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CLINICAL SECTION

TWO CONTRADICTORY CRITICISMS OF CLINICAL EDUCATION: DILEMMAS AND DIRECTIONS IN LAWYERING EDUCATION*

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INTRODUCTION

This Article reviews what legal education is attempting to accomplish in teaching lawyering skills and where, from my perspective as a clinician, I think it has fallen short. I then offer some suggestions for what both clinicians and nonclinicians might do to further our efforts directed at truly educating lawyers.

The two critiques I will offer of clinical education derive from two of clinical education's principal goals—teaching students how to "behave" as well as "think" like a lawyer (a behavorist goal), and teaching our students to think more broadly about the purpose of their roles as lawyers in the larger society (a social critic's goal). All clinicians do a little of both and some non-clinicians claim to pay some attention to these issues, but there are ways we have fallen short of making the most of these pedagogical goals.

I approach this topic as a friendly critic. I believe clinical education is one of the most important contributions to legal education since 1870 (in my view rivaled only by Legal Realism and Critical Legal Studies—perhaps in other's views by law and economics).[1] Clinical education provides the flesh on the bones of legal education. It is in clinical courses that students learn about law on many levels—substantive doctrine; the animating policy or set of political concerns behind the doctrines; the process by which the law is enacted, enforced, and influential on actors in the legal world; the failures of the law to achieve all that it is intended to achieve; how the law operates in action (the "gaps" between the law on the books and the law in reality as the socio-legal movement describes

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[1] See Menkel-Meadow, "Too Little Theory, Too Little Practice: Stevens' Law School", 1985 AM. B. F. RES. J. 675 for different perspectives on what the most influential forces on legal education have been.

it)[2]; what lawyers can accomplish in the world and what they cannot—in short, it teaches more about the legal world than any other single course or area of study. Because clinical teachers and students are exposed to law on so many different levels in the context of legal education, and not exclusively from the position of being in practice, they can reflect on the various meanings of all these different levels on which law is experienced, as constraint or as a source of empowerment.

Indeed, it is the self-reflectiveness of clinical legal education that offers the hope of changing some of legal education's traditional pedagogy—by focusing on performance and by exposing the self and others to constant critique and feedback. This form of criticism-self-criticism is perhaps best illustrated by my favorite lightbulb joke:

> Question: How many legal clinicians does it take to change a light bulb?
>
> Answer: Four—one to change the lightbulb, one to critique the changing of the lightbulb, one to critique the critique and yet a fourth to critique the critique of the critique.

It is this constant self-reflection and critique on several simultaneous levels—objectives, performance, analysis, social role, effect on others and learning—that provides the particular contributions and strengths of clinical education.[3]

So, I embark on the clinical legal educator's favorite activity—self-criticism, a critique of clinical education. Good as I think we are, we can and should be even better and should apply the same searching analysis to ourselves as teachers that we ask our students to apply to themselves as lawyers. Good critiques emerge from a clear set of principles or goals about what one is trying to accomplish, so we return to the goals stated at the outset in order to measure our effectiveness.

THE GOALS OF CLINICAL EDUCATION

First, when we teach lawyering we are concerned with teaching those things which lawyers *do*, of which "thinking like a lawyer" (analysis) is only one part. Included in this teaching of lawyering skills is the teaching judgment, decision-making, interpersonal skills, the interaction of legal and non-legal factors in making legal decisions (both from the lawyer's and the client's perspective), and the constituent elements of lawyering tasks—question-framing, listening, drafting, persuading, fact

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[2] See, e.g., Galanter, "Presidential Address: Legal Malaise or Justice Observed" 19 LAW & SOC'Y REV. 537 (1985); Abel, "Law Books and Books About Law", 26 STAN. L. REV. 175 (1973).

[3] Bellow, "On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology" in CLEPR, CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVING SETTING, (1973).

gathering, synthesizing and marshalling information, investigating, problem-solving and advising, to name a few.[4] Elsewhere I have called these the "micro" aspects of lawyering.[5]

Second, we are concerned with teaching our students to think about the uses to which they will put their newly acquired skills—what are the purposes or ends behind their lawyering? What do/should lawyers do with their skills—what is their larger social purpose,[6] what I have, in another context, called the "macro" aspects of lawyering.[7]

I will examine each in turn below.

