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I. INTRODUCTION

The addition of a clinical component to the traditional law school curriculum has been proposed as an educational reform for more than fifty years.[1] During the past ten years, a period in which many law schools have established clinical programs in earnest, the debate over the value of such a reform has dominated the literature on legal education.[2] This debate often has focused on whether

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1. Probably the most influential early article on the subject was Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933) [hereinafter cited as *Clinical Lawyer-School*]; *see also* Frank, *What Constitutes a Good Legal Education?*, 19 A.B.A. J. 723 (1933) (speech summarizing *University of Pennsylvania Law Review* article). For a response to Judge (then Professor) Frank, see Gardner, *Why Not a Clinical Lawyer-School?—Some Reflections*, 82 U. PA. L. REV. 785 (1934). Some legal clinics already were in operation in the 1920's and 1930's and were both supported and criticized. *See, e.g.*, Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469 (1934) [hereinafter cited as *Distinctive Features*]; David, *The Clinical Lawyer-School: The Clinic*, 83 U. PA. L. REV. 1 (1934); Fuchs, *The Educational Value of a Legal Clinic—Some Doubts and Queries*, 8 AM. L. SCH. REV. 857 (1937); Harris, *The Educational Value of a Legal Aid Clinic—A Reply*, 8 AM. L. SCH. REV. 860 (1937). In addition, the University of Denver operated a "Legal Aid Dispensary" as early as 1905. *See* Merson, *Denver Law Students in Court: The First Sixty-Five Years*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138 (U. of Chicago Law School Conference Series No. 20) (E. Kitch ed. 1970) [hereinafter cited as LAW SCHOOL OF THE FUTURE].

2. The literature on clinical legal education is collected in part in two valuable bibliographies. G. GROSSMAN, CLINICAL LEGAL EDUCATION: AN ANNOTATED BIBLIOGRAPHY (Council on Legal Education for Professional Responsibility 1974); Snyman, *A Proposal for a National Link-Up of the New Legal Services Corporation Law Offices and Law School Clinical Training Programs*, 30 J. LEGAL EDUC. 43, 56-66 (1979) (including some articles relevant only to legal services). A review of recent volumes of the *Journal of Legal Education* confirms this observation. *See* Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 536 n.3 (1976) (author suggests reading "every other article in the Journal of Legal Education" for authority that there is no shortage of solutions to the perceived failings of legal education). Two law review symposia devotcd largely to clinical legal education have been published in the past year. *See Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345, 345-848 (1980); *Symposium*, 40 MD. L. REV. 203, 203-347 (1981).

the educational goals of clinical education justify the place that these programs now occupy in law school curricula.[3] Although the participants have not been able to identify a single set of educational goals, the goals most often cited—training law students in lawyering skills, introducing students to the full scope of the legal system and its actors, and developing in students an understanding and appreciation of professional responsibility issues[4]—all empha-

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3. Some commentators have argued that providing legal services is the primary goal of clinical legal education. *See, e.g.*, Kitch, *Clinical Education and the Law School of the Future*, in LAW SCHOOL OF THE FUTURE, *supra* note 1, at 15-16; *see also* Paulsen, *Involvement and Clinical Training: An Evaluation*, 41 U. COLO. L. REV. 461 (1969). Others have propounded the service goal in the criminal law context. *See, e.g.*, Spangenberg, *Legal Services for the Poor: The Boston University Roxbury Defender Project*, 1965 U. ILL. L.F. 63. *But see id.* at 72 ("Let us also not lose sight of the educational value of these programs for the future members of the bar."). Although the provision of legal services to the community is a welcomed by-product of any clinical program, the majority of clinical legal educators are right to emphasize the educational values of clinical legal education. *See, e.g.*, Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Ferren, *The Teaching Mission of the Legal Aid Clinic*, 1969 LAW & SOC. ORD. 37; Vetri, *Educating the Lawyer: Clinical Experiences as an Integral Part of Legal Education*, 50 OR. L. REV. 57 (1970). Obviously, educational and service goals are not mutually exclusive in this context. *See* Johnson, *Education Versus Service: Three Variations on the Theme*, in CLINICAL EDUCATION FOR THE LAW STUDENT 414 (Council on Legal Education for Professional Responsibility 1973).

The question whether law schools are obligated to provide legal services to the community has been addressed on its own merits outside of the specific context of clinical legal education. *See, e.g.*, Broden, *A Role for Law Schools in OEO's Legal Services Program*, 41 NOTRE DAME LAW. 898 (1966); Brown, *The Trumpet Sounds: Gideon—A First Call to the Law School*, 43 TEX. L. REV. 312 (1965). *See generally* McGee, *Universities, Law Schools, Communities: Learning or Service or Learning and Service?*, 22 J. LEGAL EDUC. 37 (1969). For a discussion of problems associated with student representation in criminal cases, see Hardaway, *Student Representation of Indigent Defendants and the Sixth Amendment: On a Collision Course?*, 29 CLEV. ST. L. REV. 499 (1980).

