

# Mid-City Law Center: Opportunity For Academic Innovation

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## I. INTRODUCTION

This paper will explore some aspects of legal education in the context of the Norton Clapp Law Center, a new mid-city law school complex. The innovations in this Center will bring certain educational hazards, many of which are at the center of recent pedagogical discussions about law schools. This paper attempts to identify these hazards and contemplate ways to forestall them.

I will not explore these issues as either a lawyer, an economist, a sociological or anthropological analyst. Rather, my observations will be those of a working psychiatric clinician who is a long-time member of a law faculty, and who is used to listening to complex troubles, trying to make rational sense of them, and then collaboratively evolving new ways to get issues back into a more satisfying and less painful adjustment.

## II. SOME BACKGROUND ISSUES

### A. *"Is Something Wrong with the Legal Profession?"*

The last decade and a half has witnessed an almost exponential increase of interest in problems surrounding professionalism and professional education. Although these issues are anything but new, Watergate highlighted them and several Supreme Court opinions regarding the business procedures of the professions stimulated a large number of conferences and meetings about professionalism. For example, there have been national conferences for lawyers to teach them how to obtain the best results from advertising investments and many meetings to teach "legal clinics" better ways to function and promote case-finding. Advertising approaches on television, in newspaper

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want-ad sections, and in other promotional media render old concerns about lawyers' "ambulance chasing" insignificant. These activities have progressed sufficiently so that it would not be too extreme to rephrase the title of a famous Brandeis essay to say, "The Legal Profession — a Business."<sup>1</sup>

Along with these organizational and attitudinal changes, there has been a mounting clamor about the perennial issue of teaching law students practice skills. Although graduates have complained for years about this deficiency, the volume of complaints has risen greatly and the debate is more seriously engaged. The content of the arguments vary from the easier concern about law students' writing skills (academics accept this readily), to pressure for increased teaching about advocacy skills, interviewing and counseling, negotiation, and all of the other applications of legal knowledge to the lawyer-client relationship, alluded to pejoratively by academicians, as "teaching the law student how to find the court house." Although these complaints are being taken more seriously, they run headlong into longstanding value images about what legal education is and should be.

### *B. Law School As Monastery*

Because most law schools today are part of a university, it has been easy to reduce concepts of legal education to the traditional (and oversimplified) idea that the goals of legal education are merely to "learn to think like a lawyer." This is congruent with the value that the primary function of universities is to explore and evaluate dispassionately the nature of knowledge. Such a view would certainly commend the notion that a law school should devote itself purely to legal research and learning. Instrumentally, this has the instant effect of removing such explorations substantially from the subject being studied. It goes without saying that melding the traditional intellection of a good post-Langdellian legal education with thorough analysis of practice issues is a very difficult task. To approach a lawyer's education and training by isolating one part of it from the others is, however, very nearly to fail altogether in grappling with the central issues. It would seem almost self-evident that if professional schools are to reach the levels of intellectual and practice profi-

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1. See L. BRANDEIS, *BUSINESS — A PROFESSION* (1914).

ciency so badly needed by society, they must take the risks of dealing with issues of application. Although such an approach *can* foster failure, it would appear to me that failure is a substantial likelihood if professional schools maintain isolation. Professionalism by its very nature is fraught with the same kinds of applicatory problems that are present in a law school when legal theory and practice problem-solving are brought together. When they are divided off from the learning experience, it covertly reinforces the notion that they are not important and not valued.<sup>2</sup>

In the past there has been an all too glib presumption that students will readily learn how to *be* lawyers as soon as they get into practice. Similarly, it has been assumed (and *perhaps* it was once true) that young lawyers would be taught how to become effective practitioners at the hands of their elders in their law firms. Economic consequences of the very high starting income now paid to beginning lawyers has greatly diminished any such training. (The training, in my opinion, was always inadequate.) Law firms tend to feel that their newly hired associates must swiftly produce a large number of "billable hours" in order to meet this increased financial burden.<sup>3</sup> Thus, new lawyers are left much to their own scrambling to develop skills that do not leap full-blown into practice behavior without intensive learning experiences of a specialized type. Because these skills are intricately interwoven with law practice, learning to deal with them ethically and professionally is not likely to happen without special attention.<sup>4</sup>

An important additional ramification develops when law schools ignore or pay little attention to these important issues. This has broader consequences than merely failing to develop

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2. See, e.g., Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CINN. L. REV. 91, 135-37 (1968).

Carrington states, "If we forbear in confronting irresponsibility and shabby ethics, however, we contribute to that corrosive sense of futility that is always gnawing on the vitals of self-regarding and self-restraining men and women." Carrington, *The University Law School and Legal Services*, 53 N.Y.U. L. REV. 402, 443 (1978). See also Redmount & Shaffer, *Studies of Legal Education: A Review of Recent Reports*, 1 NOVA L.J. 9 (1977).

3. The author has gained this impression from numerous conversations with law office placement personnel, met at several meetings of the National Association of Law Placement Officers (NALP) in which he has participated.

4. See, e.g., Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL EDUC. 441 (1974). See also Terkel, *Reflections on a Course in Ethics: Job Magruder and a Question of Slippage*, HARPER'S, Oct. 1973, at 59.

the skills. It also sends out the clear and cogent message that issues of professionalism and ethics are simply not important. It is a fact of human communication that non-comment about important and apparent questions is tantamount to saying they are unimportant. It is not logically possible for educational institutions to avoid taking responsibility for this educational consequence.

One of the principal reasons frequently given for not expanding legal skills training in law school is that it is too expensive and ineffective. While teaching professional skills in law school would definitely raise costs at the career threshold, a cross-career cost-benefit analysis would surely show savings in avoided pain and frustration for clients, as well as the elimination of a great deal of legal malpractice and practice incompetence. If this expense rationale is an excuse to legitimate the unskillful practice of law, then it should also apply to the practice of medicine, and the cost of carrying out a training procedure has never been held to be a legitimate defense for medical malpractice.<sup>5</sup>

Lack of effectiveness is also an invalid reason for failing to teach legal skills because several methods have evolved that make education for professionalism feasible and effective. Although their ultimate law practice utility is not proven, neither is the efficacy of current methods of legal education. Indeed, the current (and past) restiveness among law school graduates, acknowledged by nearly everyone, suggests that current methods are not adequate and must be modified.<sup>6</sup> By ignoring all of the above issues, law schools actually fail to conform to the doctrine of "truth-in-advertising."<sup>7</sup> Since upwards of 80% of all law students go to law school in order to become lawyers (and not merely "to learn to think like lawyers"), they anticipate learning how to do so and are annoyed when they do not. Even

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5. Chief Justice Burger raised this point while still on the D.C. Court of Appeals bench. In his keynote address before the 37th biennial convention of the Phi Alpha Delta law fraternity, called, "A Challenge to Current Legal Education," he made the following statement: "What would we lawyers and judges—yes, and law professors—have to say if the evidence in a malpractice suit against a young doctor showed that he put out his shingle and began to deliver babies and remove gall bladders without ever observing such operations or assisting with them or taking a case history to make a diagnosis?! My how we would excoriate this hapless defendant! What would we say of the medical schools and the whole medical profession?!"

6. See Carrington, *supra* note 2, at 421.

7. See *id.* at 431.

in the most prestigious law schools, many students have great dissatisfaction with their academic experience. It is my impression that much of this is due to their feeling that they did not get what they bargained for. If it is the intention of law schools to retain the more limited goal, it would seem that in all university catalogues and all recruitment procedures, potential students should be fully informed of the precise nature of their forthcoming legal education. This might alter recruitment substantially. Change in one direction or the other would improve this situation and lay the ground for a better student-professor-law school relationship.

### III. THE SETTING OF THE UNIVERSITY OF PUGET SOUND LAW SCHOOL

The decision to renovate and occupy two department store buildings in the center of a city that was suffering from typical urban blight was an act of creative imagination. A law school alone would hardly impact significantly on the urban redevelopment process but the long-range planning that led to relocating the Court of Appeals, as well as the development of elegant lawyers' offices potentiate exciting possibilities. Similarly, having legal aid clinics and facilities in close proximity to both law school and consumers, provides many valuable logistical advantages.

The fact that law students will be able to move across the street from one building to another and observe lawyers working in several of their natural habitats will greatly facilitate making those activities the subject of full academic analytical scrutiny. How do lawyers function in courts? What are their positive and negative attributes so far as ethics and professionalism? What do working lawyers "get away with"? What kinds of practice models are there and what are the pros and cons of each? Whole bebies of court procedures and administrative processes will be right at hand for study and understanding. It will be easy for classroom teachers to link their analytical exercises with real life operations. Because the courts will be appellate, there will even be a symmetry of content.

Of course, easy access to these lawyering realities will not come without risk. It will be very seductive for students to shift their interests and work in these directions. They will have available the easy rationalization that those practice activities are more real and more pertinent to their legal education than

the orderly and meticulous case analysis going on in the classroom. There is no question that these easily accessible glimpses at real life will have a strong competitive advantage in the eyes of many students. This would seem to suggest that classroom teachers will need to work hard to integrate legal theory with reality in order to hold student interest and to compete successfully.

These juxtapositions of practitioners with legal "theorists" will also make it quite easy to explore systematically such issues as continuing education and paralegal education. These educational areas are fraught with complex problems that require skill and knowledge of both practice and legal theory and a law center such as Puget Sound should have the facilities and the personnel to deal with such curricular items.

#### IV. SOME TEACHING GOALS FOR AN URBAN LAW CENTER

##### A. To Focus On a "Humanistic Law Curriculum"

Although there has been mounting discussion about the need to develop pedagogically elegant presentations on "practice skills," these presentations have had to exist largely isolated from the mainstream of legal education.<sup>8</sup> This has tended to leave law school graduates with a strong yearning for more knowledge about such subjects and their protest against these omissions has persisted for years.<sup>9</sup> The traditional argument against such education has tended to be that the skills were sim-

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8. See T. SHAFFER & R. REDMONT, *LAWYERS, LAW STUDENTS AND PEOPLE* (1977); Bellows, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* (CLEPR CONFERENCE PROCEEDINGS) 374 (1973); Himmelstein, *Reassessing Law Schooling: An Inquiry Into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978); Watson, *Lawyers and Professionalism: A Further Psychiatric Perspective on Legal Education*, 8 U. MICH. J.L. REF. 248 (1975).