"SKILLS" TRAINING

When we teach skills, we aim to develop at least a minimal level of competancy in those essential lawyering tasks that lawyers perform (interviewing, counseling, fact investigation, negotiation, advocacy and transaction planning). To this I add the goal of making "better" lawyers. That is, most clinical teachers do not conceive of themselves as mere agents of socialization or assimilation to the profession as currently practiced. Why not resort to the apprentice system if that is our goal? Instead, what the clinician aims to do is to study lawyering skills so that students can be taught to be the "best" (most effective) lawyer possible, which may require the creation and development of "new" norms, values and practices. Thus, good clinical teaching is not just descriptive drill, it is explicity normative, and the debate about from where the norms are derived provides some of the most interesting scholarship and teaching in the field.[8]

Teaching skills also involves demonstrating the relationship of doctrine and substantive law and process to the practice of lawyering skills. This is one place I think we have fallen short. In the context of teaching about how each lawyering act is done, we have the opportunity, if not the

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[4] Clinicians have been active in the development and training for new lawyering skills like mediation and other forms of non-adversary representation. See e.g. AAA Task Force on Teaching Alternative Dispute Resolution in Law and Business Schools.

[5] Menkel-Meadow, "The Legacy of Clinical Legal Education: Theories About Lawyering" 29 CLEVE. ST. L. REV. 555 (1980).

[6] See Bok, "A Flawed System" HARVARD MAGAZINE 38 (May-June 1983).

[7] Menkel-Meadow, *supra* note 5.

[8] See e.g., the debates in negotiation theory such as White, "The Pros and Cons of Getting To Yes" 34 J. OF LEG. ED. 115 (1984) and Fisher, Response, 34 J. OF LEGAL ED. 120 (1984); Menkel-Meadow, "Toward Another View of Legal Negotiation: The Structure of Problem Solving" 31 UCLA L. REV. 754 (1984); Gifford, "A Context Based Theory of Strategy Selection in Legal Negotiation" 46 OHIO ST. L.J. 41 (1985) in which opposed views of the goals of legal negotiation and the world in which negotiation skills are practiced have led to different teaching models of negotiation skills. See also the different approaches to trial advocacy in the various trial advocacy texts, e.g. T. Mauet, *Fundamentals of Trial Techniques* (1980), Bergman, *Trial Advocacy in a Nutshell* (1979); Tanford, *The Trial Process* (1983).

responsibility, to understand the political, economic and social foundations and structures of the rule systems that our students will be working with when they are lawyers. To think about what the rule is and from where it is derived is an essential "skill" of being a lawyer. What political forces caused a particular rule to be dominant where several possible formulations were contested?[9] How do the lawyer's activities influence the making and changing of rules? One could look, for example, for the lawyer's creativity in crafting new causes of action as a "skill", responsive to particular client's needs which result in vast changes in rule systems (products liability, discrimination cases, warranty of habitability, to name a few).

We also, in teaching skills, seek to understand and teach about the interpersonal aspects of lawyering—the affective as well as cognitive aspects of lawyering. What are the client's (and lawyer's) feelings about a particular situation? In making judgments about whether to choose a particular course of action—how do non-legal factors influence decisions—social, psychological, moral, political, ethical and economic dimensions to individual client's problems (or group or state clients) that may overwhelm the legal considerations law students become familiar with in their non-clinical courses?[10]

Finally, in teaching lawyering skills, clinicians have been concerned with understanding the criteria by which lawyering work should be evaluated so that reflective clinical students as lawyers will continue to learn about lawyering when they leave our programs. These criteria are derived from our study of and reflection on our practices[11] and on our theories of practice.[12]

In teaching these lawyering "skills", many clinicians have replicated, perhaps unwittingly, what we find most distasteful about the non-clinical classroom. Let us examine a "typical" clinical class in client interviewing as an example. An instructor begins with suggesting four or five objectives of a client interview: learning the facts, learning what the client's "problem" is, developing rapport with the client, establishing a relationship with the client and developing some agreement about what's going to happen in the remainder of the lawyer-client relationship (the lawyer will draft a pleading, the client will bring documentary evidence

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[9] See e.g., Horowitz, *The Transformation of American Law 1780-1860* (1977), for a discussion of how the processes of industrialization and capitalization linked with political ties to the legal system (judges and lawyers) produced particular "rules" in protection of particular industries.