4. *See, e.g.*, Gorman, *Clinical Legal Education: A Prospectus*, 44 S. CAL. L. REV. 537, 551-55 (1971); Kitch, *supra* note 3, at 13-20; Meltsner & Schrag, *Report From a CLEPR Colony*, 76 COLUM. L. REV. 581, 584-87 (1976); Vetri, *supra* note 3, at 62-69. If one of these goals is singled out over the others, it tends to be the teaching of professional responsibility. *See, e.g.*, Barnhizer, *supra* note 3, at 71-79; Sacks, *Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility*, 20 J. LEGAL EDUC. 291 (1968). The goal of introducing students to the full scope of the legal system can be achieved with a wide variety of approaches. In a recent article, Professors Wizner and Curtis urged that clinical programs should both introduce students to "the workings of the legal system," and provide a laboratory for students and faculty to study and develop reform in areas of substantive law and parts of the legal process. See Wizner & Curtis, *"Here's What We Do": Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 678-79 (1980). Others outside of the clinical context have addressed the goal of developing skills. *See, e.g.*, Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel*, 49 FORDHAM L. REV. 1 (1980); *The Place of Skills in Legal Education: 1944 Report of the Committee on Curriculum of the Association of American Law Schools*, 45 COLUM. L. REV. 345 (1945). Commentators also have proposed other goals for clinical legal education. *See, e.g.*, Clark & Leleiko, *House Counsel for the Poor—An Experiment in Clinical Legal Education*, 17 How. L.J.

size the ability to offer new areas of substantive learning as the primary, if not exclusive, value of clinical legal education. Consistent with the establishment of these goals, either separately or in some combination with one another, proponents of clinical education have presented and justified their techniques to the legal community as a way to teach subject matter—the skills of the law practice, the reality of the legal system, and the issues of professional responsibility—that is not taught or cannot be taught effectively in the traditional law school curriculum.[5]

Clinical legal education does offer new subject areas for study in law school, and some advocates justify it on this basis alone.[6] A simple subject matter justification, however, ignores perhaps the most important contribution of clinical legal education to the modern law school. Clinical education is as much a new methodology—a system for teaching law—as it is a vehicle for teaching new areas of law. Although many commentators and clinical teachers recognize that clinical education is a valid method for teaching law, they usually emphasize the expanded substantive material that is

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614 (1972) (increase awareness of legal problems of the poor); Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149 (1979) (contribute to legal scholarship through empirical studies); Levi, *What Can the Law Schools Do?*, 18 U. CHI. L. REV. 746 (1951) (stimulate research); Swords, *The Public Service Responsibilities of the Bar: The Goal for Clinical Legal Education*, 25 U. MIAMI L. REV. 267 (1971) (teach social responsibilities of the legal profession).

5. The early commentators, such as Judge Frank and the first clinical teachers, also had adopted this rationale. *See* Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); *Clinical Lawyer-School*, *supra* note 1. In 1933 Professor Bradway set forth five objectives for his clinic at Duke University Law School that were directed at expanding the substantive content of the law school curriculum: (1) To provide a course in practice through experience; (2) to provide an opportunity for students to synthesize the substantive and procedural law learned in traditional courses; (3) to allow students to learn about the attorney-client relationship; (4) to allow students to learn about the attorney-attorney relationship; and (5) to teach students how cases develop from the beginning. *Distinctive Features*, *supra* note 1, at 469-73. Students also have expressed similar thoughts concerning the primary value of clinical legal education. *See*, Cowgill, Hoerger & Ridberg, *Report of the Student Participants*, in LAW SCHOOL OF THE FUTURE, *supra* note 1, at 29 (summary of law students' central points at the Law Students in Court conference sponsored by the University of Chicago Law School which were largely supportive of clinical legal education because of its ability to expand the substantive content of the curriculum).

6. A subject matter justification for clinical legal education is not necessarily a narrow justification; in effect, it will be as broad as the new subject matter introduced into the curriculum by the clinical program. Thus, the president of the Council on Legal Education for Professional Responsibility put forward a strong subject matter justification for clinical legal education when he argued that clinical programs which emphasized skills, training and issues of professional responsibility would prompt law schools to become "involved as the place to train practioners, and as a center working to reform the machinery of justice through clinical work." Pincus, *The Clinical Component in University Professional Education*, 32 OHIO ST. L.J. 283, 296 (1971).

made available to the law student, rather than the value of the clinical approach as a teaching method, as the primary value of clinical legal education.[7] There are, of course, exceptions to this trend in emphasis. For example, when Gary Bellow wrote about the elements of clinical methodology for an early conference on clinical education, he urged that putting students in a professional role, using students' experiences as a focus for instruction, and teaching under the tensions inherent in the teacher-student/supervisor-supervisee relationship of clinical law practice are conditions that facilitate learning.[8] Similarly, Robert Condlin in a recent article examined actual dialogues between clinical teachers and law students to explore how clinical teachers teach and to determine whether the full potential of clinical legal education as a teaching method is being realized.[9]

Nevertheless, a fully satisfactory examination of the goals and values of clinical legal education remains to be made. In particular, a coherent, methodology-based justification for clinical programs does not exist. Future inquiries into these matters unquestionably should recognize both the expansion in substantive content and the improvements in teaching methods that the addition of a clinical component to legal education can effect at law schools.[10] It

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7. Although Professor Bradway stated that "[t]he clinic course differs from other methods of instruction in approach, in method, and in material or content," *Distinctive Features, supra* note 1, at 472, when he compared the clinical method with lecture, textbook, and case methods of instruction, he emphasized that students can learn much more in a clinical setting, not that they can learn any better. *Id.* at 472-73.