9. For example, 30% of those responding to a "Law Poll" stated that they had "insufficient training in legal skills." 66 A.B.A.J. 842 (1980). In a paper summarizing past attitudinal studies of law graduates, as well as reporting a new study, the author found that very consistently at least 25% of law graduates felt that their legal education was deficient in practice training. Baird, *A Survey of the Relevance of Legal Training to Law Graduates*, 29 J. LEGAL EDUC. 264 (1978). Another paper notes that, "highly alienated students in our surveys expressed impatience with academic presentations of the law that did not clearly relate to their own vocational needs. Although they were relatively isolated from the professional ethos, the alienated students are vocationally oriented with a vengeance." Carrington & Conley, *Negative Attitudes of Law Students: A Replication of the Alienation and Dissatisfaction Factors*, 76 MICH. L. REV. 1036, 1040 (1978).

ple enough to be easily learned with the advent of law practice. It was also noted that such skill had little substance anyway. The end result has been that with some few exceptions the desired skills have not been very accessible nor very elegant. (One early exception was an offering by Rutter at Cincinnati).<sup>10</sup>

Additionally, it has long been my contention that traditional law school teaching methods have some negative impact in relation to creativity motivations as well as upon the kinds of altruistic impulses so crucial to effective legal professionalism.<sup>11</sup> By exploring these subjects directly within the matrix of practice, it would be possible to help students develop the psychological skills so necessary to ethical behavior even in the face of enormous temptation.<sup>12</sup> Since much of the capacity to behave with high professional skill relates to the development of a self-image which embraces interest in "service,"<sup>13</sup> the issue could be directly confronted and explored in the context of a well-organized urban law center. Experience in identifying with working professionals who actually face the temptations and stresses and then also providing the tools to cope with those stresses successfully, helps the student to develop and maintain pride and self-esteem which can lead to "professional competence."<sup>14</sup> The next important goal would be to elevate to a position of high importance the role of "lawyer-as-counselor." This much neglected issue probably warrants being placed near the very center of legal education. This role raises enormous conflict and anxiety and, therefore, it is not strange that so many lawyers and law teachers wish to avoid it. Since so much of a lawyer's work activity is related to the lawyer-as-counselor role, this should proba-

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10. See Rutter, *A Jurisprudence of Lawyers' Operations*, 13 J. LEGAL EDUC. 301 (1961).

11. See Carrington, *supra* note 2, at 426; Watson, *supra* note 2, at 130. A University of Michigan psychology student, Johnathon Sherman, has conducted a study of pre-law seniors and 1st, 2nd, & 3rd year law students, in regard to their ethical concerns. The pre-law and the first year students had the highest concerns of any students measured on the Kohlberg Moral Development Scale. From the 2nd year onward, there was a statistically significant drop in their ethical concerns. J. Sherman, *The Influence of the Law School Experience on the Moral Judgment Development of Law Students* (May 1980) (unpublished thesis, University of Michigan Psychology Department).

12. See Watson, *supra* notes 2, 8. For an opening viewpoint, see Hedegard, *The Impact of Legal Education: An In-depth Examination of Career-relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, A.B. FOUNDATION RESEARCH J. 793, 867 (1979).

13. See, e.g., Carrington, *supra* note 2, at 411-12.

14. See, e.g., Carrington, *supra* note 2, at 425.

bly stand very close, if not equal, to the pedagogic goal of teaching law students how to "think like lawyers." The deliberate and explicit development of counseling skills in law school programs would serve to underscore continually the interpersonal nature of a profession. Clearly, this would give a whole new cast to legal education and it would emphasize a role far removed from that of a lawyer as "hired gun." Indeed, if the hired gun image is adopted by a lawyer, one should probably view it as a kind of conflict resolution that verges on symptomatic behavior. A mid-city law center with its teaching thoroughly enmeshed in accessible practice activities could make many contributions to the development of technologies for this new kind of teaching. (I say *new* kind of teaching in a sort of statistical sense. Although there have been several excellent programs to carry out this kind of strategy in the past, they are relatively few and far between.)

#### *B. Creativity As An Aspect of "Adaptability" to Professional Needs*

For a long time law professors have implicitly or explicitly valued the development of creativity in their students. Indeed, law practice by its nature should place a lawyer in a constant ferment of creative activity. It appears to me, however, that one of the dynamic effects of traditional case-method teaching on a large number of law students has been to stifle creativity through the development of certain personality attributes mobilized to offset the risks and anxiety of "Paper-Chase" teaching. Instead of dealing explicitly with the classroom tensions that are developed, students are left to flounder in their anxiety and muster whatever psychic protection they can. Generally, these seem to be detrimental to the evolution of interpersonal sensitivity, so vital to many lawyer activities.<sup>15</sup>

One of the necessary conditions for developing creativity, which by definition is the ability to move out into the unexplored unknown, is the presence of a substantial belief that the explorer can return to the security of the known when the exploration is finished. Some students in traditional law school classes do evolve this capacity and, when they do, they become the generation's Brandeises and Cardozos. Unfortunately, the vast

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15. For some exceptions to this situation, see Brest, *On My Teaching*, 9 STAN. L. Soc'y J. May 18, 1979, § 8, at 3; Himmelstein, *supra* note 8, at 543-54; Watson, *supra* note 2, at 150-59.



majority of students, as with the vast majority of most human beings, under duress mobilize psychological defenses that produce conservatism, insensitivity, and a progressive desire to avoid challenge.

By facing the challenge of synthesizing real life stresses, as will be encountered in the courts and in the law offices found in the urban law center, with the theories of the classroom, students may be helped to develop solid and realistic psychological security as well as a deeper and less magical awareness of risks. This should make it possible for them to retain and enhance their maximum creative capacity. The challenge of synthesizing practice realities with the more theoretical aspects of jurisprudence will itself be a creative task and both the faculty and the students (as well as the practitioners, for they will have synthesizing to do as well) should profit from the experience.

### C. *Who Is a Practice Hero?*

Let me first reiterate the vital importance that modeling has for learning. A great deal of the motivation we have to behave in any specific way is taken from those whom we regard highly and, then, whose behavior we attempt to emulate. One of the advantages of a mid-city law center, enmeshed in a law practice setting, should be the relative ease with which students can obtain images of those whom they wish to emulate and whom law professors will decide they should and should not emulate! Clearly, to incorporate this kind of learning deliberately into an academic setting, the faculty will need to make conscious choices of who is a good model and whose behavior should be criticized and rejected. This will force academicians to do some things they do not readily like to do (and in fact at one level no human being does) — to make open and personal evaluations. If a faculty fails to take these steps, it will again communicate the message that we, the faculty, do not see any particular importance in the way the legal profession practices. This has tended to be the pattern of recent legal education and its negative effects can hardly be calculated.<sup>16</sup>

Once the issue has been settled about what kinds of persons

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16. See Watson, *supra* note 4. It is also David Halberstam's judgment that this same lack of objective criticism of personalities and behavior led us more and more deeply into the morass of Vietnam. See D. HALBERSTAM, *THE BEST AND THE BRIGHTEST* (1969).

the students should be led to emulate, the question becomes, "How can I get to be like that?" This, of course, would lead implacably to the confrontation of many highly conflicting issues having the same psychological dynamics as those faced by all of the Sir Thomas Mores down through history.<sup>17</sup> Part of the academic task would be to seek out contemporary practitioners in all legal roles who practice in the desired style. The moment this statement is set down I can hear many of my colleagues muttering that we would then be seeking to indoctrinate our students. I will bite this bullet and say, "Indeed so." In my opinion we must make a full commitment in favor of appropriate professional behavior or, in fact, we will be behaving against it. While it is certainly clear that many ethical and professional questions cannot be answered easily with certainty, it should be equally clear that one can always consciously, deliberately, and conscientiously *try* to be ethical.

On the other side of the coin, what kind of attitudes shall the faculty express in relation to the Thomas Cromwells encountered?<sup>18</sup> Once the brave step is taken to develop the kind of urban law center that Puget Sound now has, it will inevitably force the faculty to make these kinds of evaluations. This necessity is fraught with many political and social risks not the least of which is that it might alienate some alumni including those who might have been among the most generous. That, however, is precisely the challenge that must be met; Thomas More did lose the love of the king! To deal with all of the varieties of practice and to consider them against the standards of ethical and professional propriety is precisely the pedagogic necessity. The fact that a central feature of professionalism is self-regulation by a group of practitioners, suggests that this potentially stressful situation could provide a good model of an effectively working professional group and that would be very useful.

Conceivably, it would be possible to develop a cohort of expert practitioners in all of the special areas of law, who in addition to their legal technical expertise would be models of elegant professional behavior. Their presence and presentations in substantive law classes for several hours each time the course is offered would begin to build bridges into practice and provide

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17. For an exploration of the social and psychological dynamics of Sir Thomas More, see Haverwas & Shaffer, *Hope Faces Power: Thomas More and the King of England*, 41 *SOUNDINGS* 456-79 (1978).

18. Haverwas & Shaffer, *supra* note 17 at 466-67.

students not only with practical knowledge, but also with the kinds of models they so desperately seek. Presumably, over time a law school located like Puget Sound, might also progressively incorporate into its faculty individuals who have demonstrated high professional skill as well as effective academic capacity so that these two kinds of teaching capacities would be fused into the person of one individual. This would be a different kind of faculty recruitment but one that has been slowly commending itself to modern law schools. I will develop the problems of this task at greater length below.

#### D. A "Faculty Seminar" on Teaching Goals

If there is an active inclusion of practitioners onto the faculty, the faculty must institute new kinds of integrative pedagogic processes. Presumably, being a member of the law faculty would carry enough prestige to induce practitioners to participate willingly in a seminar with their academically-oriented colleagues to explore the complex but highly interesting pedagogic problems involved in this fusion.<sup>19</sup> Inevitably, the two groups would generate great defensiveness toward each other and this could be worked out during the course of the seminar. A collaborative teaching venture such as this necessitates harmony which can evolve through the joint problem-solving required to develop such a curriculum. Luckily, a joint problem-solving happens to be the best way to resolve intergroup prejudices and to bring about an effective working relationship.<sup>20</sup> This kind of "team teaching" should provide exciting curricular potential and highly motivating experiences for students and faculty alike.

#### E. The Goal of Developing Lawyering Skills and Interpersonal Sensitivity

At the root of all of the so-called lawyering skills is the requirement for developing great interpersonal effectiveness. Advocacy, negotiation, counseling, and interviewing require the

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19. We should note that seminars on pedagogy by law faculties are not all that commonplace. There is generally the presumption that if you have been a top-notch student, you just naturally will be a first-class teacher. This presumption has been challenged tentatively with the institution of the Young Law Teachers workshops, sponsored by the Association of American Law Schools. See Kelso, *Teaching Teachers: A Reminiscence of the 1971 AALS Law Teachers Clinic and a Tribute to Harry W. Jones*, 24 J. LEGAL EDUC. 606 (1972).