[10] I use the term "non-clinical" instead of traditional or "regular" law school classes to demonstrate how labels we use in legal education set the agenda by describing what is central or "core" to the enterprise and what is "peripheral."

[11] See D. Schon, *The Reflective Practitioner* (1983).

[12] Spiegel, "Theory and Practice" UCLA L. REV. (forthcoming).

and the names of witnesses). These objectives might be stated in lecture form, derived from student discussion (socratic or otherwise) or elicited deductively from a critique of a student performance, or from a previously assigned text on interviewing.[13] A videotape of a client interview typically will be shown to students and students will be asked questions like—"What's wrong with this interview?", "Has this lawyer developed rapport with his client?", "How effectively has the lawyer learned the facts" or "Are there more effective ways of doing this?"

If this is an accurate description of such a class, what does such a class produce? By such a methodology (not unlike parsing an appellate case in the non-clinical classes) we teach students to develop a critical analysis of interviewing. They learn how to articulate critiques and to formulate arguments about what is a good interview and what is a bad interview. Students learn to recognize and label what went wrong in the interview. They may even learn *conceptually* what a good interview may look like. But have they learned anything to prepare them to conduct or perform their own good interview? Have they learned anything about what general principles may apply in most, if not, all legal interviews? Has the student learned anything but that each student and teacher (and probably each lawyer) has his or her own idiosyncratic criteria for performing and judging an interview?[14] In this sense, we do no differently than our non-clinical colleagues who teach conceptual analysis—the taking apart and critique of what is. Does an ability to analyze and critique a performance (or a judicial opinion) mean that a student can describe, understand and demonstrate behaviorally how to conduct a good and effective interview? I think not. Our analytic methods may be useful for our scholarship—for our thinking about what an interview does consist of and what, perhaps, it ought to consist of, but I think it does not permit us to evaluate ourselves very highly in terms of teaching lawyering skills to students in a way that we can be confident of their ability to perform consistently well on a behavioral level.

What might we do instead of this analytic, critical, negative teaching? We can use synthetic, positive "models" of lawyering which students can be taught to "master" at the same time that they are taught to

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[13] D. Binder & S. Price, *Legal Interviewing and Counseling: A Client Centered Approach* (1979); G. Bellow & B. Moulton, *The Lawyering Process: Materials for Clinical Instruction in Advocacy* (1978); T. Shaffer, *Legal Interviewing and Counseling* (1976); Schoenfield & Schoenfield, *Interviewing and Counseling in a Legal Setting* (1981).

[14] Although it is beyond the scope of this essay, I might mention that some of this critique of clinical education applies as well to lawyer education programs such as the NITA Trial Advocacy college, where too often critique of performances is based on idiosyncracies of the critiquers and seldom on a general conceptual framework. What do students of such programs take back from such programs except fleeting memories of what Lawyer X, Judge Y or Professor Z said about their cross-examinations.

critically evaluate the models. In the clinical program at UCLA we teach our students to be lawyers with the use of explicit, positive models of interviewing, counseling, fact investigation, negotiation and questioning and argumentation in trial advocacy.[15] Lawyering skills are broken down into component parts and students do not progress from one stage until they have "mastered" it. Thus, to use an example from Binder & Price's *Legal Interviewing and Counseling* text, students are taught Preliminary Problem Identification, Preparatory Explanation, Chronological Fact Development and Theory Development and Verification in separate units, with role-play exercises that are designed to teach mastery of each aspect of legal interviewing. Once a mastery of the model has been achieved so that there is at least a minimal level of competance and comfort with lawyering, the model can be critiqued for when it does not work (such as in child custody litigation, for example, where the chronology is too long and legally "irrelevant," and non-litigation matters such as estate planning where (topical rather than chronological order may be more efficient and effective)). Students and teachers together can test the models for effectiveness in accomplishing particular legal tasks, both against standards in the present world and against standards which attempt to change and improve legal practice.

