of the individualized teaching relationship is left unrealized by the sole use of the "supervisory" terminology. It is critical to the development of the teaching component of the clinical method that it be analyzed as a theoretical process. The beginnings of that
analysis are attempted in this section. The term “supervision” has not been totally discarded; when used, however, it is intended to refer to the actual overseeing of the technical aspects of student performance on their cases that represents but one part of the total teaching process.

(A) Formation of the Relationship between Clinical Student and Teacher

The need to enter into between four and ten individual teaching relationships during any particular academic period places heavy demands upon the clinical teacher. It requires that teacher to fulfill multiple professional roles. These roles range from the making of sensitive, subjective judgments about each student and developing the means of teaching from those judgments, to the teaching of the technical lawyering skills of the advocate and counselor. At times the teacher will also find it essential that he function as the primary attorney in some cases. To act effectively in these varied roles it is important that the teacher understand both himself and the general principles of human learning motivation and expectations. Additionally, he must be able to see the effects that attitudes, intelligence, emotional maturity, confidence, and discipline have upon his students’ willingness and ability to learn and perform. The teacher must not only understand these principles as generalities, but see each student as an individual and make many specific judgments from these factors in the individual teacher-student setting.

The need for constant individualized teaching judgments is the most difficult and challenging for the clinical teacher, and the teaching abilities required to fulfill them are the most difficult to master. Carl Rogers, in a brief essay, has outlined ten factors he sees as essential to the creation of “helping relationships” and, although Rogers approaches his discussion from the perspective of the patient-psychoanalyst relationship, many of his observations have considerable meaning for the formation of the individual student-teacher clinical relationships. For that reason, Rogers’ observations are considered below from the perspective of the teacher.

1. “Can I be in some way which will be perceived by the other person (the clinical student) as trustworthy, as dependable or consistent in some deep sense?”

The relationship of clinical teacher to student involves the forced consideration of extremely sensitive matters of student attitudes, biases, and basic values as they affect the student’s ability to represent clients and his perception of professional responsibility. Therefore, the relationship potentially involves substantial tension and defensiveness due to its critically evaluative nature, and the teacher must be able to overcome this initial threat to the relationship to gain the trust of the student, so that the fabric of the teaching interactions will not be destroyed by hostility and defensiveness.

2. “Can I be expressive enough as a person that what I am will be communicated unambiguously?”

39 Id., at 50.
40 Id., at 51.
The clinical teaching relationship often involves varied role interactions on the part of both the teacher and the student. Attempting to fulfill these sometimes diverse roles—to be a person—a teacher—a lawyer—to the student—creates the danger that inconsistent, unclear, or conflicting messages will be transmitted, interfering with the effectiveness of the relationship. The inability to communicate unambiguously in what is, at times, a fundamentally ambiguous situation can be an enormous obstacle to establishing an effective teaching relationship.

3. “Can I let myself experience positive attitudes toward (the student)—attitudes of... interest, respect?”

The classic teacher-student relationship in legal education is considerably altered in the clinical setting, becoming less authoritarian, much more personalized and subjective. This often results in the surrender of the special privileges of the authoritarian teaching relationship and in the acceptance (by the teacher) of a more potentially threatening teaching relationship, with opportunity for subjective judgments by the student greatly increased. Just as the student may be threatened by the relationship and react defensively, so may the clinical teacher. The teacher may seek to avoid judgments by retreating to the distance of the traditional teaching relationship. If this happens, the teacher loses the essential ability to make the subjective judgments that are essential to the optimum use of the clinical method.

4. “Can I be strong enough as a person to be separate...?”

Personal involvement, liking, interest, respect, each provide the possibility that one part of the needed relationship can be created. However, the teacher must not lose sight of his total mission and, in attaining the ability to see the student as a person and a lawyer, lose the ability to stand outside the personalized relationship and use the knowledge gained to make his teaching most effective.

5. “Am I secure enough within myself to permit him (the student) his separateness? Can I permit him to be what he is—honest or deceitful, infantile or adult, despairing or over-confident? Can I give him the freedom to be? Or do I feel that he should follow my advice, or remain somewhat dependent on me, or mold himself after me?”

The challenge that this idea presents for the clinical teacher is clear. However, unlike the psychoanalytic relationship, the clinical teaching relationship includes other persons dependent upon the clinical student and teacher, and this external dependency obviously must affect the teaching situation. Certain freedoms cannot be given to the student in the context of client representation, and there are behavior patterns that the teaching relationship is deliberately attempting to modify. Nevertheless, this passage from Rogers helps the teacher to understand the threat of some human tendencies that can impair the teaching relationship. The teacher must seek to understand the path the student must follow in reaching insights through the clinical experiences and not, through a lack of such understanding, dis-

41 Id., at 52.
42 Id.
43 Id., at 52–53.
rupt that learning through his (the teacher's) own immaturity. Some clinical teachers see the only acceptable way of lawyering to be their own individual method, and attempt to force others into that mold.

6. "Can I let myself enter . . . into the world of his feelings and personal meanings and see these as he does?"

It is through this ability that part of the needed understandings of the teacher are gained—by being able to share the student's frame of reference and move to apply this knowledge in creating the student's learning experiences.

7. "Can I be acceptant of each facet of this other person which he presents to me? Can I receive him as he is? Can I communicate this attitude? Or can I receive him only conditionally, acceptant of some aspects of his feelings and silently or openly disapproving of other aspects? It has been my experience that when my attitude is conditional then he cannot change or grow in those respects in which I cannot fully receive him. And when—afterward and sometimes too late—I try to discover why I have been unable to accept him in every respect, I usually discover that it is because I have been frightened or threatened in myself by some aspect of his feelings. If I am to be more helpful, then I must myself grow and accept myself in these respects."

8. "Can I act with sufficient sensitivity in the relationship that my behavior will not be perceived as a threat?"

For the clinical teacher the simplest answer to this question is no. Unlike the therapeutic relationship, there must be at least an implied threat underlying much of the clinical teaching relationship, where a third party depends upon the student's performance. With the ideal student it may never be necessary for the threat to be more than implicit, but nonetheless it will exist. It is not, however, a necessary part of the non-representational elements of the clinical process, and this duality that will sometimes confuse the student unless effectively communicated.

9. "Can I free him from the threat of external evaluation?"

Again, Rogers is speaking of a long-term two-person relationship intended only to permit the person undergoing analysis to better understand himself through the mediation of another. The clinical relationship is different and substantially dependent upon evaluation in areas of professional performance.

10. "Can I meet this other individual as a person who is in the process of becoming, or will I be bound by his past and by my past? If, in my encounter with him, I am dealing with him as an immature child, an ignorant student, a neurotic personality, . . . each of these concepts of mine limits what he can be in the relationship . . . . If I accept this other person as something fixed, already diagnosed and classified, already shaped by his

44 Id., at 53.
45 Id., at 54.
46 Id.
47 Id.
past, then I am doing my part to confirm this limited hypothesis. If I accept him as a process of becoming, then I am doing what I can to confirm or make real his potentialities.”

B. Patterns and Techniques of Individualized Clinical Teaching

Interactive Patterns

Individualized clinical teaching takes place in many settings and for varied educational purposes. The teacher must often use different teaching techniques to adapt to these different situations. There are five sets of primary variables that interact to dictate the form of specific teaching interactions. These variables are (1) the professional lawyering tasks upon which the teacher-student “team” is focusing on behalf of the client; (2) the educational purposes of the specific interaction; (3) the “setting” of the interaction (i.e. the physical location, the identity of the participants); (4) the form of the teaching (formal sessions, scheduled-unscheduled, “spontaneous”, brief-lengthy, etc.); (5) the sophistication of the student’s knowledge.

The forces created by the interaction of these five sets of variables determine the manner in which the clinical teacher functions. The teacher uses professional tasks to achieve specific learning purposes. To accomplish this he must take the other three variables into account in selecting the most effective teaching techniques to apply to the student’s learning process. However, there are some potential difficulties that should be mentioned here. The physical, professional, and interpersonal settings in which the teaching occurs affect the communication between the clinical student and teacher, with the content, form, and timing of the communications varying depending upon the task being performed (if any) and the educational purpose. Erving Goffman, a social scientist, writes in *The Presentation of Self in Everyday Life,* of concepts identified as “front” and “teamwork” that are useful in understanding the public part of clinical teaching. Goffman uses these two terms to describe the process interacting individuals undergo in presenting desired impressions to an audience. The “front” therefore, is that image or impression which the particular group or “team” presents to the audience or to outsiders. Offstage, when the “audience” cannot see, the communications will be far different from those witnessed by the public. A large part of the clinical experience is characterized by this split between the public communications made by the representational “team” and the private dialogues occurring “offstage” in which only teacher and student participate. This essential dichotomy must be honored by both teacher and student if the learning relationship is to be effective.

Whatever the behavior of the clinical student and the teacher in the privacy of the clinical office setting, it is essential both that their public actions be “team” and that any educational purposes do not interfere with repre-

48 Id., at 55.


50 Goffman defines a “team” “... as a set of individuals whose intimate cooperation is required if a given projected definition of the situation is to be maintained.” (at 104). The term “front region” is used to refer to the place where the “performance” is given. (at 107).
sentational effectiveness. This demands a clear, prior understanding of how the responsibility will be shared, and how far the student will be permitted to go before the teacher considers it necessary to interfere to protect the client’s interests. The situation is analogous to principal-agent relationships and their different degrees of authority-expressed, implied, and apparent. The key factor is often the amount of authority others reasonably believe the agent (the clinical student) to possess. It is this grant of authority, and the resulting professional responsibility which authority demands, that provides the central dynamic upon which the clinical process of education is premised. The student, however, possesses only a fragile authority that can be easily shattered. The teacher must consider this reality when determining the amount of responsibility to grant a clinical student. Based on a student’s skills, progress, and abilities, the teacher can determine when to withhold degrees of authority and responsibility that are not warranted. This decision requires extremely refined teaching judgments, made to enable the student to grow through the acceptance of responsibility within the controlled relationship. The threat of denial and interference must be clear from the beginning of the student-teacher relationship, but must be exercised by the attorney only in situations where a client’s interests are about to be harmed.

It is easy for the clinical teacher, as with any other professional, to suffer misplaced loyalties as a result of the differing roles he plays. The roles are not necessarily complementary and are often inconsistent. The clinical student-supervisor, teacher-student, counsel-co-counsel, friend-acquaintance roles, may result in a dilution of the attorney-client responsibility role, and subordinate that latter relationship to those involving the clinical student. The non-client relationships are basically “insider” relationships, with the primary one being between the student and lawyer-teacher. At most junctures, the lawyer-client role represents an idealized, projected version of the responsibility owed a client—an “outsider”—and it is at times extremely difficult to make the subtle choices that primarily protect the client at the student’s expense.51

The clinical law student is in a sensitive position. It is very easy to make students aware of the thinness of their general knowledge and the inadequacy of their expertise concerning actual law practice. In such a half-way setting, students feel vulnerable to everything occurring about them. It is as if they were play acting and the teacher was the one individual aware of their secret. One word or inappropriate communication by the attorney to the audience can destroy the illusion. This “playing at being lawyers” is accepted by the students as necessary, but if its rules are unnecessarily confusing and the teacher irresponsible, the quality of the student’s learning will be diminished.

Teaching Techniques

After identifying the specific patterns controlling teaching interactions, the teacher then must determine the technique or series of techniques with

51 This tendency to want to protect the clinical student even at the expense of the client reflects the kinds of forces that work on the lawyer following graduation. The legal profession is a “club” and even during law school we join ranks. The client is not a member of the group and this cooptation is something that must be constantly resisted by the clinical teacher or to speak of professional responsibility is meaningless.
which he is comfortable and able to work most effectively. There are many specific teaching techniques available to the clinical teacher and the most useful among them are:

1. Socratic dialogue
2. Directed discussion
3. Free discussion
4. Lawyer performance by the student
5. Immediate individualized feedback
6. Simulations and role-playing
7. Observation
8. Evaluation
9. Videotape and audiotape
10. Analysis of case
11. Research
12. Writing
13. Lecture technique
14. Problem technique
15. Student presentations (teaching)
16. Structure

The techniques of free and directed discussion and Socratic dialogue are particularly suited to drawing the student through an analytical process encompassing the problem confronting him and, at the same time, providing the teacher with a great deal of information about the student’s capabilities in his mental processes, attitudes, depth of thought, and overall quality of analysis. For that reason, the beginning stages of a developing teaching relationship occur most productively in the form of discussion and dialogue, in which the teacher asks, suggests, and listens very carefully to the students. From the initial contact the teacher can probe more deeply to obtain valid information through which the student can be better understood, including his motivations, fears, abilities, biases and prejudices, sense of responsibility, and lawyering self-concepts. These techniques draw out the student and force him to participate in a personal fashion, thus enabling the teacher to gain the individual understanding needed. The techniques of dialogue and discussion are also useful at other stages of the experience but are most helpful at its beginning.