20. See, e.g., Sherif, *Experiments in Group Conflict*, 195 Sci. AM., Nov. 1956, at 54.

ability to "read" what is going on between the participants in these activities. The psychological theories and dynamics that pertain to one, pertain to all. A central goal for a mid-city law center should be to develop a legal professional who has impeccable lawyering skills that can be used with high human sensitivity in order to provide short- and long-range satisfactions for clients and counsel alike. Indeed, those who develop into the kind of elegant professionals, whom everybody admires and many seek to become, *enjoy* their work. A substantial part of the reason that they enjoy their work is that they are able to not only be aware cognitively of their role and their effectiveness in it, but they also feel satisfaction in carrying it out. This is well expressed in the ancient aspiration of "*mens sano en corpore sano.*"

## V. THE PLACE OF ETHICS IN PROFESSIONAL RESPONSIBILITY TRAINING

### A. *The Need for Ethical "Intention"*

One of the primary problems for a professional who wishes to behave ethically is that a large number of the conflict issues that arise do not fit precisely under any of the explicit ethical canons. For this reason, after a lawyer has thoroughly analyzed a problem, he will be able to behave ethically only if he has a deeply ingrained *intention* to behave ethically and responsibly. A lawyer must control such an analysis of practice with the question of "how can I carry out this task *ethically*?" rather than, "if I do this action, will I be unethical?" This is not an easy standard to follow and it requires constant re-evaluation of one's own inner thoughts and attitudes, never an easy task. Indeed, such an intellectual process is so anxiety-provoking that it causes a powerful inclination to avoid such stress completely and a psychological means readily at hand is to bury such thoughts beneath an attitude of cynicism.<sup>21</sup> "Why should I sweat so hard on this problem; nobody else does." This behavioral manifestation has been all too common and evident among lawyers and probably should be seen as symptomatic behavior, reflecting a failure to resolve adequately this inner professional tension. How can such cynicism be prevented?

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21. See, e.g., J. CARLIN, LAWYERS ON THEIR OWN 168-84 (1962).

### B. *The Avoidance of Cynicism*

When dealing with the difficult and the unknown, human beings often find answers by making a leap of faith. There are two kinds of faith according to Tillich: blind faith and rational faith.<sup>22</sup> Blind faith smacks of magic. Hewing starkly to concrete rules which carry the stated assumption that to follow them is equal to adequate performance can and does provide a modicum of comfort provided one believes the rule, and *provided* one is willing to forego any further question or challenge. With rational faith, one is dedicated to explore all possibilities to the fullest of one's intellectual ability. Then, and only then, is it appropriate to make a leap of faith and to draw a conclusion such as "I have performed appropriately."<sup>23</sup> When and if professional tasks have been carried out with this kind of personal soul searching and with this degree of dedication to professional obligation, there can be a real sense of optimism and hope in the individual lawyer as well as in society.<sup>24</sup>

One of the personal psychological costs to those who cut corners in relation to adherence to professional behavior is a progressive reinforcement of the belief that "Since I am unethical, surely others will behave in the same way." The converse is that "if I attempt to be ethical then others might also try to behave so." When the first course is followed, it becomes progressively illogical to ever let one's guard down with anybody.<sup>25</sup> Instead of starting off with a presumption of trust, one would have to approach relationships with a sense of negative expectation and distrust. This is hardly a comfortable condition and it is very costly of personal equanimity. Indeed, such an attitude could quite appropriately be called paranoia.<sup>26</sup>

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22. See P. TILlich, *DYNAMICS OF FAITH* (1957).

23. See Watson, *The Fear of Faith*, 14 *PASTORAL PSYCH.* Dec. 1963, at 18.

24. See, e.g., Haverwas & Shaffer, *supra* note 17.

25. This matter is addressed very effectively in S. BOK, *LYING* 146-64 (1978). This book is filled with insights which are very important to professional behavior.

26. The essential features are persistent persecutory delusions or delusional jealousy. The persecutory delusions may be simple or elaborate and usually involve a single theme or series of connected themes, such as being conspired against, cheated, spied upon, followed, poisoned or drugged, maliciously maligned, harrassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system.

AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 195 (3d ed. 1980).

### C. *How To Teach Ethics and Professional Responsibility*

Legal educators have far too easily surrendered to such propositions as "We can't change how students were reared and their morals are fixed by the time they get to us." Under this theory, by the time students arrive at law school their conscience structure is so well formed that nothing we do can or will alter it one way or the other.<sup>27</sup>

This is simply not true psychologically. A person's conscience is by far the most fragile of all of his psychological processes. It needs life-long support and reinforcement. We are slowly accumulating evidence that in fact law students have a diminishing concern for others as they go through law school. In an unpublished study by Sherman,<sup>28</sup> he found that pre-law students have the highest ethical concern for others of any group of undergraduates yet studied. This high level of concern is maintained through the first year of law school, but, in the second and third year, it falls off in a statistically significant degree. This supports a proposition that I have long believed, that the failure to reinforce positive concerns for ethicalness and professional responsibility constantly carries the covert message that such matters are not seen to be important by the law faculty. The Bar, like all professional groups, state that they set and enforce ethical standards and, historically, they have always held to that proposition. On the other hand, performance has not remotely reached such a standard and to do so would require that the Bar pay constant attention to this issue.

Clearly, mere admonition against unethical or unprofessional behavior is not enough to modify such behavior. The impulse to behave unethically or unprofessionally is a prime example of the concept of "an enemy within." Professionals (and others) must learn to know and accept openly the *fact* of their own unethical, self-centered, avaricious impulses and then be able to shift their attention away from the question whether these impulses exist to the question of deciding how they shall be managed. We might alter slightly an ancient admonition to "Know thy nasty self!" This suggests that educators should focus teaching and training efforts upon helping students and professionals develop the ability to perceive these self-centered impulses in order that they may learn to control them. Such

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27. See, e.g., Carrington, *supra* note 2, at 426.

28. See Sherman, *supra* note 11.

learning experiences would best occur in the context of clinical education and in practice courses such as negotiation, trials and appeals, and perhaps even in such presently non-existing courses as "The lawyer as counselor." Only when these psychological motivations are encountered in real contexts, can a person come to appreciate the way they operate covertly and then learn how to remove the many psychological defenses against such self-knowledge. Clinical education is made to order for this important training goal.

#### *D. On Sponsoring Altruism*

How many legal educators actively aid and encourage altruism in law school classes or in the clinical law setting? First of all, serious attention should be focused upon any activity or presentation which even remotely suggests that altruism is foolish or unnecessary. While it is certainly true that untrained and naive altruism is likely to get in the way of efficient and effective lawyering behavior, at the same time altruistic concerns should not come to be seen as the outlook of a "bleeding heart" or of a "fuzzy-minded" intellectual. I have heard these kinds of allusions many times and although the teachers' conscious intention was to teach their law students to be more tough-minded in their effort to learn to "think like a lawyer," a clear covert message perceived or misperceived by the students was that the professor believed such thinking to be ridiculous. If this perception did not have such serious consequences, it would be humorous, given the highly altruistic personal outlook shared by most law professors. It is a great pity that more students do not know about that aspect of their professional values since modeling is such a powerful teaching agent.

Greatly needed in the intellectual content of law schools is a thorough analysis and comprehension of the social necessity and social utility of altruistic impulses. Indeed, sociobiologists recently have come to postulate that there is very likely a genetic predisposition for altruism that is vital to the survival of groups.<sup>29</sup>

It is also sad that all too often a student's serious effort to figure out what is "Just," will bring forth a similarly cynical challenge. While it is certainly true that this is a difficult con-

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29. See R. ALEXANDER, *DARWINISM AND HUMAN AFFAIRS* 21 (1979); E. WILSON, *SOCIOBIOLOGY* 106-29 (1975).

cept to formulate, to view it as a foolhardy aspiration for the young and naive is to give powerful negative reinforcement to any concern about it. Under such circumstances we should not be surprised at the cynicism of many trial lawyers who virtually have eliminated any interest in justice from their practice concerns. Although it is a fact that lawyers working in the legal system are the principal sponsors and operators of a system which purports to seek justice, this fact sometimes escapes clear notice or at least significant attention.

Many of the young altruists in law school (and there are certainly too few who maintain this self-image through graduation) will seek out "public interest jobs."<sup>30</sup> Unfortunately, there appears to be a very high "burn-out" rate for these individuals.<sup>31</sup> They tend to last less than two years on these jobs and then, unfortunately, they go back into the mainstream of law practice, perhaps more cynical than their fellow lawyers. This is a very sad result and should cause legal educators to wonder what can be done about it.

The way to survive this phenomenon appears to be related to a somewhat changed perspective on the question of what is "success?" One of the normal characteristics of many young people is the desire to change and swiftly improve the "newly" apprehended faults and difficulties of the world around them. Great quantities of zealous energy are unleashed, some few problems solved, but, in the end, the overwhelming resistance to change in most institutions and people will be still highly evident. This causes a progressively sinking sensation of futility and suggests a great need to teach young professionals what they will see when and if they are successful. They must learn that the vast majority of vital changes in society occur at no more than a snail's pace. The first sign of change may be nothing more than increased restlessness or resistance in the opposition, while real failure will be manifested by no reaction at all to the suggestion for change. This is the kind of situation where

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30. See, e.g., Erlanger & Klegon, *Socialization Effects of Professional School, The Law School Experience and Student Orientations to Public Interest Concerns*, 13 *LAW & SOC'Y* 11 (1978). Winter, *Where Have All The Poverty Lawyers Gone?*, 66 *A.B.A.J.* 1058 (1980). See also ABA SPECIAL COMMITTEE ON PUBLIC INTEREST PRACTICE, *IMPLEMENTING THE LAWYER'S PUBLIC INTEREST PRACTICE OBLIGATION* (1977).

31. The concept of burn-out and its causes and remedies is well described in J. EDLWICH & A. BRODSKY, *BURN-OUT: STAGES OF DISILLUSIONMENT IN THE HELPING PROFESSIONS* (1980).



increased knowledge of legal history (or any kind of history for that matter) could provide helpful solace. Since fundamental conservatism is a fact of life in all bio-social systems, it takes a very long time to modify any important aspect in such a system. Although this fact is frustrating when change is being sought, if it were not so, we would live in a constant maelstrom of shift that would be even more devastating than the difficulties caused by stability and conservatism.

Another aspect of law practice which can contribute to the sense of frustration that leads to burn-out occurs because we fail to teach law students about the dynamics of "triaging."<sup>32</sup> There are probably no human decisions more difficult to make than those which require prioritizing competing social needs that involve the resolution of human pain and suffering. Such thinking is often perceived as taking the first fatal step along the slippery slope leading to callous totalitarianism. It cannot be denied that there is some risk in this kind of thinking, neither should we overlook the fact that a failure to do so can only lead to frustrations and defeats that themselves can bring about social regression in the direction of magical political solution-seeking.