Teaching with models presents its own difficulties. From where are they derived? Thus far, most "models" used in clinical legal education have been developed from our work as clinical scholars studying what lawyering skills consist of and what they ought to consist of—both an empirically descriptive and theoretically normative perspective. Some of our models have been derived from observing and interviewing lawyers,[16] others from theoretical work in other disciplines[17] and still others from analysis of the lawyer's tasks under a microscope.[18] These models are suggestive and tentative; they require testing, validation in the world of practice, and as theoretical constructs that help us understand our world. They evolve as we work with them and modify them.[19]

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[15] These models are based on Binder & Price, *supra* note 13; D. Binder and P. Bergman, *Fact Investigation* (1984); Menkel-Meadow, *supra* note 8; Bergman, *supra* note 8; A. Moore, "Analyzing Circumstantial Evidence" (forthcoming, mms on file with author).

[16] See e.g. D. Binder & C. Menkel-Meadow, *ABA Lawyering Skills Program* (1982), Menkel-Meadow & Ntephe, "Clients Are People Too—or Are They?" 10 BARRISTER 12 (1983).

[17] See the influence of game theory and Pareto economics on my work on negotiation, Menkel-Meadow, *supra* note 8 and Menkel-Meadow, "Strategies in Search of A Theory: Legal Negotiation" 1983 AM. B. F. RES. J. 901 and others', e.g. H. Raiffa, *The Art and Science of Negotiation* (1982).

[18] See e.g. Binder & Bergman, *supra* note 15.

[19] Recently, one of my former students, now a practicing attorney, read what I had written about legal negotiation. "That's not what you taught us", she said. How can we explain or perhaps conduct the "continuing education" of ourselves as well as of our former students who are, in some sense, the guinea pigs in these exciting new ways to learn about lawyering?"

Teaching from models is a controversial suggestion in legal pedagogy. There is an authoritarian conception of what ought to be in an interview, in a negotiation session—how will the student learn to think on his own (the reigning pedagogical justification for socratic dialogue)? Yet in my experience, students are so unable to translate their fine conceptual understandings into behavior that some authoritarian "drill" (like those my junior high school French teacher used to give) is the only way to teach the minimal level of competence that permits the student enough self-confidence to begin to ask questions of the model.

For me it has been particularly useful to "innoculate" students against what I perceive to be the destructive and counterproductive ways most legal disputes are resolved by today's lawyers.[20] In teaching students to be *proactive* problem-solving negotiators, rather than exclusively competitive adversarial negotiators,[21] a clear and positive model helps them to do, rather than simply critique, the perceived prevalent competitive model. More importantly, they may learn the greater complexity of analyzing when a particular model may be appropriate in a particular context.[22] Students can learn the "adversarial" model equally well when it is juxtaposed to an affirmative and provocative presentation of the "problem-solving" model. Indeed, at some schools whole courses are taught from this one model,[23] at other schools both models may be taught together to clarify and teach both the conceptual material and the behavioral analogues. Models can be taught in both simulation courses and real-client contexts; the former permits a better opportunity, perhaps, for creating models by mimicing the "controlled" environment of the laboratory where one variable at a time can be manipulated, the latter a better location for testing the validity and effectiveness of models in actual legal practice. In my experience, both lend themselves to the "reflective practice" that creates theories about lawyering.

Thus, the replication of critical question-asking in the clinical curriculum (I was once called a "Socratic questionner hiding in clinical clothing" by a student) focuses our classes, like more traditional classes, on the tearing down, analytic, critical aspects of lawyering which are taught quite well in the rest of the curriculum. What clinicians out to do, in my view, is something else, pedagogically richer, perhaps more difficult, but ultimately teaching and learning of a different order. The use of

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[20] See Menkel-Meadow, *supra* note 8.

[21] The students may be wrong about their perception of the prevalence of the "competitive" model of negotiation, see G. Williams, *Legal Negotiation and Settlement* (1983), Ch. 2.

[22] For excellent efforts to do this sort of analysis see Lowenthal, "A General Theory of Negotiation Process, Strategy and Behavior" 31 U. KAN. L. REV. 69 (1982) and Gifford, *supra* note 8.

[23] See e.g. Harvard Negotiation Workshop, Harvard Law School, taught from R. Fisher & W. Ury, *Getting To Yes* (1981).

models not only offers students the possibility of learning for achievement and accomplishment and the confidence that enhances all learning, but also should foster more interesting clinical scholarship—studying what lawyers do, why they do what they do, creating new frameworks for lawyering activity that in the applied research sense may improve the ways lawyers do their work.