Many of the other teaching techniques are primarily performance-oriented and externally directed. The teacher observes what the student does, and, thereby obtains further information about student capabilities. Through these other techniques he can guide the student through the process of performance, observe that performance and make further judgments as to needs and abilities, and then make whatever adjustments are necessary as the experience progresses. At the same time, the process of dialogue is continued in order to examine the extent and direction of the student’s development and to ensure the integration of the desired learnings.

It may be useful to make some further brief observations about the other available techniques listed above. The technique of immediate individualized feedback between the teacher and student is used to direct the attention of the student to positive and negative aspects of his performances at critical
points when the insights can be most useful for understanding and adapting behavior.

Simulations and role-playing by the student are helpful as a preliminary or preparatory stage of his experience. They are particularly useful for preparing the student for specific lawyering tasks, including trial and appellate advocacy, negotiations and interviews, essentially as "dress rehearsals" for the actual performances.

Observation as a teaching technique permits the student to see others perform professional tasks in either an excellent or a mediocre fashion. The performer may be the clinical teacher functioning as a lawyer, an opponent, or any other individual.

Evaluation is dealt with extensively in a later part of this section and will not be further discussed at this point.

Videotapes and audiotapes are useful in several ways. They can be used to show the students pre-recorded material which they can observe and critique. Alternatively, a student's performance can be taped, and he can analyze his own performance with the help of critical observations by the teacher.

Analysis of case materials not only serves as the basic pattern of law teaching but is carried over to the activities of clinical students. Much of their experience will require in-depth analysis of cases (and statutes) to determine the legal principles applicable to the cases on which they are working. This technique is obviously related to fundamental legal skills and, in the clinical setting, begins the process of integrating all the diverse classroom experiences of law school into a concept of the process. Case analysis is used throughout the student's clinical experience.

Research permits the learning of the substantive and procedural principles applicable to the particular area in which the student is involved, and his performance in this skill enables the teacher to recognize and remedy any problems the student has in researching.

Writing can be useful to teach legal writing itself, and to gauge the student's ability to conceptualize and organize the legal and factual issues with which he is involved. Many times it is difficult to see specific deficiencies in the student's analysis through discussion but, when he is required to convert his thought processes into written form, the problems are more readily observable.

The lecture technique is generally not found in the clinical teaching of individual students although to a limited extent it is used in the introductory course. It is primarily useful to impart a substantial amount of information in a relatively limited period of time and thus usually not appropriate to the type of relationship existing between clinical teacher and student.

The problem technique is a fundamental structured part of clinical teaching, with actual cases providing the "problems" on which students work. Obviously, just as the problems used in the non-clinical setting must be carefully selected for learning content, so must the "case problems" of the clinical method.

Student presentations or teaching are often used as the instructional technique for a limited number of seminar sessions during the clinical experi-
ence. The preparation of these seminars, in which an individual student teaches from a case on which he is working and presents the analysis, strategy, performance, etc., of that case, is another way in which the student can be assisted to see lawyering as a total process.

The general and specific structure of the clinical experience is a basic tool of the clinical teacher. It dictates the nature of that experience in each significant aspect and determines just what the student will have the opportunity to perceive.

C. The Teaching Relationship in the Clinical Setting: A Case Model

Since clinical teaching occurs in many diverse forms and settings, it may prove helpful to illustrate the teaching through an individual case and set forth some of the teaching interactions occurring at different points during a student’s representation of a client. The case used here involves a client charged with assault and battery on a police officer and resisting arrest. The interchanges are abbreviated versions of what could occur, and do not include every juncture at which the teaching interactions might take place. The four settings dealt with are, the initial interview with the client, a clinical teaching session between the teacher and the student handling the case, an informal pretrial conference including a plea bargaining session with the prosecutor and counseling of the client, and a subsequent clinical teaching session for review.

Situations in which clinical teaching should also be occurring include the trial, if one is held, along with the development and argument of any pre-trial motions; the spur-of-the-moment contacts between teacher and student that occur in response to ongoing case development; the final, pre-trial preparatory stages in which the students run through with teacher, witnesses, etc. what will occur at the trial; field investigation and factual development; re-interviews and factual sessions with the client; and development of sentencing alternatives. This fact pattern, though edited, provides an overview of certain aspects of individualized clinical teaching, which serve as a useful frame of reference to which problems of clinical teaching can be effectively related.

STATE v. MONROE: DIALOGUE IN FOUR PARTS

Character profiles

**Student: Brad Roberts.** An extremely hard-working individual in his final term in law school. He is twenty-six years old and was raised in an almost exclusively white suburban community about 30 miles east of Cleveland. Roberts is enrolled in the clinical program to prepare for a position with his father’s small suburban law firm. He has been employed there on a part-time basis while in law school. His academic record is average. He has interviewed several clinical clients prior to this one, and currently represents those clients.

**Attorney: Daniel Wells.** He has been out of law school for five years, two years were spent in a legal services office and the latter three in clinical teaching. He is thirty years old. Wells is responsible for the overall direction of the clinical program and is committed strongly to
the theoretical goals of the clinical program, with a heavy emphasis on issues of professional responsibility, institutional reform, and the “human” skills of perception and communication. His teaching emphasis attempts to combine broad framework conceptualizations of the legal process, with the teaching of immediately useful practice skills.

Client: Wallace Monroe. A factory worker, Monroe is one of the leaders of a non-militant organization of black people which is attempting to develop means of combating crime in the predominantly black east side of Cleveland. He is twenty-six years old and has had fairly extensive trouble with the law, with two prior felony convictions. He has lived most of his life on the east side and has a part interest in a local bar.

Prosecutor: Robert Ellis. Young, two years out of law school. He is very inexperienced as a trial attorney and always wants to plea bargain cases. He is attempting to develop a private practice on the side and likes to use his afternoons for this purpose. He is concerned about protecting his interests with the police.

Judge: Richard Mathews. He is in his mid-forties and despises any form of public interest lawyer. For a substantial period prior to his election to the municipal court bench, he served as a county prosecutor. The clinical program has had several heated altercations with him in past appearances. He has been reversed several times on appeal of clinical cases due to clearly erroneous ruling at trial.

Part I—The Initial Interview

The interview will be conducted by the student, Brad Roberts. It takes place in a clinical office in the law school building. The room is small and rather bare, with overhead fluorescent lighting; the only furniture is one desk, behind which Roberts is sitting, three chairs, and a videotape camera which will be used to record the interview for subsequent viewing by teacher and student.

The teacher has the option to decide who will play what role in the interview. He could elect to do the interview himself so that the student could observe him and they could subsequently critique the teacher’s interview performance or he could elect to observe the student interviewing. The choice in this instance was to give full responsibility for the interview to the student and give feedback regarding the interview process afterward.

The teacher has many factors upon which he can focus as he evaluates the student’s performance in this interview. Among these are:

1. The structure of the interview itself. How is it organized? Is the student asking questions that tend to elicit relatively unbiased information? Does he recognize the relevance of the information that is produced by the responses and can he pick up verbal and non-verbal cues that may be a “tip-off” to critical information?

2. What kind of relationship does the student establish with the client? Is he overly controlling or defensive? Does he project attitudes of superiority or possess other communication mannerisms that will offend the client or that are clearly nonprofessional? Does the client understand what is and
will be expected of him in the lawyer-client relationship? Is the client willing to trust the student with critical information?

3. The teacher could choose to focus on the informational content of the interview—has the student obtained the kind of information needed at the particular point of representation or has he left needless gaps that will require additional “make-up” sessions with the client?

1. Roberts: Hello—you’re Wallace Monroe? Glad you could make it. This man here is Daniel Wells. He’ll be working on the case, too. Before we start, can I get you some coffee? (Motioning for Monroe to sit about two feet from the side of the desk.)

2. Monroe: (Shakes his head negatively, and sits down.)

3. Roberts: Wallace, when you called yesterday, you indicated that you were arrested by the police for driving without a license and that they beat you. Is that right?

4. Monroe: Yea—it happened last week and they’re hasslin’ me now, too. After I called here yesterday . . .

5. Roberts: (Interrupting Monroe) Look, let’s just start from the beginning. I have to get a good idea of everything that happened so we can figure out what to do in the case.

6. Monroe: (Speaking in a soft, low voice) Mr. —uh— Roberts? Yeah—well, are you going to be my lawyer?

7. Roberts: (Leaning back in his chair and steepling his fingers, pauses a moment before answering. Roberts tends to have a moderately loud, aggressive manner of speaking) I don’t know yet Wallace. I’ll have to see about some things first. The best thing to do right now is for you to answer my questions and then we will decide.

8. Monroe: (In a louder voice) What’s the problem? When I called you yesterday you said I was to come down here. I’m taking off a half day from work and I don’t want to spend all day talking if it ain’t going to do me no good!

9. Roberts: (Sitting forward in his chair, glances quickly at Wells and responds in a slightly peevish tone). Look, I’m sure we are going to represent you. I didn’t mean what you thought. I just need to find out some things, alright?

10. Monroe: Okay, man. But don’t jive me. I need a lawyer . . .

11. Roberts: (Leaning forward over the desk and putting down the pen he had been holding) Alright, let’s take it from the beginning. You go back to the day it happened and tell me everything you can remember.

12. Monroe: You a lawyer?

13. Roberts: Huh? I’m licensed by the State of Ohio to represent clients. (pause) I’m not admitted fully to the bar yet . . . but . . . Mr. Wells here is and he’ll be working on this case with me.
14. Monroe: Well maybe him and me should be doing the talking (looking at Wells).

15. Wells: Mr. Monroe, Brad and I will be working closely together on your case, and he will be doing a lot of the beginning work on developing it. There won't be any problem with it at all. He has experience in representing clients and does a very effective job.

16. Roberts: Okay?

17. Monroe: What do you want to know?

18. Roberts: Everything that happened the day you were first arrested.

19. Monroe: Well, where do you want me to start from? A lot of things happened, and different places.

20. Roberts: (Looking out the window) You said before you were arrested for driving without a license. Why don't you tell me what led up to the arrest?

21. Monroe: Right. I was working late that night . . .

22. Roberts: What night was it?


24. Roberts: What kind of work do you do?

25. Monroe: I own a club. "The Superfly" on Euclid. We stay open late on the weekend you know, and Friday's a big night.

26. Roberts: You mean a bar?


28. Roberts: Who's Alice?

29. Monroe: Alice Cooper. She works for me.

30. Roberts: (Picking up the pen and preparing to write) Go on.

31. Monroe: She called and was really hot. She had gone out to get some food for me and was at Big Q's . . .

32. Roberts: Big Q's?

33. Monroe: The seafood place on Carnegie. You must have been there.

34. Roberts: No.

35. Monroe: She said I'd better get over there, because the cops was going to tow my car. So I got this guy in the club to drive me over and he dropped me and I went up to the scene.

36. Roberts: Okay. Hold it a minute. A few questions. Are you married?

37. Monroe: (Looking directly at Roberts) No.

38. Roberts: What time of night was it?


40. Roberts: What happened then?

41. Monroe: I saw Alice and these two cops were standing beside her. They were next to my car. I went up to them and told them
it was my car. It was double parked, and I said I'd move it but they said they were going to tow it. I showed them the papers but it didn't make no difference to them. (pausing)

42. Roberts: mmm. (nodding)
43. Monroe: So I asked the older cop why he wanted to hassle people like that and then he said he wanted to see my license.
44. Roberts: Yeah. What for?
45. Monroe: I don't know. He knew I didn't drive the car there. I told him I didn't bring it with me and then he said I was under arrest for driving without a license. I couldn't believe it. I started to heat up and asked him was he crazy and he just shoved me over toward the cop car. I wasn't even driving.
46. Roberts: Did they take you down to the station then? What is that, the Fifth District?
47. Monroe: Yeah, Fifth District. No, we walked back over across the street to their car and we were arguing—not shouting but, you know—I was trying to find out what was going on, why he said I was arrested. The car was double parked but you don't get busted for that.
48. Roberts: Did he have his gun out?
49. Monroe: No.
50. Roberts: Did they put cuffs on you?
51. Monroe: Not then.