Another vital goal for the professional education of law students should be to help them crystalize an *identity* which includes professional competence and altruistic concern for all of their legal work.<sup>33</sup> A person's psychological identity functions like the fly-wheel of an engine. It provides a kind of ongoing inertia that will enable one to deal with acute difficulties and strains in a more or less predictable fashion, without the need to engage repeatedly in a fundamental analysis of things. For example, instead of having to raise the question of whether one should behave professionally ethical, the automatic question will be, how should I carry out this task in a way that is professional and ethical?

### E. How Can We Teach Students To Cope With The

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32. See Watson, *supra* note 8 at 278-82.

33. See, e.g., A. WATSON, *PSYCHIATRY FOR LAWYERS*, 337-42 (rev. ed. 1978); Himmelstein, *supra* note 8, at 518-22; Watson, *supra* note 2, at 103-04. For a description of the way that identity relates to imitative social learning, see Meissner, *The Role of Social Learning in Identificatory Processes*, 22 J. AM. PSYCHOANALYTIC A. 512 (1974). Although this paper describes the processes in childhood, they also occur in adults although with greater resistance. For a further elaboration of this process, see Meissner, *Identification and Learning*, 21 J. AM. PSYCHOANALYTIC A. 788 (1973).

*Stresses of Professional Work?*

First of all, it should be repeated that if we do not teach students how to cope with the difficulties of a professional life, we can readily predict that they will retreat to the easy position of self-interest. The ubiquitous human need for psychological comfort will cause them either to flee or attack the source of the stress-causing conflicts by taking the simplistic and easy routes of resolution, rather than to make the difficult analyses needed to solve tensions in ways that are more professionally appropriate.<sup>34</sup>

This kind of learning is ideally dealt with in the context of clinical law experiences. The first step is to develop the diagnostic skill which enables a lawyer to know the difficulties he is encountering.<sup>35</sup> For example, the client who swiftly succeeds in enraging his lawyer through frustration, ideally should lead his counsel to learn why that client is engaging in such self-defeating behavior. Instead of perceiving the situation and dealing with it as a personal problem or idiosyncrasy, it becomes an example of interpersonal dynamics driven by hidden motivational agendas that must be detected, understood, and resolved. Similarly, to deal with the client who tries to seduce a lawyer with money, sexuality, or status, the first step must be to recognize and embrace the primitive inclination to accept such bribes so that one can then move toward the professional satisfaction of having resisted them.

To carry out these kinds of educational efforts effectively, teachers must be able to relate the issues to bona fide practice experiences. Legal theories must be coupled with precise details of everyday law practice reality in order to make the issues come alive and vibrant with the emotional conflicts they stir up in students and lawyers alike. I witnessed a very powerful example of this kind of presentation in a negotiation seminar with my former colleague, Harry Edwards. It involved the negotiators for United Airlines and their Flight Attendants Union. These individuals had been through the *sturm und drang* of three different contract negotiations and the ambiance of their presentation

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34. This response, termed "Cannon's Law," is the physiological principle whereby an animal (including man) under stress will either "fight or flight." For descriptions of how this response works in man, see L.J. SAUL, *BASES OF HUMAN BEHAVIOR* 32-37, 83-87 (1951).

35. See, e.g., Flynn, *Professional Ethics and the Lawyer's Duty to Self*, 1976 WASH. U.L.Q. 429; Himmelstein, *supra* note 8, at 516-33; Watson, *supra* note 8, at 252-65.

clearly demonstrated the many and complex emotional tensions they had grappled and successfully resolved. The obvious mutual respect they emanated gave powerful and poignant demonstration of the advantages to working through these powerful emotional conflicts and coming to successful and mutual agreement.

*F. How Can We Teach Students/Lawyers About Bar Self-Regulation?*

Since one of the principal barriers to ethical self-regulation relates to the ancient ability to perceive that "there but for the grace of God go I," how do we provide professionals with the "nerve" to report the miscreant to an ethics committee? Since judges are so often privy to the blatant demonstrations of unethical behavior, why are they so loathe to report it or at least to challenge it in their courts? Lawyers, too, are nearly always aware of the unethical behavior of their colleagues, so what inhibits their willingness to challenge?

If these questions are addressed to individuals privy to the knowledge of misbehavior, they will usually note the difficulties of proof in the case. While this may well be true, it is so blatantly inaccurate in so many situations, that this response must be viewed as a defensive psychological rationalization. By this, I mean an answer that is logical but does not explain the facts. For example, it provides an alternative explanation and psychological cover-up for the fact that the lawyer would be uncomfortable reporting an ethical breach for any number of reasons. If such charges were made more frequently, whether or not they were ultimately proven, at least it might invoke shame dynamics that do much to press most people toward behaving in accordance with group standards. A high-priority concern for the Bar grievance committee should be to press those who commit ethical breaches to modify their practice appropriately rather than seek their expulsion. The Bar should reserve the remedy of expulsion for the immutable. There may be many levels of response between complete and final disbarment and committee silence and expungement of the record. Their modulation should always be controlled by the goal of helping members of the Bar behave with professional appropriateness and to remain in good standing.

Since the process of pointing a finger at the misbehavior of others is so anxiety-provoking, it is important that the Bar

evolve means for positively reinforcing such behavior. If the person wishing to file the charge is left merely to his own thoughts, the chances are very high that he will seek some rationalization to avoid the action. On the other hand, if he is helped to feel good about behaving ethically, it is more likely that the act will be carried out. It is precisely at this intersection that we can determine the fundamental question of whether a self-regulating professional group can actually work. If it is not possible for persons to criticize fellow group members for inappropriate behavior, then indeed there is no alternative but to have some external regulatory agency fully perform the function.

Another way, of course, that the Bar can and, in some places, does demonstrate its bona fides would be through a system of compensation for victims of inappropriate lawyer behavior. When these monies are provided by the Bar itself, it clearly advertises their intention to maintain its integrity, and it might also provide motivation for the Bar to be more strict in its regulatory activities. When this technique is utilized it would seem that it should have a useful effect.

Another procedure that the Bar might utilize to demonstrate its concern about clients would be to help them learn how to evaluate legal services more accurately. How can clients know when they are not receiving adequate service? Although it is amply clear that such self-assistance is limited, it is equally clear that clients can do much to help themselves. Professor Lawrence Dubin of the University of Detroit Law School has prepared an interesting educational film to promote this public knowledge.<sup>36</sup> In it, he interviews a series of individuals who have been victims of lawyer malpractice, followed by commentaries that lead to several clear principles that might be used by clients to assist in their own self-protection. This kind of public relations and public educational activity not only has much substantive value, but it also makes it clear that the Bar has concerns about the appropriate behavior of its members. If carried out systematically by local Bars, it could provide invaluable help in generating greater public understanding and acceptance of the Bar.

There is virtually no way that malpractice and unprofes-

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36. See Dubin, *Professional Irresponsibility of Lawyers: Conversations with Victims*, in *TEACHING PROFESSIONAL RESPONSIBILITY*, 181-222 (P. Keenan ed. 1979). The film is available from Centerpoint, P.O. Box 12, Arlington Heights, Mass.

sional behavior can be prevented from outside the professional group. Since so much professional activity is and must be carried out under great time pressures, it can not be externally previewed. Only the competency and the integrity of the working professional can protect the client from inappropriate behavior a priori. While malpractice suits may remedy negligent acts after the fact, fear of such risk does not appear to be a very effective preventive. This means then that procedures to develop professional and ethical concern among practitioners must be supported and promoted by every means possible.

## VI. SOME TEACHING PROBLEMS

### A. *The Process of Tying Cognitive To Affective Learning: The Ultimate Challenge*

In order to approach this issue rationally, it is important to understand something of the psychological motivations of the parties. To look at law students first, we should recognize that the vast majority of those who enroll in law school intend to become practicing lawyers. For this reason, the courses that help law students imagine themselves in this role are stimulating and satisfying. When such courses are pejoratively called "bread and butter" by the faculty or students, it is likely to initiate a wedge of alienation in their attitudes toward the traditional law school courses and goals. They begin to see themselves and their interests in either/or terms that substantially distort the real image of law practice. Instead of seeing practice and theory as being inextricably intertwined, students come to view them as antagonistic qualities about which they must make a choice. Similarly, this dichotomized way of thinking produces and promulgates a division between the so-called clinical faculty and the more traditional faculty which is also detrimental to balanced learning.

Traditional law teachers have tended to be largely invested in the analysis of legal policies and doctrines as set forth in appellate opinions. Although they are also concerned with fact evaluation, the data about facts is usually drawn from secondary or tertiary sources, robbing the student of the opportunity to get involved in some of the kinds of psychological conflict situations that are so ubiquitous in law practice. Another important motivational factor derives from the fact that a large number of law teachers, especially those in the high prestige law schools, have

had little practice experience other than to serve as clerks for various appellate justices, or as employees of various administrative law agencies where they worked primarily in the analysis of regulatory policy and in the framing of appellate briefs. It is not meant to denigrate these activities, but merely to characterize them as being somewhat removed from the psychological hurley-burley that is found in dealing with primary clients at the law office or trial level. Although it cannot be stated with any degree of certainty, since we all choose our vocations because of many complex conscious and unconscious motives, it is probably safe to say that those who choose to teach law probably enjoy doing that more than they do practicing it. Since practicing law is the place where emotional and professional tensions are at their highest, this might well be a substantial part of what is being avoided. That would mean that effective coping with these aspects of a lawyer's life would remain outside the experience of this type of law teacher. They are just as likely to be effective in exploring such lawyering questions as a sex counselor without sexual experience might be in helping a person to straighten out a sexual conflict.

Similarly, in order to deal with whatever implications these factors may have to the professors' own self-images, it would not be surprising if they tended to view practice matters as being of inferior intellectual quality. This is interesting in as much as practice not only requires dealing with the same policy issues that are explored in appellate opinions, but also forces counsel to handle them from within the maelstrom of human passions, even as they are subjected to critical analysis and evaluation. Perhaps some of the vigorous opposition to clinical teaching in law schools may be in the vicarious service of helping to cope with some professorial sensitivities. This is to say that both kinds of skills are important and valuable, and both should be acknowledged, valued, and fostered. Presumably there were highly different emotional qualities to be found in those priests who led a cloistered and reflective existence, and those who went forth into the wilderness as evangelists. While the qualities and capacities are different, they do not settle to central issues of intrinsic value. For these reasons it seems quite possible that one factor that leads to the tendency to stereotype and derogate law practice courses is that it represents a defense against anxiety.