There are implications in this for non-clinical teaching as well. In my work on *negotiation*, the development of a new negotiation model reinforced the importance of substantive doctrine as one of the tools of legal problem solving. Students who attempted to master the components of problem solving returned to their property, contracts, business associations and taxation courses with a renewed interest in understanding how disputes are resolved and transactions are planned. They came to understand that their lawyer's skill in putting transactions together (planning "around and with" rules) would be used in different ways than the lawyer's skill of arguing from rules for the doctrinal issues used by judges to "decide" cases. These realizations can be tapped in traditional classes. Students can be asked to put things together as well as take them apart—drafting contracts, writing procedural rules, planning transactions and the old favorite used on traditional exams—drafting an opinion to demonstrate issue-spotting skills as well as the elements of decision-making, policymaking and the written craft. Thus, even in the traditional class the interplay of doctrine, the skill of decision-making and the political constructs from which law is made can be explored in exercises that are designed to do more than simply "analyze" from a given text.

THE LAWYER'S ROLE IN SOCIETY

When we turn to our goals in teaching about lawyering from a broader, macro perspective we have the following subjects in mind: What is the lawyer's role in an adversary system, vis à vis her client, her adversary, the rest of the profession and the legal system? We are concerned with professional responsibility and ethics, both in the descriptive sense of defining what are professional responsibilities and roles, and in the prescriptive and normative senses of what we think they ought to be.

We also use clinical teaching to examine how the law in action actually operates (i.e. how does it affect the regulated, how does its rules penetrate social action) and to examine the values which underlie the substantive rules of our legal system (i.e. what value choices are made when we "prefer" process over result, in "assigning" burdens of proof).

We are concerned with examining how decisions are made in the legal system. How does a lawyer make each decision? How and when does the client become involved? How and when does the other side

(lawyer and client) become involved in decisions which affect us? How do juries find facts? How do judges decide questions of law? (This is, of course, the stuff of which traditional classes are made, but it also should be part of the clinical curriculum to "deconstruct" judicial decision-making from the advocate's perspective).[24] What clinical education can do is focus attention on the myriad of decision makers who don't make it into the traditional curriculum—the Social Security Administrative Law Judge, the legislative committee, the bureaucrat who grants or denies thousands of government-dependent benefits and those who enforce the law (police officers, social workers, probation officers and other law functionaries we seldom encounter in the conventional legal curriculum). How do these "law-makers" in the non-traditional sense decide when to take action and when not to? In short, what can we study and teach about the law and legal system by focusing on the decisions of the human beings who make up the legal structure?

Finally, what is the role of law and lawyers in society? How do lawyers facilitate what our clients and society hope to accomplish? How, more commonly in our consciousness, do lawyers, law and its institutions make more difficult the resolution of our client's and society's problems and needs?

To respond to these questions may require us to step away from teaching lawyering models, and so my second criticism of clinical legal education is somewhat contradictory, or at least, takes us in a different direction. For if we were to satisfy the first set of goals of clinical education, that is, the teaching of lawyering skills, would we be doing anything different from our traditional colleagues in creating technicians of a very narrow craft? To focus on skills, models might also continue the narrow ways in which legal problems are conceived and solved. And, in creating conceptual and behavioral models of lawyering wouldn't there be the danger of creating conceptual frameworks in the ivory tower, away from the main action?

For those who supervise their students in court, how is it explained when the judge makes a snap judgment without listening to the testimony or legal arguments, after ten classes on the models of "rational" decision making? How does a model of judicial decision-making play itself out in the family courts or municipal courts of Chicago, Philadelphia, New York or Los Angeles, where judicial appointments may be made on the basis of political connections and the judge who is sitting has little interest or expertise in the cases assigned to him? Will our models or skills training help students function in such environments?

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[24] *See* Kennedy, "The Phenomenology of Judging" (forthcoming, TELOS).

What can we do in law school to teach about the social, political, and psychological and other non-doctrinal aspects of the legal system in which our students must practice?