Observations

In this interview the teacher should be noting the verbal and non-verbal behavior of both Roberts and Monroe. Even at this early point Wells should have observed the initial contact between Roberts and Monroe, including the physical positioning of the parties selected by the student. (Paras. 1 & 2). Paragraphs 3–5 involve the assertion of control by the student and while it is generally true that a lawyer must direct the interview the abruptness of the cut off of the client might be questioned.

The immediate use of the client's first name by Roberts should be noted along with the apparent conflict between the two that is reflected in paragraphs 6 through 16. Roberts (the law student) is in a very precarious position here. He has come on rather strong with Monroe and this is consistent with his basic personality. However, the client responds not by submitting to the authoritarian tone but instead by a challenge to the authority itself. (See paras. 8, 10, 12, & 14). The student, who does not yet see himself as a lawyer, doesn't really know how to handle this attack (and probably doesn't understand what caused it either) and his facade of lawyering could be shaken. The teacher mediates this particular conflict and at some point he can use the videotape to demonstrate for Roberts just what might have precipitated the disagreement. If the teacher had not been present there may or may not have been long-term effects on the actual lawyer-client relationship between Roberts and Monroe but, having observed the interchanges, the teacher has the opportunity to teach the student some skills of interviewing and also to probe more deeply into the reasons the student reacted as he did.
The student then begins the actual information gathering part of the inter-
view (para. 18), and asks an open-ended question that serves to least bias
the information with the interviewer's frame of reference. Having asked a
broad question, Roberts has the difficulty of many interviewers—he does
not have the patience to listen to the response but instead continually inter-
rupts the client. At paragraph 36 Roberts again interrupts “Are you mar-
ned?” but finally returns to listening to his client. See particularly para-
graphs 40, 42 and 44 where Roberts gets Monroe talking and then encourages
the flow of information from the client without interfering.

As the teacher observes this interview he should begin to make tentative
judgments about the student's special strengths and weaknesses in the inter-
view process and how these can be communicated most beneficially to the
student.

This and other interview settings revealed the student's strengths to be:
The student has an excellent grasp of legal issues and a good understanding
of the need to develop a specific factual picture. He is able to develop a
generally good relationship with white middle-class clients. He possesses
the ability to recognize some non-verbal cues from the client and to probe
sufficiently to develop the information.

At the same time the teacher determined the student's primary problems
to be: He is prejudiced against black clients to such an extent that it affects
his ability (or willingness) to function effectively on behalf of those clients.
His general dress and appearance is unprofessional. He tends to abuse women
clients with domestic problems. He tends to be overly judgmental and is
domineering with his clients to the extent that he frequently is confronted
with resentment by clients.

Having tentatively derived this information about the student, the teacher
must determine how he can most effectively teach. It will be relatively easy
to work through the positive aspects of the student's performances with him
and to focus on technical skills (e.g. tone, appearance, use of note-taking,
question patterns, topics, etc.), but it is a totally different matter with the
significantly negative aspects of the student's performance. Even if the
teacher is able to isolate the factors of, racism serious enough to result in
less effective professional representation for members of the racial or ethnic
minorities against whom the student's attitude is directed; abusiveness to-
wards certain clients (women with domestic problems); lack of ethics in cer-
tain situations (e.g. leaks confidential information, fails to investigate cases
on behalf of certain clients, is willing to misrepresent some matters to the
court, etc.), how can the teacher effectively remedy the problems? Should
he bring all these matters to the attention of the student and demand a con-
certed effort be made to remedy the "deficiency", or should the issues be
avoided? What if the teacher recognizes the problems but does not feel com-
petent to devise any means of effecting change in the student's attitudes and
behavior? Does he have the right (or responsibility) to attempt behavioral
modification and if so, can he do it by covert techniques?

Assuming that some of the problems are deep-seated psychological mat-
ters, what can the clinical teacher accomplish without training and over a short
period of time both in terms of accurate recognition of the problems and af-
firmative change? How can the teacher identify the areas in which the cre-
ative use of teaching feedback and structuring of the student's experience can make some difference and those in which attempts to insist on the student's changing may be educationally counterproductive?

Roberts continues with the interview and the following major points are revealed:

a. Monroe was charged with resisting arrest and assault upon a police officer.

b. The client admits the car was illegally parked but vehemently denies that he at any time resisted arrest. He states absolutely that he did not strike any police officer.

c. Monroe insists "at least four" police officers manhandled him and literally threw him head first into one of the police cars.

d. He was driven to the Fifth District Police Station by two black officers and they warned him on the way that "he had better behave himself at the station because the white officers were after him now."

e. Upon arriving at the station, Monroe was booked and formally charged.

f. While being taken to his cell, he was severely beaten and kicked before he was thrown into his cell.

g. A few moments later, one officer returned to Monroe's cell and sprayed mace in his face, causing severe pain.

h. Approximately one hour later, he was released on a $200 bond obtained by Alice.

i. He was taken to the emergency room at a local hospital at which time he was treated for a broken rib and a severely contused eye.

j. Monroe had a prior criminal record for possession of narcotic drugs and burglary.

Part II—The Initial Teaching Interaction

This part sets out the first individualized teaching session between Wells and Roberts. It takes place immediately after the client interview and the reader should closely consider the decisions of the clinical teacher in terms of what subject matter is appropriate to deal with at this time. What is gained or lost through the teacher's decisions?

The discussion contained in this transcript clearly does not represent either a complete interview or teaching session. However, this concept of "completeness" is one which should be defined in relative terms. The teacher cannot deal with everything in one session and must decide on what the session will focus. In each such interaction, there are inevitably important matters that could have been developed, but were not. The reasons for selection of one element for concentration is partially tied to a conscious and rational process of choice between alternatives, and partly in response to the competing pressures of time, energy, individual commitment, and teaching skill. The communications described here are subject to this conscious and unconscious decision-making process, and several decisions were being made by both the student in the interview setting and by the teacher. Some decisions
deal with the technique of the communications while others involve choices between the available alternatives.

52. Wells: Brad. How do you feel about this case? Where do you think you should go with it?

53. Roberts: I thought I got all the facts, don't you?

54. Wells: Yes. I think it was a good first interview for getting at your client's factual position. We'll talk more about that in a minute. What I'm asking now is what you think we should do in this case.

55. Roberts: Well, I'm going to have to read up on resisting arrest and all, but if there are some cops who are going to say he did resist then I don't see how we really have much chance.

56. Wells: Chance of what?

57. Roberts: Of winning this case. People are going to believe the police and not him.

58. Wells: What do you believe happened?

59. Roberts: I think he probably resisted arrest.

60. Wells: So do you think Monroe is lying to you about what happened?

61. Roberts: Probably—he just wants a lawyer to represent him.

62. Wells: Why do you feel he isn't telling you the truth?

63. Roberts: I just told you. He wants a free lawyer to represent him. He knows a lawyer can string things out and make a deal for him.

64. Wells: Brad, it bothers me that you are coming to a conclusion so rapidly that he is guilty. Do you really have enough to go on? If you accept what he told you as accurate, then, did he commit any acts of resisting arrest or any other crime?

65. Roberts: Yeah, but I know something about the area where this happened. The police are always having problems with these jive dudes and I've seen them. They're always putting the police down. And this was on a Friday night in June. You wouldn't believe the way those people act then.

66. Wells: What people?

67. Roberts: You know, the ones who live in that area.

68. Wells: You mean black people?

69. Roberts: Yes—mostly. It's really bad there. Noise and double parking. They're all over the streets there.

70. Wells: Is it possible you are already assuming that your client is guilty based upon what you think about the people in the area where this happened, and not because of the facts you got from him during the interview?

71. Roberts: Well, I know what it's like out there, and you heard that story about how they beat him in the police station. Do you believe that?
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72. Wells: It does happen. I want you to look at the facts he told you, and for the present, assume they are accurate. Where do we go from here?

73. Roberts: Like I said. I have to do some reading on the law before I can really answer that.

74. Wells: Of course you do. But what are you going to look at? What are your initial impressions about what legal issues exist, actually or potentially, in this case?

75. Roberts: He said he is charged with assault and battery and resisting arrest. I'd start with finding out the specifics of those statutes.

76. Wells: They are in your Code pamphlet.

(Roberts looks up the relevant statutory sections and reads them)

77. Wells: Okay. How do you apply those statutes to this case?

78. Roberts: The assault and battery charge . . .

79. Wells: By the way, how do you know he is charged with assault and battery and resisting?

80. Roberts: He told me!

The primary concern reflected in this initial teaching session is immediate concentration on the client's problem and initial decision-making in the case. Such a focus may be one of the few “absolutes” in a clinical program. The choice of priorities by the teacher transmits a message to the student. It need not be specifically verbalized, but the first major concern will be accompanied by a judgment that it is the most significant of those competing for attention. The development of a sense of professional responsibility for the client should be a central concern of a clinical program and to fail to concentrate on this as the initial educational premise of the clinic works against the teaching of “professional responsibility”. The apparent choices seem to be between placing primary emphasis on education or on elements of professional responsibility and competence. In reality, the most effective means of achieving the educational goals, whatever they are in addition to the absolute one of professional responsibility to the client, is to first concentrate on that fundamental premise of client responsibility and competence. This provides the foundation from which all the remaining educational benefits flow. Without it, the danger of perceived hypocrisy and lessened credibility is created. For this reason, the initial teaching session should deal with immediate attention to the client's legal problems to ensure this process is perceived by the students as the most significant part of the attorney role.

The direction of this first session is legal analysis set in a skill-oriented framework providing some of the direction in which the case should proceed. It is an exercise in factual and legal issue development and synthesizing concentrating upon the lawyering thought process.

81. Wells: Sometimes you will find your client doesn't know everything he is charged with. I'm just mentioning this so you will know that as soon as possible after you get a case, you should go over to the Clerk's office and look at the case file. We have talked about this before, and I will go over with you after we finish this discussion. It is the only way you can be certain
of the correct charges since they are on the warrants and complaints kept in that file. It saves you a lot of work to get the correct information right at the beginning. Anyway, assuming the charges are correct, how do they relate to the facts of this case?

82. Roberts: He said he didn't do anything except ask them not to tow his car away. He also said the police officer claimed he hit him. The assault statute says that "No person shall knowingly cause or attempt to cause physical harm to another." I assume physical harm occurs whenever somebody hits another. Even if you don't hit anybody, they can get you for assault. It only requires that the person tried to cause physical harm.

83. Wells: Is there any place you can find a clear definition of physical harm? What does the person's intent have to be?

84. Roberts: Let's see—we could look in a dictionary or a medical book. That would tell us about the definition of what is commonly accepted as physical harm.

85. Wells: What about the Code? Does it define the terms it uses in its "crimes" section?

86. Roberts: (Looking through the Code book.) Yes—"physical harm to persons." It is defined as any injury or other physiological impairment, regardless of its gravity or duration. I think that it would easily come under this statute if he hit someone or attempted to. If that happened, they can almost certainly get him on assault.

87. Wells: The resisting charge. What does it involve as elements of the offense?

88. Roberts: It says, "No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself or another." He said he didn't do anything. If that can be shown, then we can get him off on this. But if they can prove the assault, then the resisting arrest will follow. If he hit a cop trying to keep them from arresting him, then we can't do too much for him.

89. Wells: Alright. You have the statutory framework. But it isn't that simple. This is only the beginning. I think you will be surprised about how much is involved. But before we can get on to that part of the case, we are going over to the Clerk's office to look at the casefile.

(They walk the few blocks to the Municipal Court's Criminal Building and enter the Clerk's office.)

Observations

The teacher begins by probing in order to determine what is in the mind of the student in relation to this particular case. He is not so much interested in laying out his own theory of the case for the student to regurgitate as in gaining information about the student. In doing this he is not respond-
ing to the student's perceived needs for structure—how did he do in the interview? Where do we go from here?

However, providing the teacher's own structure at this early point will possibly result in the student merely emulating the teacher's behavior rather than the student developing his own abilities and/or the teacher failing to gain the required insights into the student to be able to effectively deal with that student's individual needs.

In the particular teaching interaction set out here, the teacher is able to see Robert's initial attitude about the case (paras. 55–59); that he thinks the client is lying (paras. 61, 63) about resisting arrest when there was not sufficient information for the student to form that judgment. The racial attitudes reflected in the discussion at paras. 65–70 raise a very critical question about the role and abilities of the teacher. Assuming that this student is making judgments about clients on the basis of prejudice and racial stereotypes, how far does the law teacher have a right to go in inquiring about this attitude, particularly when it seems likely to affect the quality of representation the client will receive? The teacher may not have the right to interfere in the personal lives and attitudes of the law students but when those attitudes are such as will affect the client the teacher has a right to intervene. Even beyond the issue of right; the real question may be one of ability. The law teacher is generally not equipped to deal with deep-seated prejudices and can attempt to resolve the problems with dialogue and experience but does not have either the time or the types of skills to effect change.