The practicing Bar also utilizes psychological defenses to

cope with their anxiety. For example, practitioners tend to see law teachers as being from the "ivory-tower" and since teachers do not practice, they cannot "understand" the kinds of things that working lawyers encounter. When and if practitioners are pressed into exploring theory too far, they may see it as an invitation to return to law school which they resist intensely. This phenomenon often arises in the setting of continuing education where law professors make presentations that explore theoretical concepts in detail. If the complexity becomes taxing, it is quite likely that their offerings will be written off as impractical and too far removed from the life of practice. Then if the academics emanate any signals that can be perceived as intellectual elitism, the distance between them will widen and the communication failure will be intensified. I have observed these manifestations many times on both sides of the axis and academics and practitioners alike forego knowledge that each could find useful.

Now as we turn to the strategy and tactics of teaching, one of the primary necessities is to make palpable the omnipresent effective-cognitive issues as they arise in law practice and the instructor must carry the burden of proving how they influence and distort lawyer and client behavior. There are certain minimum requirements for carrying this out. First of all, there should be sufficient teaching time so that when an emotional issue arises in the instructional setting, it is possible to identify it, and then embrace it and explore it cognitively in ways that do not foster defensive intellectualization. Enough time must be programmed for this purpose so that, when emotionally disturbing or frightening issues are pressed into awareness, they will not be left there without resolution. This would cause students to withdraw behind even more firmly fixed defensive barriers in order to avoid the anxiety.

Examples of such teaching presentations are the series of Young Teachers Workshops sponsored by the Association of American Law Schools<sup>37</sup> and the Canadian law teaching clinic organized by the law deans, the Canadian Association of Law Teachers, and the Canadian Law Faculties. The National Institute for Trial Advocacy,<sup>38</sup> also is directed toward helping lawyers to cope with the tensions which arise in trial practice.

Another requirement for teaching effectiveness regarding

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37. See note 19 *supra*.

38. See Tamm, *Advocacy Can Be Taught—the NITA Way*, 59 A.B.A.J. 625 (1973).

professionalism is that someone on the faculty knows how to observe the interpersonal processes between lawyers and others and be able to interpret them in relation to professional conflicts and the code of professional behavior. This permits such conflicts to be explicitly examined in relation to the lawyer's working performance. The various alternatives for coping can then be tested during the course of the learning experience. Generally, this interpretative skill requires that the teacher has had bonafide practice experience so that not only can he present relevant practice material, but also he can deal with challenges that are made by the students in relation to practice efficiency. In my own early experience in working with lawyers, whenever I would raise anything involving psychological issues, it was common for lawyers to challenge me on the basis that I did not understand how law practice worked. Since I have now had a great deal of practice experience working with lawyers, not only has this challenge been voiced less frequently, but I am able to meet it head-on when it arises. One of the principal ways that students ward off a question that is anxiety provoking is to raise some collateral issue as if it had not been considered, hoping to distract attention from the troublesome proposition. This displacement maneuver is very familiar to lawyers who use it often in trials and negotiations.

Clinical legal education is made to order for teaching law students about ethical conflicts. Such conflicts arise in nearly every case and at the outset, student anxieties lead them to utilize swiftly all of the standard psychological defensive procedures to avoid anxiety.<sup>39</sup> These may then be readily explored in the real contexts of lawyering behavior. Although these interpretive encounters are anxiety provoking in the first instance, they ultimately lead to real understanding and mastery that can substantially assist students to develop the kind of attitude and skill that leads to appropriate professional behavior. Law classroom teaching may also be utilized for this kind of interpreted experience because there is a precise analogy between the situations of lawyer and client and teacher and student. Such an experience

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39. For discussions of various aspects of this subject, especially the interaction of professional responsibility with ethical conflicts, see Miller, *Living Professional Responsibility-Clinical Approach*, in CLINICAL EDUCATION FOR THE LAW STUDENT 99 (1973) (collection of essays prepared by the Council on Legal Education for Professional Responsibility). Also, for an anecdotal commentary on a "traditional" law professor's experience in a clinic, see Conard, *Letters from the Law Clinic*, 26 J. LEGAL EDUC. 194 (1974).



stems from the clear power discrepancy between teacher and student caused by the knowledge differential as it relates to what is being taught. In a lawyer's office the same discrepancy exists when the client comes to seek help that he has little capacity to evaluate. Both of these situations impinge upon highly emotional issues and both can generate high levels of anxiety, tension, and defensiveness in all parties. Learning about these kinds of professional tensions can occur in the context of nearly any subject in the curriculum. Just as there is vicarious learning when class members watch and listen as their colleagues engage in a Socratic dialogue about the law, the same may occur in the discussion and exploration of professional issues.<sup>40</sup> It is clearly true, however, that the smaller the class, the more impactful the learning. Therefore, it would be well to arrange the curriculum, if possible, so that every first year student has at least one class in which there are no more than twenty or twenty-five students and where one avowed purpose would be to meticulously explore professional ethics and behavior along with legal substance.

Because many members of most law faculties will not feel totally comfortable with this kind of content, it is an ideal place to use an interdisciplinary colleague who can work with and help the first year teachers to develop the teaching materials and even co-teach with them until they feel confident to go it alone. This is not an unrealistic aspiration and certainly any law professor who wishes to may add this parameter to his teaching methods. Although it is always argued that the curriculum is already too full, it is my position that these professional issues and tensions are omnipresent in the classroom even when they are not dealt with explicitly. If they are ignored, it carries the covert message to students that such matters are unimportant. That aids and abets the very attitudes that professional education should attempt to modify greatly.

Because dealing with this kind of material is unfamiliar and perhaps unorthodox, it could be made the subject of faculty teaching seminars. This author believes they could be made sufficiently interesting and alluring to engage nearly all of the faculty, even the most conventional members. If the seminar were initiated by the several (or the many) who were interested,

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40. For a "demonstration" of this form of classroom teaching, see Watson, *Know Thyself Know Thy Client*, in 1 *LEARNING AND THE LAW* 45-51, 66-68 (Spring 1974).

and if it were presented with effective challenges, it would attract those who do not initially come, given the fact that good law teachers have an unmitigated curiosity and hunger for challenging information.

### *B. The Process and Problems of "Modeling"*

One of the most serious negative consequences of the move from the apprenticeship model of lawyer training to the law school based Langdellian methodology was the loss of ready access to professional models. During the three intensive years of learning that take place in law school, there is little, if any teaching by the kind of working lawyers who struggle daily with the ethical and technical problems of professionalism. Indeed, the fact that they are so systemically absent, when coupled with the many large and small cues from the faculty suggesting that theories and problems about practice are intellectually inferior to the policy and doctrinal analyses of the classroom, casts a negative aura around law practice. Though most of this is unintentional and quite inadvertent, it nonetheless has a serious and alienating effect on many law students. It demonstrates the need for good practice models *during* the law school experience when lawyer character is being shaped.

Additionally, during the course of much traditional legal education, there is a rather systematic intellectual assault on what might be called the heroes of the law. All of those great names known to students before they came to law school, come under intensive analytical scrutiny during classes and it is all too easy to infer that they were all men with clay feet and not the masters they were thought to be. Thus, the images of Holmes, Brandeis, Cardozo, Hand, and others, all go down under critical analysis and although they may have written their opinions in lovely, and even poetical, language (stated in irony by the analyzing professor), it seems as though what they had to say is wanting. Although this is certainly not a conscious intention of the process, it is an inference all too readily drawn by the student who is desperately seeking some kind of anchor to the wind to help them cope with the storm of their feelings, churned by the tensions of the classroom process. This is highly regrettable since a substantial amount of our learned behavior is gained by means of model-emulation. Many tend to view such learning as relevant and appropriate only during infancy and childhood, but that is not the case psychologically. Such hunger for models with

whom to identify is even highly visible in the political process and many of the to and fro swings in political ideology reflect the vicarious effects of disillusionment with one set of models, followed by magical seeking for somebody who can take their place. Legal educators should use these inevitable psychological processes deliberately in legal education. One of the potential virtues of an urban law school such as Puget Sound in its new setting can be its ready access to contacts with practice.

Using practitioners as teachers presents several advantages and disadvantages that must be well understood and dealt with in the planning of the curriculum. First of all, if practitioners are brought in to serve as models for future lawyer behavior, they must be selected because they incline to represent the paragons of practice. Their behavior should be of such quality that if all or most students were to emulate them, it would be the source of satisfaction and not cause for regret or concern. Alternatively, if practitioner-teachers present behavior that is not desired, such behavior must be open to evaluation and criticism by the faculty. This kind of peer review process, held forth as one of the qualities of a professional group, must be developed as a skill and rewarded as a virtue. Willingness to accept criticism is not high on the scale of human aspirations and it is only through careful evolution, that a group can develop this kind of self-critical capacity.

Many of the past efforts to utilize practitioners in law schools have brought them in on a kind of free-lance basis whereby they carry out their teaching role, often doing little more than spewing forth "war stories." These stories may demonstrate casualness about analysis, contempt for professional standards, and, quite often, ineptitude so far as pedagogical skill is concerned. For the above reasons, the recruitment of a teaching staff from the practicing Bar is an exercise in diplomatic negotiation. The parties must achieve clear agreement between themselves when dealing with these delicate issues and, above all, group approval must be the reward for the mutual self-exploration. It is clear that practitioners have many complaints about the theories and thoughts of legal scholars. Exchange about these matters, though delicate, should have mutual benefit. To suggest that "I will explore you and you can explore me" has the ring of forbidden childhood sex play and it may well be just as dangerous to the self!

I saw a stark example of this kind of dilemma recently in

our "Lawyers and Clients" course. We had a presentation by the senior members of a prominent local law firm who were describing what life was like in a large corporate firm. One of the students inquired what would happen if a young lawyer belonged to an organization like the Sierra Club while the firm represented a large public utility. The senior partner somewhat unctuously noted that the client would probably not look upon such an affiliation with great satisfaction and probably it would be just as well for the young lawyer to resign from such an organization. There had been several examples of this kind of advice given to the class and, since I was becoming progressively more annoyed, I raised my hand. I noted that Brandeis, as a young lawyer, had deliberately placed himself in the legal community so that, at different times and in different cases, he could represent both sides of an issue between labor unions and private corporations, and between the state and a corporate interest in an anti-trust matter, thus achieving the kind of behavior so common among British barristers. I then inquired what the senior partner would think of such behavior today? To my utter amazement, he answered that such behavior was fine back in Brandeis' day but that life is tougher today and it would not be possible to behave that way! I regarded his answer as a gross misrepresentation of the historical facts, that was bad enough, but what really disquieted me was that a large number of the students in the class applauded this answer! With this, I sank into despair and at least temporary silence. It seems to me that this kind of statement, unchallenged, is the kind of risk that will exist if practitioners present their opinions to students in a setting where they may not be vigorously challenged. I did not consider that I had license to challenge this gentleman openly under the circumstances of the class when he had volunteered his presence at our behest; it had not been a part of his contract that he would be challenged vigorously by members of the faculty. That to me, was a serious pedagogic oversight.