8. Bellow, *On Teaching The Teachers: Some Preliminary Reflections on Clinical Education As Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT, *supra* note 3, at 379-94.

9. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981). Professor Condlin's results suggested to him that clinical teachers may be teaching in a manner that is not all that different from traditional law teachers. Condlin, however, believes that clinical instruction—if properly implemented by what he calls the "learning mode" rather than the "persuasion mode"—is a valuable and unique teaching method. *Id.* at 275.

10. Professors Bellow and Johnson recognized the interplay of both of these values of clinical education when they planned their clinical semester at the University of Southern California:

> [I]f understanding and knowledge are the focus of legal education, then the small portion of lawyer experience on which law schools presently concentrate is far too narrow a context for the intensity and expense of our endeavors. In part it was this problem that led U.S.C. to experiment with enlarging the experiences, problems, and contexts within which teaching and learning could occur.

Bellow & Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664, 688-89 (1971). Similarly, when Professor Barnhizer urged that the clinical method is well suited to teach professional responsibility, he also set forth several critical elements of successful clinical instruction that must exist to establish a favorable

is also appropriate, however, to single out the generally overlooked value of clinical legal education as an innovative methodology and to examine whether this value can provide a more substantial, lasting justification for clinical legal education than those rationales that have been propounded in the past. This Article seeks to establish a new justification for clinical legal education based on its value as methodology. This justification is founded on a new concept in education theory that provides a consistent and logical rationale both for adopting a methodology-based justification for clinical education and for considering certain related implications.[11]

Modern education theory has produced the concept of andragogy, which when applied to professional legal education, focuses on one particular aspect of this type of education that tends to be ignored when educational goals are discussed, either for law schools generally or in the specific context of the value of clinical legal education. This aspect is that law students are experienced students, are at least in their early twenties and often much older, and are about to begin—and in many cases are already participating in—the practice of law. Andragogical theory originally was designed to provide a framework for analyzing teaching programs for adults.[12] The theory, therefore, can in turn serve as a coherent, theoretical background for a methodology-based justification both for the clinical method of legal instruction and for the addition of a clinical component to the law school curriculum. In the following sections of this Article the basic concepts of andragogy are discussed and examined to explore the andragogical basis for using the clinical method for teaching law students. The Article makes suggestions about how an understanding of andragogical principles can improve the quality of clinical instruction in particular and, therefore, the quality of legal education in general. After this general discussion of andragogy and clinical legal education, suggestions are also made concerning the details of implementing a proposed andragogical model for clinical programs.[13]

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climate for learning. Barnhizer, *supra* note 3, at 72-75.

11. As noted earlier, clinical educators have touched upon the value of clinical education as methodology. *See supra* text accompanying notes 7-9; *see also infra* text accompanying notes 60-85. No commentator, however, has transformed these observations into any coherent, theoretical framework, and, as a result, the observations tend to be idiosyncratic. Consequently, no identifiable clinical methodology has emerged. *Compare* Bellow, *supra* note 8, *with* Barnhizer, *supra* note 3.

12. *See infra* notes 16-18 and accompanying text.

13. *See infra* notes 86-118 and accompanying text.

No single model for implementing the clinical method is universally accepted.[14] As a result, a certain imprecision inheres in the term "clinical legal education" that must be addressed at the outset of any inquiry into this field. For the purposes of this Article, the term clinical legal education—including variations such as "clinical programs" and "the clinical method"—refers to any law school course or program in which law students participate in the representation of actual clients under the supervision of a lawyer/teacher. Courses limited to simulation and unsupervised placements, therefore, are not included in the definition.[15]

II. ANDRAGOGY

In a seminal work that was published in 1970, Malcolm S. Knowles introduced the concept of andragogy to modern education theory to separate the concerns that are peculiar to adult education from those theretofore addressed in traditional education literature.[16] In coining the new term, which is derived by substitut-

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14. *See* Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 173-86 (1974); Meltsner & Schrag, *supra* note 4, at 587-624.