The teacher is also engaging in a dialogue with the student to ascertain his skills of case analysis. The student must be, in effect, tested for analytical and tactical thought processes. How much lawyering knowledge does he possess? Where are his blind spots? Is he able to see the range of issues in a case? Does he prejudge a client, or an issue? Can he blend the facts and legal issues in a case? How much of the analysis does he do for himself and how much does he lean on the teacher?

90. Wells: (Approaching counter) Hello Bill. How are you? This is Brad Roberts and he will be working with me for awhile. Brad, Bill Larson. Could we see the file on Wallace Monroe? He made his first appearance before Judge Mathews on June 9th.

(While Larson is locating the file, the teaching actually continues.)

91. Wells: Brad, as simple as it seems, a lot of lawyers don't take advantage of what a little friendliness and courtesy can do for them. The people in the Clerk's office, judge's bailiffs, etc. can do a lot to either help you or make it difficult for you. You are going to need their help a lot more often than they will need you, so it doesn't hurt at all to treat them decently. Hopefully, you would do that anyway, but some lawyers seem to think it is beneath them. Oh, Bill. Thanks for the file. Brad, let's look at this and see what we can find out. (Spreading the papers on the counter top). We have gone over these kinds of papers before in class, so look at them and see what information you can get. (Roberts examines the papers for a few moments.)
92. Roberts: He is charged with assault and resisting arrest. That's all. He is out on a $200 surety bond. The affidavit filled out by the police officer says Monroe hit and kicked him. Looks like they can make out an assault. This other affidavit on the resisting charge also says he physically resisted his own lawful arrest.

93. Wells: What other relevant information can you find in that file? You have to get as much together as you can. This gives you your first impression of what the prosecutor might have and what he is going to argue.

94. Roberts: There are these violations. What is the history on the back of the warrant?

95. Wells: Those are the dates and abbreviations of his prior arrests. Not convictions, but what this police department has on him for arrests. Looks like a long string. Three assaults, two drug offenses, burglary and traffic. That can all really hurt in a trial if he has convictions on some of those. He left some things out of the interview. You can find out his actual convictions in the record room downstairs. What other information do you see?

96. Roberts: This NG 6–8–73 not guilty plea. Next appearance 7–6–73. Is that for trial?

97. Wells: No. The procedure this court follows is to have at least three appearances. The first is the arraignment. That was June 8th. He is supposedly informed of the charges and of his various rights, and the case is then set for the next appearance. That gives him time to find a lawyer. Then he will go back in and indicate his plea, file motions, request a jury trial, etc. You won't have a trial until at least the third appearance.

(More discussions follow and they leave the Court and go back to the clinical offices.) (Back in the attorney's office)

98. Wells: I've only a small amount of time and then have to prepare a class. So let's outline what we have so far. You have your client's story, and you have seen the court file. You have the names of some of the police officers involved and witnesses Wallace told you about. What I want you to do is spend a few days on your own, laying out this case as thoroughly and completely as you can. Right now I am going to tell you the areas I want you to consider, but I am not going to even attempt any conclusions about them at this time. It is Tuesday and we will discuss this again at 2:00 P.M. on Thursday. The things I want you to look into are these: From the case file, we know the arrest was without a warrant. You should find out in what situations police can make arrests without warrants. Does it matter that the arrest was for a misdemeanor rather than a felony? The officer's affidavit indicated the assault occurred as part of the resistance of the arrest. If that is accurate, then upon what grounds
were the police attempting to arrest Monroe? What is the extent of an individual's right to resist an unlawful arrest? Who are the witnesses you can possibly identify in this case? How can you find them? Do you want to talk to all of them? What tactical decisions do you think should be made prior to the next court appearance? Should a jury trial be requested? Should you start plea bargaining? What pre-trial motions, if any, should be prepared and filed? There is a lot more we have to talk about in this case. We have not even really begun to develop the technical quality criticisms of the interview. There are some things I saw in it that I think we should go over. Mainly dealing with techniques and attitudes.


100. Wells: Yes. You did a pretty good job of finally getting all the facts. What I am talking about are certain fairly minor things you did or didn't do that might have affected the interview. I will set up a time and we can take about an hour within the next few days to go over the videotape together. I will see you Thursday afternoon at 2:00.

The teacher is supplying the student with the benefit of his own experience and this sharing process is a fundamental part of the clinical learning process, although the line must be drawn between the teacher acting as senior counsel, and as a crutch that will prevent the assumption of individual responsibility by the student.

The kind of teaching interchange set out here is an example of the application of Socratic dialogue similar to that which occurs in the much larger classroom setting, and represents one teaching technique used by the clinical teacher. As is discussed in a subsequent section, there are numerous teaching techniques used by the clinical teacher and the primary differences between this and other law school teaching is in the ratios (one to one) and the subject matter (actual cases with clients rather than appellate decisions).

In addition to teaching how to examine a court file for relevant information, the teacher is also attempting to help this particular student gain an understanding of the importance of non-lawyers (court personnel) in the lawyering process. Presumably he is taking this step because of the problems Roberts has with people in general.

At some point even the most conscientious clinical teacher must take short cuts. You cannot and should not do everything for the student, but with a court appearance coming up you often cannot afford to teach only from generally directed dialogues intended to pull everything from the law student. These parting instructions both finalize the initial case structure and serve as a means of determining how seriously the student will take the process of client representation. The student has been given several days to do a substantial amount of work and, if it is not done, the teacher can judge whether the failure is due to confusion, intellectual difficulty, or a lack of diligence. Each understanding is important to the teaching process.
The above is a relatively formal teaching session of substantial duration. It ends with the setting of a time for another scheduled session but as was pointed out in a previous section of this article, the student and teacher will interact "spontaneously" with great frequency. As the student works on the case prior to the next scheduled meeting, he will be in contact with his teacher to obtain feedback and advice as questions arise. These brief teaching exchanges have as much to do with the final learning experience of the student as the scheduled sessions.

Part III—Plea Bargaining

The date has finally arrived for a jury trial in State v. Monroe. The trial is to begin as soon as the court finishes its morning docket of arraignments. The court building is a large, dimly lit, circa 1930's stone edifice. The halls outside the small courtroom are dark and dingy with about 20 people standing around waiting to be called as witnesses or parties in various cases. The persons involved in this part are Wells, Monroe, and Roberts along with the City Prosecutor, Robert Ellis, and the judge, Richard Mathews. Present at the initial discussion are Wells, Roberts, and Ellis. The court is in a brief recess and Wells and Roberts approach Ellis standing near the bench.

The teacher again has the option of either observing the student as he negotiates with the prosecutor or of doing the negotiation himself with the student observing. In this instance he elects to conduct the negotiation.

The transcript presents both the plea bargaining and client counseling processes. It is important to note that, with respect to the actual performance of the tasks of client representation, there are no competing educational factors. The roles are purely those of client representation and while learning does flow from those acts, at that point in time considerations of teaching must be peripheral.

While the plea bargaining and counseling are occurring they are the most significant parts of the clinical experience, and, in both its role-modeling aspects and direct implementation, represent the center of the professional competence—professional responsibility components of the clinical program. The performance by either the teacher-attorney with the student observing, or by the student with the teacher observing, of these adversary system tasks is the focus of the clinical "method" of instruction. Additionally, there is the third relationship, which is the performance of representation by the student without the teacher present. This can be either a positive or negative learning experience, depending upon the manner in which it is handled, preparation by the student, ability, and assessment by the teacher of the student's capability to handle the task. At times, the student will feel hesitant and inadequate, and successful performance on an adversary task will provide an enormous upgrading in the student's professional self-image. This could be called part of a process of "cutting apron strings". Teaching support is still provided but over a longer distance. What this all comes to is that the "stuff" from which teaching and role-modeling is created is actual practice. The question is the means through which it is ensured that this experience serves maximized educational goals rather than simply a hazardous, good or bad, thing.

101. Ellis: Hi Dan. You haven't been around here for awhile. What case are you on?
102. Wells: Oh, we have that jury on Monroe. The one we did the motions on last month.

103. Ellis: Right, I remember now. Are you going forward on it? What is he charged with? A & B and resisting?

104. Wells: Yes. I told you at the pretrial that we have to go forward. Bob, have you met Brad Roberts? He'll be handling part of this case with us.

105. Ellis: Look, have we ever discussed any plea in this case? I can probably break it down and get you some guarantees.

106. Wells: Come on. I'll buy coffee. But I am telling you now that Monroe says he never did anything. We have talked, and he has his witnesses together. I don't know if he will accept anything less than a nolle.

107. Ellis: (Taking him out to the hallway, and away from Monroe and the complaining officers. He speaks in a conspiratorial tone.) You know I have to protect these guys (referring to the police). If they won't agree to a deal, I can't give you anything. But they want a conviction to be protected from a civil suit by Monroe. They'll take to the resisting and A & B and I'll try for small fines. They want him to serve some time but maybe I can talk them out of it. Your guy's got a bad record, too. It's not going to hurt him to plead.

108. Wells: I don't know what the cops have told you about the case, but they beat the hell out of him. That's why he is ready to go forward with the trial . . .

109. Ellis: They haven't said much but we both know they rough up "resistings" and A & B's on police. They probably did but, hell, let's get rid of this while we can. You know if you lose a trial, the judge will hit him with the maximum fine and time.

110. Roberts: That's not right! How can . . .

111. Ellis: I didn't say it was fair did I? But you know that's what will happen. You have seen Mathews work before, Dan. This way you keep your man on the street.

112. Wells: Look. I've gone over all this with Monroe before and he hasn't said anything but that he wants to try it. I've spent a long time on this case and I think we have you on it. You saw all those people upstairs. We have more witnesses than we know what to do with. (looking at Roberts.) I know if I take back to Wallace what you have offered that he's not going to buy it. If that's your bottom line, we'd better finish the coffee and get on with it. Brad's been working on this case so long he dreams about trying part of it. It should be interesting.

113. Ellis: Uh . . . look. If I talk to Mathews, I can probably guarantee you no time on either one. He'll do it if I push him.
114. Wells: No. That's not enough. We had better just forget it. (starts to rise) Wait. I'll do this much. If you nolle the A & B, promise only a fine on the resisting, with no time on anything. I'll try to get him to agree. (standing up).

115. Ellis: Alright. You go talk with him, and I'll get to Mathews and the police. (All three leave the coffee shop and go back upstairs to the courtroom.) Wells asks Monroe to come out in the hall to talk with him and Roberts. They walk over and sit down on a marble bench. Ellis is still inside the recessed courtroom.

116. Wells: Wallace. They have offered us a deal . . .

117. Monroe: I don't want no deal! We talked about it before. I'm ready to go to trial and take my chances.

118. Wells: Look. Right now I just want to explain things to you again. We're up against the trial now so we have to be sure how we want to do it. So hold off a minute and let me tell you what's on. Alice hasn't shown up again and it looks like if we go to trial we are going to have to have a bench warrant issued. She is our big witness. If we don't have her, then you stand a good chance of losing the trial. If we have her arrested then there is no way of being sure what she will testify to. They have offered to dismiss the assault charge if you plead no contest to the resisting arrest. The judge will give you a fine and we can have a definite promise that you'll serve no time. What do you think?

119. Monroe: I don't know. I told you I wanted to try it. They beat me y'know, and I got a broken rib out of it. Then I'm the one has to say he did wrong to the cops. Man, y'know . . . how would you feel?

120. Wells: Wallace, Brad and I have been with you on this right from the beginning, and you know we don't feel right about what happened to you either. You know how much time we spent getting this thing (case) together, and you know that we are going to have a trial in this court starting right away. But you have been through this before, and you know that if you try a case to a jury you're flipping a coin. There's no way I can guarantee you we will win, anytime, but without Alice I can pretty much tell you we have a good chance of losing it. We have a couple other witnesses, and they are here but they are just sort of extra, and they tie into Alice's testimony. I know this is a principle thing with you, and that's why we have been spending the time on it. You know that we think you got burned by the cops. So I agree with you on it. But my job is to make sure I give you advice good enough so you can make the best decision for yourself. If we go to trial and lose, this judge will give you the maximum on both. I know him well enough to know that. That means you could spend over a year in the Workhouse, and he could fine you up to a thousand. You've
got money so you'd have to pay, and if you're in jail, who
do you trust enough to handle your club and the money?
If you want to get the cops we have the civil suit ready to
go just waiting to get this over with, and we'll file it and
serve them.