It is well-known that the mega-law firms, now so common in all metropolitan areas, engage in an aggressive socialization process with their new associates. The pressure to conform to whatever behavior the firm favors is enormous, and it is extraordinarily difficult for individuality to develop under these circumstances. Should individuals wish to behave in ways that are some or much different from the firm's model, it is likely that they will be subjected to great pressure and face the risk of

being extruded, or at least, so they believe.<sup>41</sup> Probably much of this socialization process is quite vicarious. It does have serious consequences, however, in terms of a lawyer's self-image and how he feels about his professional role. If he is made to feel that his most important task in the firm is to run up large numbers of billable hours, he will quite naturally tend progressively to minimize his concerns about pro bono representations or other activities that are not seen to be financially remunerative to the firm. Apparently, there was some small pressure from new members coming into firms during the '60's to change this, but it is my impression that that trend, small though it was, has largely disappeared.

Recently, the National Association of Law Placement Officers has begun to explore the role of their membership in relation to this aculturation process. It is quite possible that they might evolve the capacity to serve as training officers to these large firms and, thus, come to explore the aculturation process with all of its attendant pedagogical problems in more systematic ways. They could then follow paths that would enhance the likelihood of young lawyers developing the kind of professionalism that at least is the stated goal of the Bar, rather than leaving them to the dangerous course of "floundering out" their own adjustments.

### *C. Building Interdisciplinary Teams: The "Academician/Practitioner" Combination*

As the development of a team relationship between academician and practitioner lawyers is initiated, the same psychological dynamisms will exist as are encountered when arranging for a psychiatrist or an economist to work in a law school. The

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41. This is chillingly described in an unpublished paper about Houston mega-firms.

But the coin of these advantages is steep, and must be paid for in the coin of personal independence and freedom. The firms regiment their members' dress, their access to clients, even the decor of their offices. A story now making the rounds of Houston tells of a young associate at (—) who decided that his north-facing office did not need curtains; 'Heresy,' said the office managers, and they hung the curtains anyway. For a decorative plant he chose a hanging basket instead of one that sat on the floor like everybody else's; soon he was summoned by the managing partner and ordered to take it down. Except at (—, —) which has a reputation for leniency, political activity by associates is notoriously restricted. They can vote for whomever they please, but to take an active role in a campaign is courting disaster unless the management approves.

G. Smith, Jr., *Empires of Paper* 16 (unpublished paper).

outside participants come to the task from essentially foreign territories. Although they will seem to share a common language, their value systems will be worlds apart and that will be the potential source of great tension even as it provides the opportunity for large collaborative payoffs.<sup>42</sup> The academicians' orientation will be largely aimed toward the meticulous study and analysis of legal issues, reflected in the carefully balanced law review articles exploring all aspects of the legal problems that have interested them. The orientation of the practitioner, on the other hand, will bear the stamp of harried practice, billable hours, and the constant necessity to negotiate compromise in order to achieve practical results for the positions he advocates.

Each of the practitioner-academic team members will constantly need to struggle with the central problems of self-esteem focused around such questions as, "Am I as valuable/important as they are?" In subtle and often unconscious ways, each will attempt to establish their intellectual and narcissistic supremacy and that will exact costs against collaborative work. Each will feel concern about their power relationships in the job, and that will be reflected in such issues as how they are paid and what kind of faculty status they enjoy. Many of the practitioners sought will have earned incomes that are so much higher than their law faculty colleagues, that participation in teaching will require economic sacrifices that make it seem like pro bono work. What quid pro quo shall they receive for such a sacrifice? Some of the payoff obviously will be related to fantasies and visions about faculty status and for this reason the manner in which they are attached to the faculty will have enormous impact on how well accepted they feel. If they must compete for status on the same basis as their more traditional faculty colleagues, they will of course be at an enormous disadvantage. It would be most unlikely that they would be able to produce the same type and caliber of law review articles that the traditional law faculty produces. On the other hand, there is an enormous

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42. See Fogelson, Pearson, & Sander, *Making Better Lawyers: A Report on a Unique Interdisciplinary Venture*, 2 *FAM. L. Q.* 322 (1968). For a suggestion about how to bring practicing lawyers into the law school process, see Kutak, *The Advantages of Making Professors Law Partners*, in 3 *LEARNING AND THE LAW* 14 (Winter 1977). For a good analysis of some of the benefits and pitfalls of this type of collaborative legal instruction, see Silverman, *The Practitioner as a Law Teacher*, 23 *J. LEGAL EDUC.* 424 (1971). See also George, *New Directions in Family Law Teaching*, 20 *J. LEGAL EDUC.* 567 (1968); Katz, *Family Law and Psycho-analysis—Some Observations on Interdisciplinary Collaboration*, 20 *J. LEGAL EDUC.* 571 (1968).

opportunity for them to write careful analytical pieces about the dynamics of practice, but such pieces would surely take a different direction from the writing produced by their academician teammate. If such work were to be openly or subtly derogated, it would certainly destroy the efforts to carry out interdisciplinary teaching. As stated earlier, it has always been my impression, that to write effectively about practice is at least as intellectually challenging as writing about legal principles since the author must not only deal with the principles, but in addition, with all of the complexity of the interpersonal processes.<sup>43</sup> Traditionally, the law reviews, the major publishing outlet for legal academicians, have been loathe to publish work about "clinical" activity, or other empirical work. Although this attitude may be changing, it has been slow to occur because, among other things, it requires the adoption of a substantially different value-set than that consciously and unconsciously built into law review editors.

The vital importance of understanding these psychological forces relates to what psychotherapists call the process of "resistance."<sup>44</sup> This is a psychological maneuver invoked to ward off anxiety by avoiding painful and conflict-ridden situations (such as psychotherapy) or any new and innovative procedure in one's work process. A confrontation with any new and unknown idea or situation will inevitably stimulate at least some anxiety. This requires individuals to develop the means to cope with such anxiety even as they learn to solve the new problem involved. The development of an academician-practitioner team is filled with unknown issues, substantial variances in value sets, and much payoff jeopardy, all of which make such an undertaking highly risky to the individuals involved. The technical pedagogical challenge, therefore, is to create an a priori image of payoff to the team members for coping with the inevitable anxiety evoked by the process. One of the best ways to do it is to have clear institutional support for the team members to carry them across the early period of trial and error before they begin to achieve the work success that will provide its own emotional satisfaction. If they do not receive this support, they will not likely survive the anxiety created by their early creative struggles.

There are certain explicit tactics law schools could use in team building to deal with the tensions described above. One

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43. See, e.g., Rutter, *supra* note 10.

44. See O. FENICHEL, *THE PSYCHOANALYTIC THEORY OF NEUROSIS* 15 (1945).

tactic is to choose a circumscribed problem area in which to develop a joint solution.<sup>45</sup> This forces the team to apprehend each other's interests, orientations, and skills, even as a clear, perceptible payoff for the anxiety of collaboration is developing. For example, in the family law area, how should a case involving dispute over child custody be handled optimally? Such a case embraces myriad policy problems around which have accumulated much controversial theory. At the same time, there is a melange of practical problems that have to be dealt with if the outcome is to be effective as well as responsive to all of the theoretical considerations. The skills of both members of the team are vital to the problem-solving and this awareness functions as a feedback loop to progressively diminish the competitive discomfort, enhance a sense of personal value, and most importantly, solve the problem in a demonstrably successful way.

In addition to the effects such a project will have on the individuals, the effort will result in the progressive development of teaching materials that more eloquently address the complex theoretical and practice problems. Each team member can clearly and concretely perceive his contributions to the process, the mutual reliance becomes more and more visible, and the effectiveness of the operation is continuously enhanced.

Another important tactic to follow is to bring these innovations into the curriculum with a modular progression. By carving out one discrete and manageable piece at a time, one can limit the anxiety that will be stimulated when all of the traditional anchorages are being changed at once. Without this, maximum faculty resistance inevitably mobilizes and virtually assures failure. As each module is developed, and if it is successful, the method will recommend itself to others who may then see the value of the risk-taking.

One important challenge to this kind of development is the issue of costs. It is certainly true that clinical teaching is far more expensive than the utilization of large lecture classes with a hundred or more students present. On the other hand, if utilizing such teaching is crucial to the development of vital professional skills, (and I believe it is) then the cost must be undertaken. Certainly, it has never been suggested seriously that the expensiveness of a procedure is a valid basis for its omission when that would lend to malpractice. The duty to perform ade-

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45. See Sherif, *supra* note 20.



quately cannot be set aside merely because of cost.

There has also been some concern that developing clinical teaching and carrying out the practice aspects of it in a law school will stimulate competitive concerns from the practicing bar. Although this was a substantial fear in the past, it appears to be true that the clientele who are served by law school clinics are not those who would be the usual clients of private law firms. Indeed, one might argue that some of the legal procedures that law school clinics have pursued have actually increased the amount of legal activity in the private sector because of the effective advocacy carried out by the clinics. (This might well have increased costs for many clients of the private Bar, but certainly it did not lead to financial suffering on the part of counsel themselves.)

There are some financial issues involving clinic clients that need solutions for other reasons. The fact that most clinic clients pay nothing for the service they receive stimulates a certain amount of litigiousness in some of them that cannot readily be managed psychologically, legally or pedagogically under present circumstances. Probably some kind of minimum fee scale must evolve so that there is a sense of responsible participation by these clients related to benefits that accrue to them. This clinic income would never be sufficient to carry the program, but it might defray some costs at least even as it clarifies a lawyer-client practice problem.

One of the most serious issues in managing law school clinic participation relates to the problem of regulating the workload. To handle this issue of "triaging" is itself a vital professional skill.<sup>46</sup> To practice effectively, lawyers must learn very early in their careers how to manage time-balancing between the many competing demands upon them, most of which are "important" for one reason or another. Probably no task is more difficult to learn for a well-motivated professional than how to *not* handle some problems because the overall cost benefit is too small in comparison with the needs of other potential clients. It requires a very hard analysis of such competing values as utility of the remedy, how much professional time it will require, what fee counsel can afford to set versus what the client can pay, what kind of skill can be mobilized, and myriad other values. In the

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46. For a description of the "triaging" problems, see Watson, *supra* note 8, at 278-82.

end, it means that counsel must be able to *rationaly* account for why he will not make efforts to help a client who needs the help but that he has decided not to carry out. This is a very painful process to implement even though it is crucially necessary. Specific training is needed to do it if the development of defensive callousness in the lawyer is to be avoided.