15. Most clinicians use simulations to some extent as a part of their method of instruction. Indeed, clinical teachers who write on simulation as a teaching technique often include actual client representation as an element in their program. Thus, the authors of a widely circulated text on simulation concluded after experimentation that simulation alone was not a satisfactory clinical experience. *See* M. MELTSNER & P. SCHRAG, TOWARD SIMULATION IN LEGAL EDUCATION (1975); Meltsner & Schrag, *supra* note 4, at 624-28; *see also* Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy For Clinical Legal Education*, in GUIDELINES FOR CLINICAL LEGAL EDUCATION 191 (Association of American Law Schools/American Bar Association 1980); Bastress & Harbaugh, *Examining Lawyers' Skills*, in *id.* at 223, 227. In its recent report the Committee on Guidelines for Clinical Legal Education of the Association of American Law Schools and the American Bar Association concluded that "the clinical legal studies curriculum should, if at all possible, include some experience working on live cases or problems." *Id.* at 65. *Cf. id.* at 20 (actual guideline for the use of clinical teaching methods states: "Where resources, cases, and law permit, law student work on live cases or problems is a valuable but not an exclusive [clinical] method"). Legal educators in the past have raised concerns about the additional costs of having actual client representation clinics rather than relying solely on simulation techniques. *See, e.g.*, ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971 (P. Carrington ed. 1971), in 1971 AALS PROCEEDINGS, Part 1, § II, at 41 [hereinafter cited as TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW]. *But see* Brickman, Book Review, 1972 U. ILL. L.F. 843, 850-52.

The exclusion of unsupervised placements from the term clinical legal education needs no explanation. *See generally* Camphell, *Training Law Students Outside the Classroom: Some Experience and Some Comments*, 26 J. LEGAL EDUC. 208 (1974). *See also* Wizner & Curtis, *supra* note 4, at 681-82.

16. M. KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION (1970). For a discussion of some similar concerns in a very different context, see P. FRIERE, PEDAGOGY OF THE OPPRESSED (1970). Friere, a Brazilian educator, criticizes traditional teacher-dominated relationships and suggests mutual interaction between teacher and student as the basis for a

ing the Greek stem *andr*, meaning adult, for the stem *paid*, meaning child, as the latter is used in the term pedagogy, Knowles intended to communicate that andragogy is "the art and science of helping adults learn."[17] Knowles felt that a distinction between andragogy and traditional pedagogy was necessary because, as the dominant use of the term pedagogy in education literature implies, "most teachers of adults have only known how to teach adults as if they were children."[18]

Before examining the basic elements of Knowles' andragogy and the appropriateness of its application to clinical legal education, at least three limitations on the discussion must be recognized. First, professional education of adults is fundamentally different from the general field of adult education that applies andragogical theory to activities such as continuing, remedial, and supplemental education programs. The typical participants in adult education programs attend part-time, postformal education courses that concentrate on specific vocational skills or specialty subjects which are designed for personal enrichment or amusement.[19] Second, although adults are distinguishable from children in certain educationally relevant ways that make the theory of andragogy useful, the types and ages of adults vary widely, and law students are not necessarily typical of the adult learners that are the focus and subject of andragogical literature.[20] Last, despite its great impact on the field of adult education, not all educators are convinced that even the basic premises of andragogy are either cor-

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politically-oriented pedagogy aimed at liberating the oppressed. *Id.* at 57-118.

17. M. KNOWLES, *supra* note 16, at 38. The book is subtitled *Andragogy Versus Pedagogy*. Apparently, the term andragogy had surfaced earlier in some European education literature. *See* M. KNOWLES, THE ADULT LEARNER: A NEGLECTED SPECIES 49-50 (2d ed. 1978).

18. M. KNOWLES, *supra* note 16, at 37. Knowles also stated that "[m]ost of what is known about learning has been learned from studies of learning in children and animals." *Id.*

19. *See generally* ADULT LEARNING (M. Howe ed. 1977); R. HAVIGHURST & B. ORR, ADULT EDUCATION AND ADULT NEEDS (1956); A. KNOX, ADULT DEVELOPMENT AND LEARNING (1977). Continuing legal education, which is in many ways analogous to general adult education, is not within the scope of this Article. *See infra* note 50.

20. *See* Morstain & Smart, *A Motivational Typology of Adult Learners*, 48 J. HIGHER EDUC. 665 (1977) (study presenting a typological framework of adult learners to analyze their motivation identified five distinct types: Nondirected; social; stimulation seeking; career oriented; and life change); *see also* Lebel, *Beyond Andragogy to Gerogogy*, 1 LIFELONG LEARNING: THE ADULT YEARS 16, 18 (1978) (the adult learner described by Knowles "is not functionally descriptive of the elderly learner"); *cf.* Meyer, *Andragogy and the Aging Adult Learner*, 2 EDUC. GERONTOLOGY 115 (1977) (andragogically based model for aging student learners found to be effective).

rect or valuable.[21] Nonetheless, andragogy provides legal educators with a coherent and viable theory of instruction that is applicable to adult law students. Andragogical theory presents optimal conditions for adult learning by establishing norms for the instructor that offer distinct advantages over the existing literature on legal education.[22] As a theory of instruction, andragogy can be useful both to evaluate existing methods of law teaching—including the clinical method—and to suggest possible improvements of those methods.