121. Monroe: Yeah, but what happens to that suit if I plead here? Can
I still go on with it?

122. Wells: What we are suing them for happened at the Fifth District
an hour and a half after they arrested you. We don't have
to worry about whether you plead to resisting on the street.
You probably can't make anything on a false arrest com-
plaint anyway. You are covered on all these things, and
this way we are certain you don't go to the Workhouse.

123. Monroe: What do you think I should do, Dan? I'll do whatever you
say.

124. Wells: I can't make the choice for you. You have to do it. This
way you're covered and only get a small fine and stay out of
jail. But you have to decide.

125. Monroe: (Looking troubled and uncertain). Okay. I'll take it if
you think that's the best way. But man, they really did the
job on me and then get away with it. I just can't stand
those damn pigs getting away with it. Did you see them
grinning at me in court?

126. Wells: Yeah, I know. It gets me too, but they won't be laughing
for long when they get served with the papers in the federal
court action.

(Wells, Roberts and Monroe confer together for several moments longer
and then rise and walk back to the courtroom. Wells catches Ellis' atten-
tion and motions him to come out into the hallway away from the four police
he had been standing with. Ellis, Roberts and Wells are standing in the
hall.)

127. Ellis: The Judge will go along with everything. I think he wants
to play golf this afternoon. The police don't really want
to. They don't want to drop the A & B. Does it matter
to you whether he pleads to the A & B or the resisting? Do you think he would object to a switch? There would be
no problem if Monroe will do that.

128. Wells: No. He is touchy as hell on even pleading to the resisting.
He feels he is really getting messed over in this thing. If
I go to him with something else, particularly the A & B, it
will blow the deal. Look, putting aside the question of the
legality of the arrest, he can sort of see where he might have
resisted. He may have gone limp when they were trying
to get him into the car and away from the fence. But there
is no way he is going to say he hit one of these cops when
he didn't and we have all kinds of witnesses to prove it.
So we either go with the deal we talked about or nothing.
That's as far as he'll go.

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129. Ellis: Let's get the officers out here and talk to them about it. (He leaves for one moment and reappears with the four officers)

(Further discussions follow between them and finally, the police agree to go along with the deal. Monroe enters his no contest plea and three weeks later receives a $100 fine and one year inactive probation. Shortly afterwards, the civil damage suit is filed against the police.)

In the interactions described above, the choices depend upon whether the tasks are to be actually performed by the attorney-teacher or the clinical students. The scope of the teaching analysis, prior to the performance, can be widened if the attorney is to do the actual plea bargaining and the broader systemic aspects of practice can be developed along with the various techniques which may be used. If the student is being subjected to the heavy pressures of performing these adversary tasks (plea bargaining or trial), then all motivations are compellingly directed toward preparing the student to function immediately and with effectiveness in performing the particular task.

This negotiation contains many elements that can be used to teach the student. Part of the learning, at this stage, is obviously occurring through observation of the negotiation itself, relying on the student's personal experience, the discussions about negotiation of this case that he has had with the teachers, and prior instruction in negotiation dynamics. It is the teacher's task to make certain that the student gets the best learning experience from the clinical activities. To do this he must be able to analyze the process itself. In this instance the critical factors are the definition of the relationship with the prosecutor (see paras. 101-108); the mutual probing of positions that goes on in any negotiation (paras. 101-115); the counseling of the client (paras. 116-126); and the generally unstated manipulation of known leverage points between the two attorneys (the prosecutor does not want to try the case and the defense attorney doesn't want his client to go to jail.)

Is the attorney being fair to the client? Is he permitting the client to make his own choice or manipulating the choice the attorney thinks is best, regardless of the client's real desires? To what extent is Wells permitting his own dislike of jails and incarceration to affect the advice he gives to the client? Hasn't he surprised the client with the sudden insistence on pleading the case? It would be possible to have any absent witnesses brought to court to testify and in any event the lawyer knows it would be several hours before the jury would be summoned and therefore, the witness could very likely be located.

Perhaps the attorney feels unprepared and will be as happy to “get rid of this case” as is the prosecutor, and is (perhaps unconsciously) glad to seize any rationalization that becomes available. If this is accurate, what kind of role-model is the teacher presenting to the student in terms of both competency and professional responsibility?

How should the teacher deal with the institutions with which they are dealing in this case? He is aware that the prosecutor is unprepared and that he spends a great deal of time building a private practice. At the same time, he knows from an informer that Monroe actually had been beaten by the
police and the student is also aware of this fact. The police have in fact committed at least felonious assault and are prepared to commit perjury on the witness stand. What should be done about this, and is it appropriate to counsel the client to admit something you know he didn't do? What effect will this have on the student in the development of his perspectives on the legal system? When you consider that the student has now observed negative behavior on the part of 1) the police 2) the prosecution 3) the judge, and 4) possibly the teacher, what will be the logical judgments he could make about this part of the legal system? How can the teacher prevent the development of cynicism on the part of the student directed toward the institutions of "justice"? Can he prevent these attitudes from developing and instead convert them to a positive desire to reform?

The Teaching Interaction

In this instance, the supervising teacher did the actual performance of the plea bargaining and counseling, with the student observing and participating as co-counsel. After the plea has been entered and that phase of client representation completed, an excellent opportunity exists to make certain that the experience is tied together as a totality in relation to the program's goals, and that the student see the experience in its fullest content rather than a technical exchange between the attorney and the prosecutor and the attorney and client.

130. Roberts: I really thought we were going to have a trial in this case.

131. Wells: There was a good chance of it, but I have told you before that few cases ever get to trial. There are just too many things working against it. Do you remember when we talked about what is involved in plea bargaining? I told you then that the prosecutor would offer a really good deal to keep from trying this case, and he did. Think about the negotiation we did today with Ellis. How does what he was doing tie in with what you already know about negotiating (plea bargaining)?

132. Roberts: What do you mean? We talked about a lot of things that could happen. I don't know that it has much to do with what you and Ellis just did.

133. Wells: If you want to plea bargain, what assumption do you make about the other side?

134. Roberts: Right. Since cases are hardly ever tried, you can be pretty certain that the prosecutor wants to settle the case. You can go in with that as a probability.

135. Wells: What do you think about Ellis? Do you think that assumption was valid as a way to approach him today?

136. Roberts: Yes I do. Except for the police, he would have given you just about anything. The judge too. He gave you a no jail sentence commitment in his chambers, even though Monroe's got a bad record. Ellis just didn't want to go ahead. He came in here today, and he was sure he was going to have a trial.
137. Wells: I spent time before this making sure he thought we were going to try this case. I even passed the word through friends, informally. He also was convinced we had a strong case because he knew Monroe had been beaten, or at least suspected it. He didn't want to have the whole thing blow up in his face.

138. Roberts: Yes. But Alice didn't even show up the last two times, and she didn't come in for a subpoena today. We would have lost without her.

139. Wells: I agree, and that's why I told Monroe that the best thing he could do would be to accept the plea. He had to know the truth. But did you see Ellis looking at all those people in the courtroom. When they were still waiting after the arraignment docket was cleared, he was sure they were all ours. I went over last week and had the Clerk issue 18 original subpoenas in this case because I know Ellis checks with them on the cases that may go to trial. We only served four, and the returns haven't even been made on those, but he thought he was in for a big one. He thought those people in court today were our witnesses, and I didn't tell him that only two of them were.

140. Roberts: The cops had a big effect on what he did. I thought the prosecutor was in charge, but at times it seemed that the police were telling him what to do.

141. Wells: Ellis is young and that makes a difference. But even beyond that, you'll find that the police often seem to run things. The prosecutors come and go and if they don't keep the police happy, they will find their job a lot harder. Even the judges worry about the police. The municipal judges and prosecutors are most affected but so are the county prosecutors and higher up trial judges. Much of the time you have to take into account how important the case is to the police because that can determine how willing they are to deal.

Another thing. At the beginning of this case, Monroe was playing it up in the newspaper and a radio station wanted to do a big exposé of the police. I wouldn't let Monroe do it because that would have polarized the whole thing and this would have definitely been a tougher case.

What choices has the teacher made in this session? Is he able to pull the experience together for the student? What has the student learned about: (1) negotiation techniques, (2) client counseling, (3) the prosecutorial and judicial systems in terms of the way they operate and are influenced, (4) case analysis, investigation and research, (5) how he wants to fit into the legal system as he sees it?

The transcript also raises questions about the conduct of the clinical teacher in the role of the defense attorney. Paragraph 136 reveals that the attorney was successful in getting a "good deal" for his client but also that the client has an extensive prior record. What is the attorney's responsibility
in terms of playing this kind of negotiation "game"? Are the tactics used with the subpoenas (para. 139) proper?

Often the roles of the attorney may seem inconsistent with the rhetoric of responsibility. How are these conflicts to be resolved and even if they can be logically resolved in terms of professional responsibility how does the teacher communicate this to the student? The teacher may be able to draw rationalized boundaries for his own professional behavior but how can he be certain that these are clearly communicated to the student and that his behavioral norm is valid?

How can the teacher deal with the student’s observations of totally irresponsible judges and lawyers? If you just “let it ride” he will almost certainly come to understand that it is simply “the way everybody does it.” What kind of impression does the student receive from this behavior—anything goes?

In this session, Roberts and Wells continue their discussion of the various aspects of plea bargaining and client counseling, dealing both with the specifics of this case and the general consideration of identifying potential and actual leverage points in the negotiation and the techniques of obtaining control. The same factors apply to the analysis of the client counseling process and its effects.

(D) General Factors Affecting the Clinical Teaching Relationship

Grading and Evaluation of Clinical Students

A rationale for grading. When the choice of giving traditional “letter grades” in clinical courses is contrasted with the frequently suggested pass-fail alternative, the question is often resolved on the basis of philosophical preference rather than on that of educational effectiveness. The author believes law students generally function best when they are being graded, and that the motivation of grading helps to protect the interests of the clients being represented by clinical students.

Students being graded on their clinical activities are generally more highly motivated and give greater attention to detail and preparation than they do in pass-fail situations. Since the law student has spent twenty years participating in an educational system which centers on the grade as reward, the reality of that system and its effects must be confronted. The ability to pass judgment through grading is the “wealth” of the law teacher and, like economic wealth, provides the teacher with the ability to direct the activities of students and to control those activities in the manner necessary for effective client representation and for the most beneficial learning experience. The ability to motivate oneself through a desire for self-growth and excellence, both personally and professionally, can easily be accepted as the ideal of legal education. When the ideal is projected against the reality of student behavior and the form of legal education, however, it is apparent that even if we could afford to take a chance in terms of the students’ general legal education, we cannot do so when client interests are involved.

Addressing the grading issue requires an analysis of the motivational forces existing in the specific educational setting. The law students are placed in a situation that demands they give present value in exchange for rewards they will receive primarily in the future. This ability to trade off
the present for the future is one which requires intellectual maturity and, even with such maturity, cannot be expected to function indefinitely. The interim effect of grading is to give immediate gratification within the functional system of education and, although most of the rewards from attaining these indicators of performance are also delayed, the acceptance of the system carries with it some immediate feedback for success within that hierarchical educational system itself. It offers immediate projections of quality transferred to ideals of hopes for future performances, immediate peer respect and other tangible rewards within the present system such as law review membership, specialized clerkships, and high-prestige interim employment. To grade students on a pass-fail basis removes the immediate rewards and forces them to look solely toward the future. Too many students are unprepared to cope with this lessening of immediate pressure and alteration in the ground rules of the educational "game". Their response is a lesser effort in terms of the intensity and depth of thought. It is not a wholly conscious process, and students may not understand that the quality of their performance and learning differs. This usually subtle shift in attitude runs counter to the educational commitments of the clinical method which strives for an experience of sufficient intensity to permit at a minimum the development of a sound base in fundamental legal skills and responsibility. This cannot be achieved if students are permitted merely to "pass-through" an interesting series of experiences, picking and choosing to work in those they personally consider worthy.

Standards of evaluation. Closely tied to the issue of grading are the standards used to evaluate student performance. In order to use the shaping forces created by the grading process, the students' internal demands for excellence, and the intense pressures generated by their relationships with clients, courts, and teachers, the clinical teacher must make students aware of the program's directions and the nature of their performance which is being qualitatively evaluated. This development of awareness is itself a major step in determining the manner in which students approach client representation. The factors upon which the evaluation of performance is based should be effectively communicated to the students in order to increase their understanding of what is demanded of them and to relate the evaluative criteria to their own representational activities.