To the extent that clinicians are trying to carry the ball that the Legal Realists set rolling, to see how the law in action operates, we have fallen short in our efforts to explain and have our students understand the bigger world in which they function as lawyers. Learning skills is simply not enough to become an effective, savvy, knowledgeable and intelligent lawyer. We could be doing a much better job of studying and teaching about the lower courts, administrative agencies and other bodies our clients confront in their daily lives. Students should be able to understand that the reason child abuse cases are being increasingly shuttled into mandatory settlement conferences is because fiscal cutbacks have reduced not only judicial resources, but the ancillary court services and crucial social work services that support the system. What effect do fiscal difficulties and social service unionization (i.e. demands for lower caseloads) have on the law that is enforced and made in such legal arenas? Where non-clinicians may err on the side of disembodied abstractions, clinicians must labor to move from the concrete to deeper and more macro-social and legal understandings of what patterns produce the cases they handle. Some clinician-scholars are engaged in this sort of work. Bill Simon, for example, has studied the impact of bureaucratization of the welfare system on the welfare law that is practiced by poverty lawyers and welfare workers who administer the programs that benefit and burden our clients.[25]

Clinicians may discuss such issues in seminars, in individual supervisory sessions, but have failed to capture in any useful way a social and political structural analysis of the legal worlds in which students operate. The sociology of the lower courts has been researched and described, for the most part, by non-clinician, sociolegal scholars active in the law and society movement.[26] Without such analysis, our models and our skills training may become more and more rarified and removed from the real and varied world in which our students will practice. If we don't attempt to understand and teach about the context in which law practice occurs, our classes will look no different from those in the rest of the curriculum,

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[25] W. Simon, "Legality, Bureaucracy and Class in the Welfare System" 92 YALE L.J. 1198 (1983); and J. Marshaw, *Bureaucratic Justice* (1981), a description of the relationship of process to substantive outcomes in social security disability cases. *See also* D. Rivkin, "Petty Disturbances": Lawyering, Power and Reform" (forthcoming, mss on file with author) for one clinician's analysis of the political and social forces behind the legal efforts to deal with mining rights in Kentucky.

[26] See e.g. P. Utz, *Settling the Facts* (1978); M. Feeley, *The Process is the Punishment: Handling Cases in the Lower Criminal Courts* (1979) for description of the relationship of rules, court personnel, customs and "routines" on what "really" happens in the courts.

but our failure will be greater because of our promise to provide the tools of understanding the "real" legal world.

There are many ways to undertake this study. The potential of clinical education to unite worlds of theory and practice is great. Clinicians can use real cases for their analysis but must learn to travel up and down the levels of generalization—moving from the concrete to the abstract and more general and back again. Larger questions must be asked. Why are these the only remedies that are available here? Why is the burden of proof established in this way? What classes of litigants are helped/hurt by these particular rules?[27] Why do "the rules of evidence not apply" before this particular administrative agency? Why are certain types of cases relegated to summary proceedings? Why do lawyers conceive of their role as "winning" legal cases rather than solving social or legal problems?

Clinicians could learn to use "case rounds" the way medical education uses "rounds." We study the individual client's (patient's) problem not only to achieve proper diagnosis and treatment, but also to analyze the symptomology so we will recognize the same disease next time and perhaps so that we may come closer to understanding the legal/medical mechanisms and perhaps come closer to a cure. Like the epidemiologist who looks for patterns in diseases to locate the source, the clinician can use case rounds to discover patterns, sources and causes of legal trouble.[28]

Outside of the clinical curriculum, non-clinicians interested in furthering lawyering education can also employ a more rigorous historical and social structural analysis of the cases they teach, such as in the personalized case history of the *Palsgraf* case presented by John Noonan.[29] It is important for students to understand the contextual reality of the cases they read about. In teaching the case of *Morgan v. Morgan*,[30] in which a New York judge held that a husband has some obligation, whether equitable or contractual, to provide equivalent financial support for a wife who supported him through professional school, I asked the

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[27] Here the recent example of proposed revisions to Rule 68, Fed. R. Civ. Pro. is illustrative. Proposals to tax the failure to settle may burden civil rights cases in ways different from purely monetary cases.