A. Underlying Assumptions of Andragogy

Knowles' theory of andragogy is premised on four underlying assumptions about the characteristics of adult learners that are drawn largely from the work of clinical psychologists such as Abraham H. Maslow and Carl R. Rogers.[23] These assumptions relate to how self-concept, the role of experience in learning, readiness to learn, and orientation to learning change from childhood to adulthood; they lead to the conclusion that adults are substantially different from children in these respects and that a theory of instruction that takes into account the self-concept of adults, the role of experience in adult learning, adults' readiness to learn, and their orientation to learning will of necessity differ from a theory based on traditional pedagogy.

The first assumption which Knowles makes is that adults see themselves as self-directing personalities, unlike children who expect the will of adults to be imposed on them. Adults' self-concept is such that they expect to make their own decisions, face the con-

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21. *See* McKenzie, *The Issue of Andragogy*, 27 ADULT EDUC. 225 (1977); Weiland, *Ungarnered Harvest: Adult Learners and Liberal Education*, 43 LIBERAL EDUC. 477 (1977) (most questions raised about andragogy relate to the purpose of adult education, not how to teach adults). *Compare* Lebel, *supra* note 20, *with* Meyer, *supra* note 20. *But see* authorities cited *infra* note 47.

22. *See* Coleman, *Differences Between Experiential and Classroom Learning*, in EXPERIENTIAL LEARNING 49 (M. Keeton ed. 1976). *See generally* J. BRUNER, TOWARD A THEORY OF INSTRUCTION (1966). Knowles recognizes that although techniques have been developed for teaching adults, the writings on the processes of adult learning have not supported them. M. KNOWLES, *supra* note 17, at 27. Legal education literature traditionally has included only descriptive analyses of how and what law students can learn. For a discussion of existing articles on the clinical method of legal instruction, see *infra* notes 89-90 and accompanying text.

23. *See* M. KNOWLES, *supra* note 17, at 39-43; M. KNOWLES, *supra* note 16, at 24-28. Knowles seems to have relied particularly on A. MASLOW, MOTIVATION AND PERSONALITY (1954), and C. ROGERS, CLIENT-CENTERED THERAPY (1951).

sequences of their decisions, and manage their own lives.[24] Indeed, Knowles asserts that one becomes an adult psychologically only when one perceives of oneself as wholly self-directing.[25]

The second assumption underlying the theory of andragogy is that adults accumulate a greater amount and variety of experience than children, and, as a result, their experience becomes a greater resource for learning.[26] In addition, Knowles argues that this difference of quantity and quality of experience is heightened by a difference between children and adults as to the importance of their experiences to them. According to Knowles, while children take note of their experiences,"to an adult, his experience *is* him. He defines who he is, establishes his self-identity, in terms of his accumulation of a unique set of experiences."[27]

The third assumption is based on the concept of "developmental tasks." Developmental tasks are those tasks that must be dealt with at various stages in life if one is to pass from one phase of personal development to the next.[28] Educators have found that children demonstrate a heightened readiness to learn those tasks that are appropriate for them to master at a given phase of their development.[29] Knowles assumes from this finding that adults also will have a heightened readiness to learn those developmental tasks that are appropriate for them. Adult developmental tasks are keyed primarily to the various social roles that adults must fulfill.[30] Thus, as adults' social roles change, their developmental tasks change, and their readiness to learn any particular subject matter or skill changes with each change in appropriate developmental tasks.

Knowles' final assumption is that adults seek to apply learning immediately, while children tend to see acquired knowledge solely as a future benefit. Since education to children is the accumulation of knowledge for future use, children study in a subject-centered frame of mind.[31] By contrast, adults "engage in learning largely in response to pressures they feel from their current life situation. . . .

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24. M. KNOWLES, *supra* note 16, at 39-40.
25. *Id.* at 40.
26. *Id.* at 44.
27. *Id.* (emphasis in original).
28. *See generally* R. HAVIGHURST, DEVELOPMENTAL TASKS AND EDUCATION (1961).
29. M. KNOWLES, *supra* note 16, at 45-46.
30. *Id.* at 46-47.
31. *Id.* at 48. Thus, Knowles asserts that children learn in elementary school to prepare for high school, learn in high school to prepare for college, and learn in college to prepare for adult life. *Id.*

They tend, therefore, to enter an educational activity in a *problem-centered* frame of mind."[32]

B. *Methodological Implications of the Underlying Assumptions of Andragogy*

Each of the four underlying assumptions of andragogy led Knowles to a set of related "technological implications" for the education of adults. These implications in turn can serve as a guide for an andragogical methodology for legal education in general and for clinical legal education in particular.[33] Before applying this methodology, however, Knowles' implications for each of the assumptions of andragogy must be examined in some detail.

1. Self-Concept

Knowles considers the change in self-concept—from the dependent child to the self-directing adult—to be the most important difference between children and adults as learners.[34] The methodological implications of this change for teachers of adults reach into the climate of the learning environment to be established and the relationship between learner and teacher in planning, conducting, and evaluating the course of study.