Evaluation of clinical students. As in other forms of teaching, the evaluative technique used by the clinical teacher consists of several parts. Each part may be better adapted to producing a certain type of learning than another. Evaluations can be used to channel students' perceptions of their clinical experience toward the program's specific educational goals. Without a specific grasp of what is expected of them during their clinical work, students may, from the beginning, unnecessarily deviate from those standards. The manner, content, and timing of the evaluations directed from the teacher to the student depends in part upon the educational goals and choices made in the specific clinical program.

Evaluation criteria should represent an identification of specific qualities and attitudes which have been determined to comprise the framework of professionalism and competence. Again, it must be stressed that a clear, early insistence upon these standards avoids any later assertions of confusion or misunderstanding as to what is to be done and in what manner. An initial
session to familiarize the students with the specifics should occur at the beginning of the clinical experience and be conducted by the teacher in individual sessions. Evaluations occurring during the clinical period, following this orientation session, will take place in both spontaneous and highly structured fashions. Evaluations should be occurring constantly as part of the individualized teaching process.

In addition to the immediate feedback which takes place at many points during the clinical experience, there should be at least two individual teacher-to-student sessions during the period geared to a comprehensive evaluation of the overall positive and negative aspects of the student’s performance, areas of strengths and weakness and any suggestions for needed improvement. One of these sessions should occur approximately one-third to one-half of the way through the experience, to draw from the substantial practice experience the students have had and to examine the basic patterns which have developed. Optionally, this may be repeated prior to the end of the student’s involvement although the length of the clinical experience and other factors would affect such a decision. In any event, a final extensive evaluation session should occur with the purpose of examining the full experience of the student, the total learning which has occurred, and, again, the areas of strength and of need. This structured evaluation process is time consuming but, if done properly, can be a beneficial experience for both the student and the teacher.

There are several critical problems facing the teacher responsible for evaluation of clinical students. Many of the evaluative judgments that must be communicated are potentially threatening to students. The teacher must be sensitive to the dangers both of causing damage to a student’s self-concept and of avoiding specific critical judgments to escape the extreme anxiety of such interactions. The concepts stated at the beginning of this section on individualized teaching should provide guidance for the teacher in this aspect of his relationship with the student. The problem of acceptance of constructively intentioned critical feedback from the teacher is further increased as the matters being dealt with become seemingly less related to technical professional skills and involve such areas as ethics, general professional attitudes, personal bias and prejudice, and difficulties in interpersonal behavior and communication. The difficulty is intensified by several factors. First, the teacher may feel uncertain of what is proper within these areas. Similarly, the teacher may have difficulty distinguishing his personal values from legitimate professional qualities, or may simply feel that an individual does not have the right to push his personal values on another. Finally, the teacher may fear that, in criticizing another individual’s supposed deficiencies, he will evoke an antagonistic response focusing upon his own imperfections.

Even when the subject matter of the teacher’s criticism is less abstract and deals with the technical skills of lawyering, the tendency will often be to evaluate behavior in general terms, avoiding the communication of specific negative judgments. This failure to accurately and specifically communicate both the positive and negative aspects of a student’s performance renders the individualized teaching process largely superfluous, reducing it primarily to a technical “caretaker” activity. There are several reasons for this phenomenon’s occurrence. A person responsible for criticizing another will find it necessary to convince the person being evaluated that he knows what
he is talking about. However intelligent, a clinical teacher only several years out of law school, with limited lawyering experience himself, will often be quite uncertain about many of the matters he is supposed to be evaluating. This legitimate intellectual and practical uncertainty is often a barrier to the teacher's willingness to admit his experiential inadequacies to the student, with a prestigious judicial clerkship sometimes added for seasoning. As threatening as this process can be for students, it is potentially much more so for the neophyte clinical teacher. He not only feels many of the same pressures as his students, but also must deal with the knowledge of his own experiential deficiencies and of the particularly stylized role of the law school teacher.

**Preparation and Training of Clinical Teachers**

Historically, the assumption seems to have been that a law teacher is qualified for his specialized profession primarily by the sum of his academic credentials, particularly law school attended, class rank, and law review editorship, with a prestigious judicial clerkship sometime added for seasoning. As the position of law teacher has generally been styled, these types of credentials have been quite relevant. The major emphasis has not been upon effective teaching, but upon the specialized forms of research and writing which characterize legal literacy. Assuming this fundamental direction, it's logical to select individuals with credentials indicating a high degree of successful performance within this educational system. Furthermore, a clearly relevant part of the selection process screens a definite personality type, resulting in a homogeneous grouping of individuals on law faculties. Shared similarity of social and intellectual interests has been as much a part of the faculty selection criteria as any other factor.

Whatever the criteria for the selection of traditional law faculty, the selection of clinical teachers requires a different rationale. Specialized training and preparation must be developed for persons involved in clinical teaching, in order that they may effectively work within specialized individual teaching relationships. This training and preparation is both a preliminary and "on-the-job" process, and should deal with theoretical frameworks and techniques for implementation of the clinical theory through the dynamic of the legal experience. It should also require at least some minimal measure of previous lawyering experience.

While questions of the qualities and training necessary in the development of the clinical teacher/supervisor have not been answered, some directions are clear. The individual clinical teaching process requires the ability to combine several critical qualities, not simply the possession of strong intellectual abilities or exceptional practice skills. *Individuals in clinical education must have a specific and powerful desire to teach.* In the individualized teaching relationship of the clinical method there is little room to hide from students. The ego protecting distance of the authoritarian model of legal education generally cannot stand up under constant close contact with students. The necessity of almost constant awareness of the need to teach from the ongoing experience, coupled with the spontaneous nature of much of the teacher-student interaction, requires the selection of persons capable of filling a position which is more pressurized, complex, and personally demanding than traditional law teaching.
Using these concrete and predictable needs facing the clinical teacher, a limited number of primary qualities can be identified concerning the type of person best suited for clinical teaching. That person should have the ability to function in the one-to-one teaching relationships of clinical education, and must possess substantial patience and human sensitivity to apply to these interactions. An element of reflectiveness coupled with a positive attitude toward the practice of law is clearly preferable, as is a great deal of flexibility, adaptability to constant pressure, and physical and mental energy. Maturity, particularly in the form of the ability to accept criticism and the threat of having one's own expertise and performance subjected to constant scrutiny is desirable, as are a positive self-concept and a sense of educational purpose.

The lawyering background of the clinical teacher will often have oriented that individual to the type of practice included in most clinical programs. Some adjustment will still be necessary, but it will come more rapidly when the prior experience is directly transferable to the substance and procedures of the clinical caseload. Total systemic knowledge is not expected by the students, but they do demand a substantial amount of information and technical guidance.

Theoretical and methodological preparation is necessary, but pales before the need for fundamental lawyering skills. More mundane than reformist theories, yet more immediately essential, is preparation in the form of technical practice skills, law, procedures, and informal systems knowledge. While the private practitioner will only sometimes use these skills, the teacher must always be prepared to inject them into the teaching process. Unlike many non-clinical practitioners, he cannot afford to relax and wait for this type of knowledge to develop over a lengthy period of practice; he must aggressively seek to structure and examine the essential systems. A practical study of specialized knowledge must be constantly pursued. The ability to develop this knowledge affirmatively runs counter to the vicarious nature of clinical teaching. By itself clinical teaching does not fully provide the tension necessary to activate the most effective learning processes for the teacher. The discussion, preparation, and strategy sessions related to case development do not generate as much "upkeep" learning for the attorney as they would if he felt the tension of direct and primary case responsibility. Without this professional tension, skills of representation, techniques, and procedural and substantive knowledge seem to decay gradually. This indicates a critical need for the clinical teacher to remain directly and primarily responsible for the total handling and performance of a limited number of cases, with the students participating in secondary roles.

(E) Factors Affecting the Teaching Relationship From the Perspective of the Clinical Teacher

Effective clinical teaching presents a number of difficulties to the person who attempts to carry out its goals. He is confronted by the competing roles and time pressures of his position, by the influences and opinions of other law faculty and students, and by his own motivations and experience. This section analyzes the individualized clinical teaching position through the perspectives of the teacher.
The Multiple Roles of the Clinical Teacher

The clinical teacher finds himself in the position of being a teacher, an attorney, a role-model, and an administrator all at the same time. As a teacher he must relate the theory behind clinical education to the specific clinical experiences of client representation. As an attorney he must remain ultimately responsible for the clients whose cases are handled by the students. As a professional role-model, he must be able to teach and demonstrate the necessary lawyering skills to the students.

The primary requirement of the teacher role in the clinical practice setting is to provide overall coordination and technical lawyering supervision of the clinical students as they perform tasks of client representation. With the central dynamic of the clinical methodology requiring the assumption by the students of significant professional responsibility for consequences to clients, a clinical program must allocate a large proportion of total teacher time to the supervision of students and to teaching from their experiences. In this way, the experience and teaching skills of the clinician are brought to bear upon the educational goals of practical performance. The teacher functions as a supportive guide, shaping the decisions and performances of the individual students, along with their perspectives on concepts of professional responsibility.

The dual roles of the lawyer, as adviser and supportive co-counsel, and as professional role-model, require direct performance of legal tasks by the teacher. In a limited number of situations students are provided the opportunity to assist and observe the teacher as he performs the critical activities of client representation. This demonstrative teaching device accomplishes two ends. The teacher can develop the theory, strategies, and tactics of a case with the students beforehand, and subsequently demonstrate their application in the specific representational setting. In addition, teaching by actual teacher performance lends substantial credibility to the other teaching functions, while at the same time aiding in retention of the basic practice skills of the attorney-teacher.

The Effect of Time Pressure on the Effectiveness of the Clinical Teacher

The ability to perform consistently at optimum levels of clinical teaching is in direct relation to the substantial commitments of time and energy required by the diverse roles and tasks. If the number of students for whom the teacher is fully responsible is limited appropriately, along with student caseloads and other teaching responsibilities, there will be sufficient time for effective clinical teaching. It is extremely difficult, however, to control these factors. Therefore, deficiencies in clinical teaching can occur at the representational level, resulting in clients’ receiving less than desirable representation. As the previous analysis of cost and resource considerations revealed, clinical programs are often understaffed, ineffectively administered, and suffer from the combined lack of teaching and lawyering experience. Teaching guidance received by the students is generally less effective and thorough than is desirable. Although it is relatively easy for the teacher to see the ideal of the process, it is almost impossible for him to function with the degree of effectiveness required to attain that ideal. There is always something that interferes with the process: the unexpected development of cases, dislike of a student by the teacher (or vice-versa), “dead” periods in
case intake, pressures of office administration, committee work, family needs, and the teaching of other courses. When this is added to the periodic enervation that results from the constantly frenetic pace forced upon the clinical teacher, there is little likelihood that any one teacher will reach the perceived goals of the clinical method. By better understanding the process and his role in it, however, he may more closely approach the ideals of learning upon which the method is based.

**Time Demands of the Teaching Process**

Each of the clinical teacher-supervisors has overlapping responsibilities for the total process of clinical teaching, program planning, and administration. Yet, it is important that each one be integrally involved in all of these facets of the clinical program. This involvement enables the teacher to understand the total goal framework of the program and also to gain a commitment to the individualized teaching of those goals. Even during those periods when the teacher is not primarily involved in teaching the framework classes, he should be required to commit time to preparing and reviewing essential program material. Since clinical education is both a movement to reform inadequacies in legal education and to add additional basic assumptions to that educational system, it is under constant pressure, both from within itself and from the overall institutional structure of legal education, to develop methods and premises which justify its existence. The most effective way to encourage such development is to involve each clinical teacher in the formation of the theories to be applied in individualized teaching relationships. If this is not done, the result may be competition between those persons charged separately with teaching and those who serve as the lawyering models for the students. Even more significantly, there will be confusion among the teachers as to the educational goals to be achieved. The end result can be a rigid dichotomy between the theories of the classroom and the instruction of the “field” teaching.

An equally compelling necessity is that, as the proper instructional methods are devised through clinical theories, they must be transferred to the practice aspects of the clinical experience. To assess the validity of the theoretical premises, it is necessary that those developing the theories participate in their application to individualized teaching. An effective way of accomplishing this is through the experience of the one-to-one teaching of clinical students.