[28] Although it is beyond the scope of this essay, it might be useful to reassess the similarities and differences of medical and legal clinical education. I spent 48 hours on a "typical" tour of duty with an intern in order to learn first hand what aspects of medical education might usefully be transported to clinical legal education. In fact, much of medical clinical education combines the best of traditional legal education (socratic questionning, but in smaller working groups) with clinical education (focus on analyzing a "real" case).

[29] J. Noonan, *Persons and Masks of the Law* (1976) p. 111-51.

[30] 81 Misc. 2d 616, 366 N.Y.S. 2d 977 (Sup. Ct. 1975), *modified* 52 A. 2d 804, 383 N.Y.S. 2d 343 (1976).

plaintiff (a personal friend) to discuss her experience with the case. To students, this case is important as a classic "textbook" case in its modification of doctrine and its attempt to break new legal ground. It created a significant rule of law, with important policy implications. To the plaintiff in the case, it meant little as the defendant's failure to pay and the indeterminancy of the ruling (as it wound its way through the appellate courts) made enforcement of the ruling almost impossible. The litigant would probably have preferred a more conventional alimony award in the end, though that was not her initial desire. Law students must come to understand that their experience of a legal case is likely to be very different from the client's. This understanding of the legal system (from the underside and client's side) may be just as important as understanding the rule of law and skills of the lawyer.

Finally, to what ends should the lawyer address her skills and understanding of the legal system? Clinical education was founded at a time (for most schools in the 1960's) when the founders saw law as a tool for social change. In these less optimistic times the question must still be asked—is the lawyer simply a craftsperson using her skills as any technician or expert or should the lawyer's skills be used for particular ends? In my view, the sort of study of the legal system in context suggested above ought to provide the impetus, through scholarship, teaching and practice, for the clinical teacher and law student to be active rather than passive, in the search for legal and social change. My criticisms of clinical education, leveled from two different places, both point to a changing conception of the clinical law student's role. No longer fueled by the social reform movements of the 1960's, clinical law students seek simply to learn how to be lawyers and how to assimilate themselves to the present legal system. In my view, if *clinical education* really is to succeed as the flesh on the bones of *legal education*, it must help to identify the weaknesses of the legal system and the social structure in which it is embedded in order to move toward progressive reforms and changes both of the legal system and the larger society. Some clinical programs have brought some of the major lawsuits decided in the last twenty years.[31] Others have experimented with new forms of legal representation (student lawyers, computerized legal aid, interdisciplinary representation such as with lawyers and social workers or psychologists) or new forms of legal services (mediation programs, night courts, client education programs for pro se representation, back-up research centers for law

[31] *See e.g.* Northwestern's clinic involvement in several U.S. Supreme Court education cases, University of Tennessee in environmental cases, and Georgetown, Rutgers and New York University in women's rights cases as a few examples.

reform cases, legislative advocacy and organizing.[32] For clinical education to go beyond mere assimilation to the profession which apprenticeship offers, it must move the educational and professional enterprise forward. To study and critique and change the legal profession and to examine the social roles of lawyers is what clinical education should be about, both in the teaching it offers students, and in the scholarship it offers the academy and practicing lawyers.

CONCLUSION

Although my criticisms of clinical education may be somewhat contradictory, my hope is that we will be able to respond to both of them simultaneously. We have begun to think of lawyering as its own subject matter. As clinical education comes of age we are learning that the subject matter is far more complex than we imagined. We have approached a time in which some of us will pursue one line of inquiry while others explore a different course. Clinical education offers the promise of combining a professional education with a good liberal arts education—we can study the many ways in which professional skills are put to use in solving individual and society's problems. To do this properly we need to be more rigorous about our teaching and our scholarship and explore the many sources of information and data we have—our own cases, our student's cases, our inside-but-outside views of the legal system at work. Whether our individual goals as clinicians are to make better lawyers, improve legal education or produce legal and social change, it is incumbent on us to press forward in both of the directions explored here. Notwithstanding some of the apparent contradictions noted in this Article, clinical education can deliver on what I believe is its great promise; to more fully educate our students and ourselves about what it means to be a lawyer, by simultaneously improving our skills as lawyers and trying to understand what it means to use those skills in our society.

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[32] *See e.g.*, programs at ITT-Chicago Kent (computer assisted advocacy), Southwestern, Ohio State (night consumer court), Duke (mediation), Wisconsin (lay advocacy and back-up center) for some examples of these innovations.