According to Knowles, the most important aspect of the adult learning environment is the psychological climate, which "should be one which causes adults to feel accepted, respected, and supported; in which there exists a spirit of mutuality between teachers and students as joint inquirers."[35] Knowles believes that andragogical methodology requires teachers to show interest in and respect for their students by listening to them and making use of their contributions; educators should not view their students as "receiving sets for [the teacher's] transmissions of wisdom."[36] Knowles also argues that this "climate of adultness" is most effective when extended beyond individual classes to the institution as a whole.[37]

Knowles discusses two aspects of course planning in the con-

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32. *Id.*

33. *See infra* notes 49-118 and accompanying text.

34. M. KNOWLES, *supra* note 16, at 44.

35. *Id.* at 41. Knowles also mentions that physical climate (*e.g.*, furnishings and decorations) can be of some concern when adults are taught in programs that are located at facilities which were designed for children. *Id.*

36. *Id.*

37. *Id.*

text of the self-concept of adults and andragogical methodology. The first of these aspects is that self-directing adults can be expected to be more deeply motivated when they are learning what they think they need to learn and when they participate in the planning of their course of study. Accordingly, students in an andragogically sound educational setting are required to participate both in the diagnosis of their learning needs and in the planning of how and when they are to be taught.[38]

The second aspect relates to the actual process of teaching and to the evaluation of learning for self-directing adults, and follows the same theme. Knowles argues that the attitudes underlying traditional pedagogical practice—in which the teacher alone takes responsibility for teaching and learning, as well as for evaluating the students' progress and performance—conflict with the self-concept of self-directing adults. To correct this conflict, andragogical practice calls for dividing responsibility equally between teacher and student for the execution of the teaching process and the evaluation of learning.[39]

2. Role of Experience

Andragogical methodology favors participatory, experiential learning techniques—for example, exercises, role playing, field work, seminars, and counseling—to reinforce the important role of experience in the lives and learning of adults.[40] The assumption is that "the more active the learner's role in the process, the more he is probably learning."[41] Because of the importance that adults place on experiences, they naturally want to learn from experience; indeed, they may even resent learning situations in which their experience is not being used. For this reason, adults' experiences are included in andragogical methodology both by encouraging the use of students' life experiences as illustrations and examples for learning, and by planning for students to use what they learn in their

38. *Id.* at 41-42. Knowles asserts that teachers who do all the planning for adult students tend to encounter apathy, resentment, and withdrawal from their students. *Id.* at 42. He states that "this imposition of the will of the teacher is incongruent with the adult's self-concept of self-directivity." *Id.*

39. *Id.* at 42-44. In his own teaching experience, Knowles has tried to avoid a common pitfall of pedagogical practice: "[T]each[ing] my students something I know they ought to know but that they don't yet know they ought to know." He believes adult students find that such overdirection inhibits their learning. *Id.* at 43.

40. *Id.* at 44-45. *See generally* Coleman, *supra* note 22; Houle, *Deep Traditions of Experiential Learning*, in EXPERIENTIAL LEARNING, *supra* note 22, at 19.

41. M. KNOWLES, *supra* note 16, at 45.

daily lives.[42]

3. Readiness to Learn

Concerning adults' readiness to learn, Knowles presents two methodological implications that he derives from applying the concept of developmental tasks to adult education. First, Knowles believes that because adults' developmental tasks parallel their social roles, adult students should be taught matters that relate to existing or changing social roles appropriate to their personal development.[43] Thus, the curriculum must be timed to coordinate the teaching of subjects or skills with the developmental tasks facing the students at that time. Second, Knowles argues that students who must deal with similar developmental tasks, that is, those with similar social roles, should be grouped together so the course of instruction can focus on their shared interests in learning.[44]

4. Orientation to Learning

The major element of andragogical methodology that is related to adults' orientation to learning is based on the change in adults from a subject-centered to a problem-centered frame of mind. Thus, andragogical methodology calls for a shift in emphasis from teaching the traditional subject areas to teaching material likely to assist students in dealing with problems they will encounter. A proper andragogical approach would teach about problem areas that the students will deal with at or close to the time of learning, rather than offer broad coverage of general subjects that have little or no relation to the students' relatively short-term goals and ambitions.[45]

C. *The Application of Andragogy Beyond Adult Education*

As noted earlier, Knowles' work on andragogy has been followed and debated in the literature on adult education.[46] Recently,

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42. *Id.*

43. *Id.* at 47. Knowles poses the example of unsuccessful attempts to teach supervision techniques to workers who are not yet secure in doing the jobs that they would be called upon to supervise. *Id.*

44. *Id.* at 47-48.

45. *Id.* at 48-49. Of course, the teacher cannot allow the student's short-term goals to limit the course of study absolutely. Knowles does not mean to suggest "tbat a good adult-learning experience ends with the problems the learners are aware of in the beginning, but that is where it starts." *Id.* at 49.