Synthesis of classroom elements, program theory, and representational activities requires that the opportunity be created to reflect upon, test, and evaluate the nature and effectiveness of the total educational process. This involves more than simply sitting down once and preparing a particular class or series of classes. In a much broader sense, it demands a constant effort to develop theoretical premises, devising methods for their application, structuring the experiences of the classroom and client representation in response, examining the results and quality of learning which are often hidden in the settling of immediate client demands, and then beginning again to develop more effective approaches and methods based upon the entire experience. As knowledge about the most effective ways to design, administer, and teach the clinical method improves, it may be possible to divide duties to a greater degree than at present. In the immediate future, however, a continued blending of responsibilities seems essential.
The effect of court schedules. A clinical program devoting a substantial portion of its effort to representing clients in cases requiring court appearances often includes a considerable amount of time spent in court merely waiting for cases to be heard. Additionally, the actual performance of adversarial activities adds to time pressures, as does the time spent in travel between the courts and clinical offices. The scheduling of cases and arrangement of court dockets does not occur in response to the scheduling needs of the clinical program. Obviously, the court appearances are priority matters taking precedence over any other clinical or law school-related activity. There is often a relatively short time period between the moment that the attorney discovers that a client must appear in court and the day of the appearance. Many clients seem to seek representation only when the threat is most intense, a few days before the appearance is scheduled. The effect on the teacher's pre-set schedules, appointments, meetings, clinical teaching duties, research and writing, and lawyering activities can be dramatic. The best arranged schedule can disintegrate before these immediate demands.

This “wasted time” spent sitting in court waiting for cases to be heard, and the time consumed travelling to and from court, sometimes seems to represent too much of the students' clinical experience and the attorneys' time. While actual performance in court at least results in a productive clinical experience, considerably outweighing the distortions in pre-scheduled time commitments, the problem of wasted, non-productive time represents a more severe situation for efficient use of clinical teacher time, and requires some immediate remedies. One method is to consider the particular type of individualized teaching that could be most effectively performed within these otherwise-wasted time blocks. The time spent travelling and waiting can be used to teach individual students or to examine the court systems, civil negotiation, client counseling and preparation for court, judicial attitudes and the nature of judicial or opponent decision-making. It may be productive to include in the court trip a student who is not performing in the particular case involved, and to use the opportunity provided by travel time or other waiting to perform individualized teaching. Using these times for teaching is much easier, however, if the attorney is only supplying support to a student for the court appearance, rather than handling it directly himself. Otherwise, the understandable tendency is to be pre-occupied with the pressing matters at hand. Similarly, a student under the immediate tension of an impending court appearance will not be overly receptive to teaching direction not clearly related to the immediate problem.

The Career and Reward Structure of Legal Education

Clinical teachers whose sole responsibility is to the clinical program, as well as those who divide their teaching between the clinical and traditional academic worlds, face additional pressures from the existing reward structures within the specialized culture of legal education. The threat created by the resulting value conflicts can cause the loss of individual effectiveness in either or both areas. The position of clinical teacher requires the individual to meet virtually all of the responsibilities of law practice, but provides little of that system’s rewards, whether economic, self-conceptual, or status. At the same time, other faculty often possess distinctly different ideas of excellence. The result can be that the clinical teacher may feel himself a form of half-breed, caught between the values of two very different
systems; this creates a situation presenting several alternatives. The clinical teacher can decide to accept the values of the practitioner, or of the other faculty. He can attempt to alter the perspectives of the educational system, or he can remain in the middle, succeeding in some ways and failing inevitably in some of those related to others' perspectives. As another alternative, he can quit clinical education for either law practice or ordinary teaching.

In many law schools, individual respectability is tied to relative excellence in those areas of teaching and research accepted as important. The long period during which legal education has neglected many areas relevant to the preparation of lawyers still has substantial effects on the attitudes of many faculty, evidenced by a continuing failure to alter traditional concepts. This can perpetuate the misconception that clinical education is second-class in relation to the "legitimate" curricular components. While this perspective has changed to a recognizable extent over the past several years, the situation remains one in which there is a general bias against the validity of the clinical method. This attitude has lately come to apply not so much to the individuals teaching in a clinical program, as to the goals and methods themselves. This is due to the academic qualifications of the individuals recently entering clinical education, which are increasingly similar to those of the other members of the faculty.

The central difficulties created by the combination of the above factors relate to the need for respect and meaning. The effects of peer pressure and group values on individual self-concepts can become quite forceful in this setting. Needs for the respect of colleagues, rewards in the form of salary and/or tenure that are sometimes tied to performance in nonclinical courses, and the pressures forcing clinicians, also responsible for non-clinical courses, to over-commit themselves and set priorities in the direction of performance in those traditional courses, all potentially create a danger of subtle alteration of the perspectives of the clinical teacher. This process may be aided by a frustration-avoidance reaction to the pressures of attempting to generate a high quality clinical experience for the students, and to the time and psychic energy drain this intensity produces. At times the continual frustration and emotional enervation present such averse stimuli that the clinician is more than happy to get away from their source, even if his body is still going through the technical motions through habit and duty. When this occurs the sensation is akin to moving about in an energyless fog, coping in a mediocre fashion with most daily activities.\footnote{As melodramatic as this assertion may seem, I know through experience that I go through this phase periodically and, as I have discovered through discussion, so do my colleagues at Cleveland State and elsewhere.}

The teacher's balancing these pressures and attempting to respond to them will have a direct impact upon the student's clinical experience. In many law schools it seems sufficient if an adequate number of students are processed through a clinical program, keeping up the appearance of progress and movement, while at the same time reducing the relative costs of clinical education vis-a-vis the remainder of the curriculum.

The Effect of Student Expectations On Teacher Attitudes

A clinical program, seeing part of its responsibility as the development of new teaching methods and of systemic reform which contains substantial
theoretical elements not immediately perceived as relevant to legal practice, may encounter significant resistance from students. Many students tend to perceive the clinical experience as the only opportunity to develop essential practice skills before graduating into the threateningly immediate world of law practice. Therefore, they are under a great deal of pressure and want immediate assistance in the reduction of this tension. When a clinician avoids this expectational reality and seems to be placing inordinate emphasis on ideals seemingly unrelated to present needs, the student reaction can be negative. Although students sometimes tentatively admit that these learnings can be perceived as relevant in a generalized sense, they nevertheless seek immediate gratification for their main concerns and are impatient with anything that takes time and energy away from that goal.

These conflicts, create frustration and tension between the teachers and clinical students, and can affect the credibility students assign to the guidance of the teacher. Students do not enter the clinical program without strong ideas about what they think they want to learn; they will react negatively when their impressions are that those ends are not being approached.

**The Nature of Individual Clinician Motivation**

In a phenomenon reminiscent of the legal services and community movements of the 1960's with romanticized expectations of working fundamental change in a system viewed as inhumanly repressive, many have been drawn to clinical education. This is due to its apparent nature as a challenge to the power and beliefs of entrenched institutions. In addition, hope has been offered for the creation of a movement that would sweep through the law schools of the nation, reforming and purifying the institutions of justice. It is rapidly recognized that legal services programs do little to change the basic institutions. It is natural to step away from that process and move back to what can be viewed as the source of training for those persons who are going to play significant roles in the future political, social and economic environment of the nation. The institution of legal education is the naturally recognizable juncture at which to direct enormous energies for reform and change. As naïve as such an analysis seems, hope for solutions to immediately perceived wrongs is a strong motivator, but is finally met with the frustration of a slower reality. The professional backgrounds of many clinicians present a pattern of liberal activist-legal services attorney, and perhaps indicates a continuing need for those persons to remain involved in social and institutional reform. The reality of clinical education differs somewhat from the dream, and old habits and beliefs of institutions change slowly. This adds to the growing frustration of the clinical teacher. On one hand he may be faced by faculty and students with dissimilar perspectives, seeking skills and traditional virtues through legal education, while on the other hand, he is struggling with a personal desire for a more rapid change within a rigid structure. Added to these problems are personal concerns about a slowly growing danger of co-optation of individual principles and alteration of personal value systems to conform more closely with the system that he is supposedly changing.

Those moving from one ideal of commitment to another carry with them an enormous amount of energy and motivation. While initially creating excitement, this energy and motivation, however, cannot exist forever. After
several years of the multi-leveled intensity of clinical responsibility, many clinical teachers seem to parallel the experience of young lawyers in public interest law programs: the stay is not long, or there is a need to get away for a type of existential thought process. In either situation, legal services or clinical education, part of the consideration is certainly that the position itself cannot be a career. Each reaches a point at which there are diminished returns in self-satisfaction, personal and professional growth, and effectiveness. There are tensions created by these realities and periodically one needs, at least temporarily, to get away from their source. Constant struggling with faculty, students good and bad, repetitious tasks, the arrogance of inferior court systems and lawyers, and one's own personal system of values concerning public service, law, and questions of fulfillment, coupled with the enormous demands of clinical education, ultimately combine to create an overall environment which many will choose to avoid.

Prior Professional Experience of the Clinical Teacher

Most clinical teachers come to clinical education from legal services-public defender backgrounds involving a specialized type of experience and clientele. The effect of this can be both positive and negative. The type of case and client serviced by clinical programs generally has paralleled that of legal services-public defender offices. One advantage of the similarity is that the clinician's prior experience, although generally of limited duration, will often have been concentrated in areas of practice highly similar to those of the clinical program. The "professional" habits existing in many understaffed legal aid offices can result in a clinical attorney with habits which substantially impede his usefulness as a teacher and role model. This problem is partly alleviated by the generally high intellectual capability of those persons who do go into teaching.

Limited practical experience is another factor that can interfere with the validity and effectiveness of the role-model provided by the clinical teacher/supervisor. This creates several problems. The first is its effect upon the teacher's ability to guide the students in their clinical activities. Closely related is the perception by the students of this inability and their reactions to it. The teacher can also be threatened by feelings of professional inadequacy and be unable to develop a credible teaching relationship. A lawyer is often only beginning to develop after two or three years of practicing law, and whatever the professional potential of the particular individual, his knowledge and skills are still not complete.

Mitigating the effect of deficiencies in experience is the nature of clinical teaching itself. In the world of clinical teaching, it is not generally necessary that extremely capable practicing lawyers be selected as teachers. If the clinical method were predicated primarily upon the students learning through observation of practicing lawyers, it would be desirable to recruit the best practitioners. For many diverse reasons, however, the clinical experience centers upon students performing legal work and accepting the major responsibility for their clients' cases, with the teacher fulfilling a guiding, prodding, controlling but supportive position. Obviously, the individual who can fill both the teaching and the demonstrative roles may represent the theoretical ideal, but the program's goals can be well served by an adequate practitioner who possesses excellent teaching/supportive supervision abilities.
The abilities required to teach clinical students and those of legal performance are quite separate and distinct. It may be analogous to the situation of the athletic coach who never had the ability to perform in the sport, yet possesses the ability to teach others to reach exceptional levels of performance. It is an error to assume the best clinical teacher is the best practitioner, and these conclusions must affect decisions involving the recruitment and training of clinicians.

(F) Student-Centered Elements Affecting the Clinical Teaching Relationship

Many of the prior observations made concerning the teaching process also apply to the clinical student. Students also bring their own special problems and needs to the relationship. With all the talk about the theories and the reformist ideals of clinical legal education, it is necessary to ask questions concerning the perceptions and expectations of the clinical student experiencing the program. Student agreement or disagreement does not, of necessity, determine the teacher's selection of final educational goals, but the knowledge permits more effective planning of clinical structures and techniques. The simplest questions to ask of clinical students are basically threefold. What did they expect from the clinical experience? Were these expectations fulfilled? Are the expectations or the program goals appropriate for legal education?

The Effect of Prior Legal Experience of the Students & External Clinical Placements

Many students come to clinical programs more sophisticated in the development of their legal skills, or at least having had more prior contacts with aspects of the legal system, than was probably true several years ago. They may have obtained their knowledge through employment or volunteer activity. Regardless of how that knowledge has been gained, it sometimes presents a difficulty that must be dealt with by the clinical teacher. From these experiences they will already have developed certain professional attitudes and practice habits that may conflict with the educational directions and demands of the clinical teacher. Their legal experiences will often have been haphazard, with little if any supervision. With certain professional behaviors having been accepted as basic by their employers and communicated to them, students are quite often aggressively certain of the rightness of the habits which they have acquired.

A similar problem arises, in a more immediate sense, when the clinical placement and teaching is in a setting external to the law school. The lawyering supervision is then performed by persons not committed to and not involved in the educational goal framework of the clinical program. First, the person doing the supervision will generally have a commitment to serve an extensive community of clients rather than to teaching students. Secondly, the individual has a position requiring a large outside time expenditure, with little time left for specific teaching. Finally, there seems to be a tendency for professional jealousies to develop between the external agency supervisors and the clinical program staff. The agency attorneys are often seen as the “practitioners” and the clinical faculty as the “academics”. This conflict impedes the effective learning of both the theoretical framework and the practice skills. It can create a substantial gap between the essential elements
of the program. In reflective, developmental clinical teaching, it is not so important to control where the teaching occurs, as it is to ensure that the teacher has the commitment to an educational experience for students, and the ability to carry out that commitment. This has been a major failure in clinical programs using the services of outside agencies and their staffs for teaching. However well intentioned the participants, the demands of a full-time career simply do not permit either the training of the teacher or sufficient time to develop in-depth clinical teaching from the students' experiences. Added to this difficulty is the inevitable clash between the requirements of client service for the outside agency and the need for limited caseloads for the clinical experiences.