This kind of thinking is analogous to medical practice questions such as what patient gets access to the kidney machine? When more people medically require it than can be dealt with, who decides and how? When legal clinic services become widely available, they will have to make the same value judgments. There is probably no more inviting slippery slope than this one and it appropriately stimulates substantial apprehension in practitioners who contemplate it.

An important and related piece of professional training that should be linked to the interdisciplinary teaching process, is how to learn to balance personal and family needs against the demands of law practice. Given the omnipresent pressure to deal with practice problems, it is all too easy to avoid personal and family commitments, vitally necessary to the maintenance of individual health and happiness. This seemingly "selfish" necessity should be a high priority consideration, for a lawyer will be of no use to anybody if he fails or falters due to poor physical or mental health. It is no accident that such problems as alcoholism, divorce, and other forms of psychological difficulty, occur so frequently among working lawyers and other professionals. One should view this fact as evidence of maladaptation and probably also, as a failure in professional education. The practitioner-academician teaching team is in an ideal position to instruct students about these factors in highly meaningful ways that are quite different from the insights provided by more cloistered traditional law professors.

## VII. SOME CURRICULUM MATTERS

The problems of setting up an appropriate law school curriculum are multitudinous and I will only focus upon the psychological aspects of such a process. The urban law center is in an ideal situation to address curriculum problems in a context of reality which is substantially missing from traditional law schools.

### A. *Development of a Lawyering Style*

A whole complex of highly personal attitudes substantially determines the style in which a lawyer carries out his work.<sup>47</sup> These attitudes are not necessarily fully conscious, but an important teaching goal should be to make them so. A working lawyer who does not know and understand the impact his attitudes bring to his work essentially is involved in flying blind.

Because an urban law center is planted right in the middle of the environment of its clientele, it has the opportunity, if not the necessity, to embrace a kind of anthropological study of mid-city life. What are the social, economic, and psychological forces that are present there? How do these factors influence all "fact" matters which the center city lawyer must encounter and work with? What are the working lawyer's stereotypic biases about these issues and how do they influence the way lawyers carry out their technical lawyering tasks? This kind of thinking is essential to the effective data-gathering and fact-finding processes of the law office practice. By utilizing the ready access to these situations, it is possible to bring forth lawyer (law-student) responses in all of their vivid emotionality. Of course, these are precisely the reactions that students have always been strongly urged to "eliminate," much to the detriment of sensitive data-gathering. Instead of being aware of these interactive reverberations, they are cemented over and denied and then the student handles them unconsciously rather than cognitively and rationally. This is the point at which the old admonition, directed first to physicians, should be paraphrased and stated as "Counselor, know thyself." Knowledge and understanding about the nature of these interactive responses can greatly aid a lawyer in learning to deal with them logically and rationally. This is one of the important points the practitioner, with all of his earthy experiences, can help neophyte lawyers learn about the dynamics of these interchanges. It is also here that the skill at insuring consideration of all relevant matters can increase the chances that students will not deal with these issues cynically but rather will look upon the issues as vital problems for appropriate professional resolution.

Self-knowledge is very difficult to develop, and the academic-practitioner team has the opportunity to model the ways

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47. See Himmelstein, *supra* note 8, at 523.

that two working professionals can help each other locate and deal with their own blind spots. Formalized arrangements can be made between them to optimize the likelihood that hidden conflicts will surface whenever they are relevant to the professional work. Working partners can almost always perceive conflict more readily in their partner than the partner can do for himself. The emotional clues of personal discomfort, anger, and the impulse to retreat from an issue or put off a decision progressively may come to be seen as cues that it is time for partner consultation. It would be possible to build these kinds of learning experiences into a law student's exposure to the team and also in relation to other counseling experiences in the law school.

As these matters are brought up for student-faculty discussion, there will be many opportunities to observe the results of failure in such conflict resolution. Cases will be left untouched, information will remain unsolicited, clients will not be contacted properly, and many other demonstrations of the wish to escape will be manifested. Instead of viewing these behaviors as matters of student sloth, they will be more accurately assessed as symptomatic responses to professional conflicts that are not being resolved. They are precisely the kinds of issues that commonly arise in client grievances and the same factors seem to motivate them. Here the interdisciplinary observation of the team can deepen the perceptual capacity to diagnose and deal with such professional conflict in a more effective, elegant, and client-serving manner. Self-esteem will be enhanced by the awareness that he has faced and dealt with difficult problems rather than avoiding and covering them over. Part of the payoff for coping with difficult professional tensions is precisely this kind of highly personal satisfaction so very important to the psychological economy of the practicing lawyer.

### *B. Negotiation Skills*

Another immensely important lawyering skill that could become more readily accessible to law students, by virtue of the presence of more working lawyers in the law schools, is proficiency in negotiation. Although this is said to be one of the most crucial and omnipresent kinds of activities in which lawyers engage, it is very poorly represented in the usual law school cur-

riculum.<sup>48</sup> Students are often quite shocked when they learn how many cases are settled by negotiation and how few by trial. Learning to negotiate inevitably immobilizes all of the kinds of professional conflict issues and adequate coping with them requires a high degree of professional skill and ethical behavior. The study of negotiation provides an excellent means to ensure that students will discover their own investments and biases about professionalism, the nature of its anxiety-evoking potential, and the opportunity to learn much about the psychology of interpersonal relationships. This kind of knowledge and skill is only rarely present on an intuitive basis and, given the unconscious self selection of law students, coupled with the traditional form of legal education, there is not a great likelihood that most current law school settings will highly develop such skills.<sup>49</sup>

A negotiation course is an ideal place in which to utilize the practicing bar. For example, when Judge Harry Edwards of the D.C. Court of Appeals, (and the co-author of *The Lawyer as a Negotiator*)<sup>50</sup> taught a section of the Michigan course, he brought in the chief negotiator, a lawyer, and the principle Flight Attendants' Union negotiator who had negotiated the contract between United Airlines and the union. The class was treated to a presentation of the full and complex panoply of skills, attitudes, interpersonal processes, and theoretical issues that working negotiators must cope with. It was an impressive and exciting display.

Similarly, a very elegant trial lawyer, prominent in the field of personal injury litigation, was brought in to discuss and demonstrate that part of effective trial lawyering is to build and shape the case for effective negotiation so that a trial may become unnecessary. Among other things, this practitioner fielded myriad student questions about how to appropriately handle the many professional and ethical conflict issues that arise. He made it crystal clear that, for him, there was simply no acceptable behavior for a lawyer other than to dedicate himself to the intention to hue closely to the canons of ethics. This was refreshing and reinforcing to the students' struggle to develop this same capacity in a comfortable and reliable way. They were clearly pleased to see that a lawyer could be highly successful

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48. See, e.g., H. EDWARDS & J. WHITE, *THE LAWYER AS NEGOTIATOR* 172-74 (1977).

49. See, e.g., Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Watson, *supra* note 2.

50. See note 48 *supra*.

and, at the same time, care deeply about his own ethical behavior.

Another area that demonstrates negotiation activities and skills is in the handling of child custody dispositional processes. Here, the delicate negotiation which goes on between the angry contestants requires thoroughly conceptualized collaborative efforts between the behavioral experts, lawyers, the court and its staff.<sup>51</sup> Every step of the process stirs up near ethical dilemmas as well as role conflicts. Such an exploration helps students learn how to wrestle comfortably with these highly emotional issues when they see skilled lawyer-negotiators carry this process forward.

The kinds of situations set forth above can facilitate student encounters with the real and highly emotional ethical dilemmas they must learn to handle. They may be dealt with ideally by collaborative efforts between practitioners and academics. In a mid-city law center where ongoing collaboration is part and parcel of the law school ambience, this directly experienced professional teaching can be ideally deployed. It would move legal education substantially in the direction of medical education, where questions of how to do things immediately impinge upon theoretical and research considerations about how they *should* be done. As these kinds of tensions are worked through, it provides the kind of learning that can effectively lead to behavioral change. The omnipresent necessity to learn how to carry out these difficult professional tasks is made clear, the capacity to deal with them is progressively developed, and the incorporation of a satisfying self-image, that includes a powerful desire to behave with true professionalism and ethical intention, has a chance for survival.<sup>52</sup>

Needless to say, some of the cases that will evolve in the setting of a center city law school will touch upon difficult political situations. This, of course, may cause tensions of various intensities but coping with them is precisely in the nature of professional life. *C'est la vie!*

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51. For an analysis of the complexity in these negotiations see Silberman, *Professional Responsibility Problems of Divorce Mediation*, 7 FAM. L. REP. 4001 (1973).

52. For an example of the kind of process being described here, see C. BOSK, *FORGIVE AND REMEMBER* (1979) (a sociologist's study of the professionalization of surgeons at a large western medical center).

### *C. Curricular Program Sequencing Problems*

So far as the development of skills training as it might evolve in a center city law school, there remains the task of placing students in course sequences that progressively build upon each other. Although this problem is not always dealt with in many law school curricula after the first year, in skills training it is crucial. The potential payoff would be well worth the complex effort of working it out. For example, explicit training in interviewing could be worked into one of the early first year courses. Following its completion, these students could become the front line persons (much as medical students do in the hospital) whereby they gather the initial intake data from clients who come into the law school clinics. This training would include theory related to concepts about professionalism and would confront students right at the threshold of their careers with some of the kinds of conflict situations they know they must learn to deal with if they are to be effective lawyers. They would begin to develop understanding about their personal coping style in professional situations, even as they provided valuable service in carrying out the time-consuming process of information gathering from clients, potential witnesses, and others involved in potential legal cases.

In the second year, they would move to work on case planning and briefing with the teaching lawyers. This would enhance writing skills, foster the application of legal theory to real life situations, and would always be done in the context of thinking in the hard-nosed way that working lawyers must. It will be recognized that law students are already making some of these arrangements for themselves when they take summer jobs with law firms. Unfortunately, this experience is not always, or perhaps even often, coupled with the kind of formal teaching that deals with the conflicts of professionalism in life. I have had many students tell me of their shock when they encountered these problems in a legal situation and they were not dealt with by the lawyers they worked with. This is the point where the academic input could be different and valuable. The second year curriculum would also be an ideal place to present the negotiation course. This could demonstrate clearly that even as early case planning is going on, the negotiation process will be looming in the wings ready to be invoked in the hope that problems can be resolved without trial.