46. *See supra* note 21 and accompanying text. *See also* M. KNOWLES, SELF-DIRECTED

educators have begun to discuss and apply andragogical theory to educational programs outside of the field of adult education—including various fields of professional education. Two recent studies found that andragogical methodology which emphasized self-direction and active, experiential learning was effective in the training of social workers.[47] Another recent study reached similar conclusions concerning the training of nurses.[48] Obviously a number of similarities exist between andragogical methodology and the clinical method of legal instruction, particularly in the use of experiential learning techniques. In part III of this Article, the basic assumptions and methodological implications of andragogy are discussed, and the potential application of these assumptions and implications to clinical legal education is analyzed.

III. ANDRAGOGY AND CLINICAL LEGAL EDUCATION

As with any general theory based largely on a single idea, a danger of tautology exists when one attempts to explain and apply the theory of andragogy at a practical level through numerous examples. Although Knowles and those following him have elaborated upon and expanded the four basic assumptions of andragogy and the methodological implications based on those assumptions,[49] the important elements of each andragogical assumption can be reduced to a single methodological point. These points can be presented, in declining order of importance, as follows: (1) Learning should be through mutual inquiry by teacher and student (adults' self-concept as self-directing); (2) emphasis should be on

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LEARNING (1975); J. Ingalls & J. Arceri, A Trainers Guide to Andragogy, Its Concepts, Experience and Application (1972) (unpublished report available from Educational Resources Information Center, Washington, D.C.).

47. *See* Faherty, *Continuing Social Work Education: Results of a Delphi Survey*, 15 J. EDUC. SOC. WORK 12 (1979); Gelfand, Rohrich, Nevidon & Starak, *An Andragogical Application to the Training of Social Workers*, 11 J. EDUC. SOC. WORK 55 (1975).

48. Tibbles, *Theories of Adult Education: Implications for Developing a Philosophy for Continuing Education in Nursing*, 8 J. CONT. EDUC. NURSING 25 (1977). Tibbles concluded that "[g]ood planning and good teaching takes into account the adult need to be self-directive. Learning should be both problem-centered and experience-centered. The adult educator should be cognizant that readiness facilitates learning and that readiness in adults is related to developmental requirements of social roles." Tibbles, *supra* note 47, at 28. *See generally* Knowles, *Innovations in Teaching Styles and Approaches Based upon Adult Learning*, 8 J. EDUC. SOC. WORK 32 (1972). For other applications of andragogy outside of the field of adult education, see McCullough, *Andragogy and Community Problem Solving*, 2 LIFELONG LEARNING: THE ADULT YEARS 8 (1978); D. Brundage & D. MacKeracher, Adult Learning Principles and Their Application to Program Planning (1980) (unpublished report available from Educational Resources Information Center, Washington, D.C.).

49. *See supra* notes 46-48 and accompanying text.

active, experiential learning (role of experience in adult leaning); (3) learning should relate to concurrent changes in the students' social roles (readiness to learn); and (4) learning should be presented in the context of problems that students are likely to face (orientation to learning).

These four central elements of andragogy and their related methodological implications provide a theoretical framework for examining the appropriateness of the methods by which law is taught to adult law students both in clinical programs and throughout legal education. This theoretical framework offers legal educators the opportunity to plan a course of law study that is fully consistent with the capabilities and aspirations of adult law students. Although the purpose of this Article is to consider andragogy as it applies to clinical programs, a few observations about andragogy and legal education in general will help put in context the subsequent discussions of the andragogical basis of and a proposed andragogically-based model for clinical legal education.[50]

A. Andragogy and Traditional Legal Education

The application of the methodological implications of Knowles' andragogy to legal education does not lead to a wholesale indictment of the traditional case method of instruction as hopelessly nonandragogical. Indeed, although Knowles was primarily concerned with developing theories about the means of adult learning, he recognized that case method parables and Socratic dialogue are examples of useful techniques of adult education that have existed since ancient times.[51] Moreover, some aspects of

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50. Continuing legal education is not addressed in this Article other than to note that in theory such programs are the component of legal education that is most analogous to adult education, but that in execution they are the least compatible with andragogical theory with the exception of some courses in trial advocacy. Most continuing legal education programs are offered in the form of live or tape-recorded lectures. *See* Cavin, *Continuing Legal Education: A Non-Objective View*, 30 BAYLOR L. REV. 717, 718 (1978). The only consistent departure from this format has been in the area of trial practice, in which courses like those offered by the National Institute on Trial Advocacy and state bar associations use problems and exercises that are based on simulations. For a discussion of the value of participatory trial advocacy courses in the context of continuing legal education, see McCauliff, *Trial Advocacy: Improving the Quality of Legal Services Through Continuing Legal Education Courses*, 30 J. LEGAL EDUC. 536 (1980).

The field of continuing legal education has an entirely different mission from that of traditional legal education, and, as a result, it has produced its own literature. *See, e.g.*, Cavin, *supra*; Darrell, *The Role of the Universities in Continuing Professional Education*, 32 OHIO ST. L. REV. 312 (1971); Friday, *Continuing Legal Education: Historical Background, Recent Developments, and the Future*, 50 ST. JOHN'S L. REV. 502 (1976).