It must be noted here that outside placement and teaching of students is not totally inconsistent with clinical teaching, provided certain standards are maintained. First, such experiences should be provided only for students who have first undergone "in house" training. Due to the character of clinical teaching, the more professional responsibility a student acquires, the greater is his freedom in moving to less controlled situations. Secondly, the student must have the professional competence and maturity to handle the type of work that is required. Finally, contact and mutual assistance by the clinical teacher must be maintained. The student must remain a part of the clinical program of the law school, with some caseload being continued in that setting.53

Attitudinal and Behavioral Traits of Some Clinical Students

The clinical student-teacher relationship depends substantially upon the personal characteristics of the two participants. Of course, there is danger in stereotyping; nonetheless, sixteen identifiable student attitudinal and behavioral traits will be outlined here. In most instances, more than one of the traits can be used in describing a particular student, and in some instances, will change over the period of the clinical experience. The reader is cautioned to avoid casual use of such categories when assessing the particular needs of the clinical student, but they might be useful in conceptualizing some basic patterns affecting the teaching relationship.

The Novice. Many students have no previous practical experience with law which can provide an initial frame of reference for their clinical activities. Each client therefore represents a totally new problem with which they must cope, and from which they will form the basis of their approach to the practice of law.

The Lawyer. Increasingly, law students have had prior contact with the legal system, often through part-time or summer employment or through volunteer projects, and have already formed ideas as to how law should be practiced. This "sophistication" can have either a positive or negative effect upon their clinical experiences, depending upon the quality of the prior experience and the amount of "unlearning" that must take place.

53 As the basic clinical programs improve, it may be possible to move back toward a variation of the "farm-out" approach and still maintain the quality of the experience. This would almost surely entail handpicking excellent lawyers who are also capable teachers, to provide a form of technically-advanced lawyering experience to the students. This could only occur after the students have successfully completed a basic clinical course.

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The Dilletante. This type of student prefers to move from case to case, sampling the interesting bits of the experience but often not going deeply into any particular case. He is surprised to discover that most of lawyering is hard work.

The Graduating Senior. This student will often be content to use the clinic to end his law school career casually. He is tired of formal education and wants only to graduate and be admitted to the profession.

The “I’m only taking the clinic to get out of hard courses” Student. Some students perceive clinical education as less demanding than their traditional courses. This pre-existing attitude can operate as a self-fulfilling prophecy, limiting the amount of effort and insight they are willing to bring to the experience.

The Able Student. He has exceptional potential as a lawyer and needs challenge and quality of experience in order to benefit fully from the clinic. This student may “turn-off” to a mediocre clinical experience.

The Slow Student. He needs seemingly interminable amounts of time to complete even the simplest project. The cause of this problem may be fear, laziness, need for attention or deep confusion about the lawyering process and personal role. The inordinate delay may be a cry for help in response to initial traumatic contact with the legal process and the burden of individual professional responsibility.

The Frightened Student. This student is afraid to enter the lawyering relationship and to take the affirmative steps of representation. The fear may be of the newness of the experience and its unknown quality, or of failing himself or his client.

The Helpless Student. He seems unable to cope with the pressures of adversarial client representation and seeks support and guidance at virtually every turn. If this student had his way, the teacher would do everything and he (the student) would observe.

The Passive Student. Some students can be best described as passive or withdrawn, and this characteristic can be carried over into the clinical experience. They are not particularly frightened by the lawyering process but have a difficult time sustaining involvement in this or anything else. Unless they are monitored very closely they may only “go through the motions” of client representation without any real depth of understanding or “feeling” of the experience.

The Defensive Student. He is extremely sensitive to evaluation and criticism and may react badly to it. This type of student presents a special challenge to the teacher.

The Aggressive Student. This student approaches each situation using aggressiveness as the sole or primary vehicle of communication. At times this will produce positive results, but the student must learn to subdue and control this tendency while developing other modes of communication.

The Demanding Student. He is not satisfied with the typical contact with the supervisor but demands the most from the relationship. These constant demands for personalized attention place heavier burdens upon the teacher-supervisor that may require adjustments in the amount of time given to other students.
The Iconoclast. This student sees legal education as just another institution to be resented. He enrolls in a clinical program but is unable to step outside the context of resistance and enter fully into the learning relationship.

The Radical. The prevalence of this type of student has decreased over the past few years. He is characterized by rigid political beliefs, a commitment to fundamental systemic change, and using the law and clients primarily as a means to that end.

The Racist. Most clinical programs primarily represent indigents and therefore involve a substantial percentage of minority clients. Racism and similar stereotyping can infect the nature of the student’s decision-making process and lessen the quality of representation received by such clients.

Student-Role in the Educational Hierarchy

The student comes to the supervised experience of client representation with mixed feelings. The major part of the educational life of almost every student has been filled with the rigidity of formal instruction. Clinical students have been years in preparation for being able to “do something”, and suddenly find themselves startlingly close to being pushed into a world which they know very little about. They generally do not consider their knowledge and skill to be relevant to the types of problems they will soon face. They sense a lack of coherent understanding of the legal process and of legally self-related confidence. With few exceptions, their education has been in a rigidly structured, authoritarian mold that was most effectively used to teach students what was expected of them. Legal instruction is an even more authoritarian mode of teaching than the forms of non-law instruction, creating intense pressures to conform. The roles of student and teacher are very well-defined in legal education and, with the power available to the law teacher, are generally quite carefully maintained. An authoritarian model requires a substantial element of interpersonal distance to function effectively.

The clinical teaching model retains some of this distance and authority through necessity, but still must create a form of instruction radically different from that which students have previously experienced. Suddenly reducing the distance and establishing a closer, more personal relationship with the students, while still retaining the ability to impose the same sanctions for failure as are available to any other teacher, can create confusion in one’s students. The difficulty arises because they (the students) cannot grant the needed credibility to non-authoritarian clinical modes, although they may consciously profess a desire for such “avant-garde” teaching. At the same time, it is unwise for the clinical teacher to romanticize students and their ideals. Reformers have often made the error of characterizing others by projecting their own primary values. It is easy to engage in such projections because the desire to see conditions in a certain perspective is so powerful.

This process of perception and misperception can create an environment of undifferentiated tension for clinical students and teachers. The attitudes and behavior of clinical teachers are as likely to have been significantly affected by the years spent in the educational system as are those of their students. Their definition of “good-teaching” will often come from that frame of reference; to be a “person” and a “teacher” simultaneously may be diffi-
cult both to accept and to master. Since students have become accustomed to operating only within the traditional, clearly defined teacher-student relationship, they have been, in effect, trained by that system to test the clinical teacher's authority.

**Tension and Ego Threat Created by Clinical Experience**

In addition to the sometimes radically altered teacher role models to which students must adjust, they are also subject to great stress arising from the knowledge that they are responsible for what happens to clients, and that they must perform instead of merely talking about hypothetical situations. The individual clinical teaching relationship can be very threatening to students' self concepts. One method of rationalization used by students to account for a lack of success in the system of traditional legal education is to deny its relevance and/or validity. What does it matter if one chooses not to succeed in a non-relevant system? Students not at or near the top of their class rationalize that legal education is a waste of time, too long, and that one does not have to have excellent grades to be an excellent lawyer. In effect, through this process they are saying they have not succeeded because it hasn't been important enough to try. As effective as this may be in relation to general legal education, closely supervised clinical programs present an explicit threat to these rationalizations. While the one-to-one clinical teaching relationship is the voice of guidance and experience, it is also that of judgment. For the first time these are not judgments easily termed irrelevant, but are presumably descriptive of the students' actual qualities as professionals. Such judgments are threatening, and one way out of the situation is to rationalize once again, concluding that "the supervising attorney isn't worth much," "the office runs badly", "the client is uncooperative or undeserving," or any other available excuses. Unless the possibility and causes of such behavior are understood by clinical teachers, it can significantly interfere with the students' learning process.

Another difficulty in the clinical experience is that, to benefit fully from their clinical experiences, students must engage in many tasks that go considerably beyond the preparation and activities necessary to perform effectively on individual cases. They are asked to meet very high standards of performance in the basic areas of research, analysis, preparation, investigation, and client responsibility. In most instances they are required to do a great deal more work on a case than many attorneys would do. In addition, they are forced into a process of considering systemic and interpersonal behavior to an extent that they may not find useful or relevant. To many students this seems to be a demand for excessive work and a return to the academic process they are attempting to leave behind. It is an attempt to demand more from them than they are willing to give. Clinical teaching that makes such requests is often subtly or overtly resisted by the students, depending upon individual student personality, respect for the teacher, or fear of consequences. To the extent that the teaching direction is rejected, this subversion can lessen the quality of the overall relationship and create additional conflict between the participants. Furthermore, the ambivalence of the students concerning their wish finally to be on their own and their fear of the first tentative steps into an unknown adversary environment, ensure some difficulty with teaching control no matter what the situation.
VII. CONCLUSION

This article has been an attempt to analyze a major application of the clinical method of legal instruction by defining the method, its primary goals, the necessity of combining certain clinical resources, and the process of individualized clinical teaching. The definition presented in the first part excludes much that is often considered "clinical" due to the need to focus upon certain educational goals with the strong underlying assumption that the clinical method (as defined) is specially capable of facilitating the learning of systems and concepts of "professional responsibility". The clinical method is the only method that consistently creates the opportunity, structure, and motivation for law students reflectively and critically to analyze their own personal systems and attitudes of professional responsibility in an internalized, non-abstract setting, prior to their being subjected to the intense and distorting pressures of the post-graduate legal profession. This is the primary justification for the clinical method although students may develop substantially in the skill areas of lawyering through their clinical experiences, those results can be approximated (and sometimes exceeded) by the creative use of non-clinical instructional techniques.

The empirical study included herein is the first one in which in-depth, specific data has been developed concerning the actual teaching and experiential functioning of the clinical method. A lack of empirical support has forced clinicians to rely on overly generalized and rhetorical claims about clinical education. This statistical analysis reveals the time dimensions of the clinical teaching relationship as a function of academic credit, caseload volume, and case-type. In addition, data were also developed which will improve clinicians' ability to predict the resources necessary for specific adaptations of the clinical method.

The final two parts of the article have dealt with the issues of program design and teaching. These factors dictate the effectiveness of an implementation of the method. Without their careful development, the best statements of theory and purpose become meaningless. The writer therefore has identified the most critical factors within these areas and has described the role which they play in the method.

The section on design initially discussed the general environmental factors of program design. Following that discussion the specific structural factors were set out, including the role of academic credit, the needed length of the clinical experience, the effect of volume, type, quality, and "liveness" of the students' caseloads, the effects which the selection of client-type, court systems, and adversaries have on the realization of educational purposes, and the importance of student practice rules and pre-clinical preparation.

The final section examined the role of individualized clinical teaching from the perspectives of both the clinical teacher and the student. It was seen that the teaching required by the clinical method is different from that which generally characterizes our system of legal education, and that the skills demanded for teaching effectiveness are substantially more extensive than those required in other forms of teaching not involving the interpersonal and multi-roled participation of the teacher in a constantly changing series of teacher-student relationships.
Where does clinical legal education go from here? Knowledge about the method is still in its formative stages, and we face critical decisions over the next several years that will determine whether it develops as a viable educational vehicle with a vital integrative role within legal education, or remains an unpredictable, at times counterproductive, means of placating law students with the supposed “relevance” of the real world. If clinical education is to play a significant role, it must do so through positive educational results, and those have not been consistently achieved. In addition, clinical educators must deal with the rigidity of many traditional legal academics, the lack of adequate resources for legal education, and the role of the organized bar in the structure of the curriculum, while simultaneously building a committed intellectual constituency.

Involvement in a substantial clinical program should be a prerequisite to graduation from law school. This would greatly increase the resources needed to support clinical education. The resources, however, should not be taken from the basic, nonclinical curriculum, which is itself already underfunded. Additional funding for legal education must be sought. This additional funding should come from an increase in the percentage share of the tuition income generated by law schools, an increase in public subsidies for legal education, and a financial commitment by the organized bar which it has thus far shown little inclination to make. The importance of these developments cannot be overemphasized, for as long as the situation is perceived as a competition between clinical and nonclinical educators for scarce resources, natural allies are set against one another.