In the third year, student activities would include further

negotiation activity, advocacy training, as well as working on appellate briefing. These would reflect the cumulative activities of working lawyers and would present in clear and ordered time-sequences the way the law is dealt with in practice. With each year's progression through the curriculum, the more senior students would be involved with and actually help the younger students with their entry tensions, a process which would be mutually beneficial and done in much the same way as in moot court and on the law review. This would reinforce the development of a sense of awareness about the responsibility of the elders in the profession to help their younger colleagues in their professional growth. All of these stages in the teaching sequence would be under the supervision of the interdisciplinary team and would utilize the cases not only to develop further and polish the legal theories involved, but also to examine the precise lawyering techniques needed to achieve the desired legal results.

Another activity present in the law school is the job placement office with all of its attendant processes. Law schools could further tailor these offices to utilize information that was being gathered about individual students' skills and job aspirations and this could help students make more rational decisions about their work interest. As they now do, the placement office could also help students gain summer jobs that would supplement the experience they were gaining from the curriculum. Since the law school would be situated in the midst of an active legal community, there should be many opportunities immediately at hand. This should greatly enhance the selection processes for those law offices, help the student arrive at the right job "fit," and also provide opportunity for skill augmentation at the job entry level. Since the placement officers have close working rapport with their counterparts in the law firms, they both could deliberately work to evolve teaching techniques that would augment the skill-training needed after leaving formal legal education. Because all students would be in close contact with working lawyers throughout their law school experience, by the time they went job seeking, they would have intimate knowledge about the best ways to approach hiring personnel and they could enter at the level of sophistication that would allow them to begin their legal work more readily. Because they would be more psychologically comfortable, they would have less need to behave defensively in ways that greatly jeopardize professionalism. It is an important rule of thumb that, when individuals are under high



stress, and if they do not have a readily available appropriate response pattern that fits the task requirement, they are highly likely to regress to behaviors that usually do not comply with such things as professional codes of ethics.

#### *D. Paralegal Training*

Very few law schools have made any serious effort to include paralegal training in their curricular presentations. It has perhaps appeared to be working at cross purposes to do so. Some of the early "interning" activities of law students will look very similar to the kinds of things that efficient paralegals do in law offices. In the end, working lawyers must evolve the means to manage the paralegals in their own offices and relate the activities of that group to their own professional obligations to clients and the bar in general. Many of the political and economic characteristics of law practice would be immediately encountered if lawyer relationships to paralegals were also visible as the skills training is being done. There are many important questions about the delivery of legal services that remain to be solved and, if the nature of legal service activities were explored and understood more fully, it might facilitate their resolution by the bar. I should note, however, that, if this is not done candidly, it would only reinforce some of the hypocrisy that now exists about these role issues. As in all educational situations, students will be enormously sensitive about what is *not* said as well as to what is. Here, as in relation to all skills-training questions, perhaps part of the reason for avoiding these subjects is their intrinsic capacity to mobilize the anxieties that are experienced when such questions are encountered. For example, "Why should a paralegal not receive approximately the same compensation as a lawyer if he carries out identical work?" Although this is not a simple question, it is typical of the kinds of conflicts that arise when you decide to bring theory into juxtaposition with practice reality and then attempt to deal with those matters as educational questions.

#### *E. The Law Review in an Urban Law Center*

Occasionally in recent years, some law reviews have developed a specialized orientation. Sometimes these changes have been related to interests that existed in the law school of origin and this has facilitated the development of a kind of specialized

literature. This could occur at Puget Sound. If this law school anchors itself in the urban processes of its environment, its law review could favor articles that deal with some of the lawyering-process skills that would be found in the law school's curriculum. The journal could foster and support the production of high quality research directed toward exploring the complex interrelationships between legal theory and legal practice. There have been several publications in recent years that demonstrate the feasibility of this type of research in such works as Rosenthal's, *The Lawyer and Client, Who's In Charge?*<sup>53</sup> and Hogarth's, *Sentencing as a Human Process*.<sup>54</sup> Examination of these works will demonstrate that such topics are certainly at least as complex as the material ordinarily dealt with in law reviews and there should be no paucity of elegant intellectual work in exploring these kinds of issues. There are myriad open questions involving problems of practice and theory and the area is prime for such a powerful marshaling agent as a specialized law review. Thus, the kind of legal training involved in student law review participation could be fostered and utilized to augment the academic goals of an urban law center.

#### F. Postgraduate Education

In past decades, much of the publication and presentation of continuing education institutes has tended to be looked down upon by legal academics. Academicians have viewed such institutes as intellectually inferior and not of the caliber which would engage first-rate legal academic minds. While it is true that it is ever so easy for such presentations to descend to the level of nothing more than self-aggrandizing war stories, that need not be the case (these observations must clearly be seen as "opinion evidence"). I have been involved sufficiently in continuing education activities to have a substantial sample of observations from which to make what I hope are relevant inferences. With care and investment, it should not be difficult to draw prominent practitioners with important cases into collaborative efforts of exploration with academics that would lead to truly creative analysis of important legal problems. Again, there would be mutual advantage to the collaborators if each deepened their own knowledge and experience precisely at the points where

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53. D. ROSENTHAL, *LAWYER AND CLIENT, WHO'S IN CHARGE?* (1974).

54. J. HOGARTH, *SENTENCING AS A HUMAN PROCESS* (1971).

they are likely to be least familiar. When such postgraduate activities are held conjunctively with a law school such as Puget Sound, the presentations could be freely available to all law students and the law faculty could sponsor interest in them. This, of course, presumes that the faculty would perceive such attendance as valuable, an attitude that did not always exist in the past.

There is another social dynamic present today that may facilitate this direction of development. It has become more and more apparent that young practitioners very much need high caliber skills-training to link up with their academic learning.<sup>55</sup> Continuing legal education is more and more frequently mandated by Bar regulations and is required for Bar membership. As this happens, the question arises about who should conduct this teaching. Since academics have little doubt about their primacy so far as teaching skills are concerned, they will very likely wish to become active in this new form of teaching: professional pride virtually requires it! This is all to the good for it will join the best competencies of academic lawyer to polished skills of practitioners for the mutual benefit of both. Additionally, one of the advantages to this approach would be that it would draw the practicing Bar more closely to academic lawyers so that true cross-fertilization might occur. This has been much needed in recent years and the necessity to solve this problem could be highly instrumental in bringing about this kind of improved liaison.<sup>56</sup>

### G. *On the Use of the Elders of the Tribe*

Each generation produces brilliantly outstanding members of the legal profession. Their capacities and skills become legend and one of their vicarious functions is to provide models for the young. We can read the opinions of the Holmeses, Cardozos, and Hands and some of them have also written autobiographies. But these sources, even coupled with full biographic study, do not give us the same full perspective on their interesting personalities as would a face-to-face encounter with them. Today there is

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55. For the attitudes of law graduates themselves, see note 11 *supra*. Skills training in law school is vigorously advocated in Boyer & Crampton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 270-75 (1974). For an extensive analysis of the above issues, see AALS & ABA COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, *CLINICAL LEGAL EDUCATION* (S. Leleiko ed. 1980).

56. See, e.g., Sherif, *supra* note 20.

little excuse for not fully capturing the character of these great men in order to provide a more widespread exposure for contemporary students and practitioners as well as for all of the future generations who will have no opportunity to actually meet them. Today, television equipment is so relatively inexpensive that we should be able to set up an organized archive to capture and preserve the images of these great men. Some of this is now being done in conjunction with the National Archives and a few law professors have utilized these materials.<sup>57</sup> It would seem highly desirable that the American Bar Association, perhaps in conjunction with the Association of American Law Schools, set up and subsidize such a project to assure that we may capture on tape all of the great lawyers, judges, and teachers who are now presently working, and this should be systematically done across time. Although there have been some few efforts along these lines, efforts should be greatly extended and systematized.<sup>58</sup>

The psychological value in utilizing these kinds of materials would be to enhance the probability of bringing legal wisdom to bear upon the learning experiences of the young. It is a truism that ordinarily when wisdom exists, it will be a quality of the elderly. While clearly not all of the elderly are wise, most of the wise are elderly. Their images and qualities are desperately needed by the young for modeling and, with the advantages obtained from modern technology, it is again possible in our mega-society to bring their presences before virtually everybody who is in the learning position.<sup>59</sup>

Such activities would not be terribly costly, and the collecting could be so far-reaching as to ensure that all or nearly all of the important persons would ultimately turn up in the archives. Then, the mere attrition and judgment that would come with the passage of time would pare down the list to the truly great. I can recall vividly the inspirational effect it had upon me at the time I first entered into the law school world, when I had the opportunity to meet, though briefly, Dean Pound, Chief Justice

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57. See Baier, *What is the Use of a Law Book Without Pictures or Conversations?*, 16 Soc. Sci. REC. 7 (1979).

58. Professor Kelso, working at the University of Miami Law School, under the aegis of the AALS, assembled an interesting series on "Great Law Teachers." These have been widely circulated to be used in seminars on legal education.

59. For an elegant description of this process, see E. ERIKSON, *CHILDHOOD AND SOCIETY* 263-69 (2d ed. 1963).

Warren, Professor Karl Llewellyn, and others of their stature. Perhaps the most salient element which impacted upon me was my perception of the intensity with which these men *cared* about the legal work that they did. The excitement that they had about their own professionalism affected me in a way nothing else could have. Their values and interests had importance which would be worth emulating.

The virtues of utilizing the skills of tribal elders (even as they are waning) was built into the character of the Hastings Law School when it was founded. The faculty roster of that school is almost always quite awe-inspiring because of the presence of the famous people upon it. By utilizing their wisdom and tailoring their teaching load to conform to their advancing age, that school was able to have enormously prestigious faculty. The fact that they were also in a geographical location where people like to live has made it easy to recruit a continuing flow of these illustrious elders. In the planning of this new kind of law school at the University of Puget Sound, one important question might be, "What kind of exciting opportunities does this law school have for older professionals with a distinguished past, who could provide the inspiration to the young that elders can do and who would be attracted by this kind of law school?" Geography, physical facilities, ready access to an appellate court, innovative library facilities, and the excitement of an innovative atmosphere should certainly have strong allure for many of the kind of people the school would wish to have.

#### VIII. CONCLUSION

This foray into description of the opportunities of a mid-city law center is certainly impressionistic and anything but exhaustive. Although the elements described were handled rather superficially, hopefully they are of sufficient depth to provoke an interest in contemplating some of the opportunities for psychological innovation that exist here. The fact that University of Puget Sound School of Law already exists in the form that it does is concrete and exciting evidence that the nature of this opportunity has been perceived. Now it is only a question of getting on with the exploration. The buildings are in place, faculty and students have moved in, and now implementation may begin.