51. M. KNOWLES, *supra* note 16, at 27; *see also supra* note 22.

traditional law teaching methods not only are fully consistent with andragogical theory, but also are premised—at least to some extent—on a recognition that law students are adult learners.[52]

One example—the act of really listening to what the student says—is a technique of the case method of instruction which is necessitated by its reliance on Socratic dialogue. This technique requires mutual respect between teacher and student and is central to the andragogical notion of deferring to the self-concept of adults.[53] In addition, the traditional dialogue between law teacher and student that requires the student to analyze a case and explore legal doctrine is itself an experiential learning technique, since the process of case analysis is not taught in the abstract but instead takes place with student participation at the time of learning.[54] The exchange between teacher and student in the classroom does not reach the andragogical standard of true mutual inquiry, however, at least to the extent that the teacher plans the dialogue in advance and waits for certain answers that are used together with assigned case materials to convey a particular mode of analysis or point of law.[55] Moreover, law students, particularly in the second and third years, can choose not to participate in class and thus adopt a passive role for most, if not all, of a course.

At least in a general sense, traditional legal education also meets the andragogical concern that the content of law study should match law students' readiness to learn and their orientation to learning. By its very nature as professional training, legal education takes into account the students' approaching changes in social roles and orients learning to problems they are likely to encounter in law practice. After all, law schools exist to enable law students to become lawyers.[56] After the first year, however, law students

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52. This Article does not intend either to advocate or to discredit the traditional methods of legal education. *But see* Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1970); Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

53. M. KNOWLES, *supra* note 16, at 41. Unfortunately, law teacher listening is not always coupled with the interest in and respect for students that Knowles finds necessary for optimal learning. *Id.*; *see also supra* notes 35-36 and accompanying text.

54. Bellow and Johnson support their argument that students should engage in actual problem solving and decision making in order to learn the dynamics of those processes when they state that "[w]e would not dream of teaching a student to analyze a case solely by telling him about the case analysis process." Bellow & Johnson, *supra* note 10, at 690-91.

55. *Cf. infra* text accompanying notes 95-96 (discussing simulation as a clinical method).

56. Regardless of a particular law school's place on the continuum from an "academic" to a "professional" orientation, most law students go to law school to become lawyers. *See*

often view traditional methods of legal instruction and the preparation required for traditional law classes to be far removed from the type of professional education that they are ready to receive.[57]

In sum, the basic elements of andragogy are found—at least to some extent—in the traditional methods of legal instruction. As Charles Reich has observed, however, law students "are not really treated as adults. They are made to feel that they are beginning their education all over again, and the classes put very little emphasis upon individual work and thinking."[58] This brief discussion, therefore, indicates that even traditional law teachers could improve their teaching with a careful reading of Knowles' work.[59]

B. *Andragogy and Clinical Legal Education*

The clinical method is now an accepted technique for teaching law,[60] notwithstanding the absence of either any empirical evidence

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generally Levi, *The Place of Professional Education in the Life of the University*, 32 OHIO ST. L. REV. 229 (1971).

57. Writing fifty years ago on the third year of law school, Felix Frankfurter noted that "[a]t the end of the second year [law students] 'are sick' of reading cases merely as a method of training or as a means of finding out what cases hold, what the doctrines are." Memorandum from Felix Frankfurter to Grenville Clark (May 12, 1932), *reprinted in* Dunne, *The Third Year Blahs: Professor Frankfurter After Fifty Years*, 94 HARV. L. REV. 1237 (1981) (1932 memorandum by Felix Frankfurter entitled "Some Observations on Third Year Work" reproduced in unedited form). Obviously, treatment of material and students' perceptions can vary from course to course. Thus, Frankfurter also stated that, "[o]n the other hand, where the case is treated as a case and not merely as the depository of a holding, it is necessary to read the case, and the same student who had not read a case in two other courses sedulously read every case in [Public Utilities]." *Id.* at 1238.

58. Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402, 1403 (1965). Traditional law teachers recognize the "problems of boredom and disengagement which seem to plague traditional law teaching." Boyer & Cramton, *American Legal Education: An Agenda For Research and Reform*, 59 CORNELL L. REV. 221, 281 (1974).

59. For example, teachers could establish a greater sense of mutual inquiry with students by presenting at least a few new hypotheticals in each class that they had not worked through beforehand and letting the students know that they would be analyzing the issues together with the teacher for the first time. Another change that andragogical theory suggests—the use of problem-oriented materials—has already begun to take place in the traditional curriculum. *See infra* text accompanying note 84.

60. Acceptance, however, does not mean universal acclaim. Clinical programs have their critics in the law school community, but the argument that the clinical method of legal instruction is a passing fad or a temporary appendage to older, traditional teaching methods is outdated. For discussions of the debate over the value of clinical legal education, see Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 881-92; Grossman, *supra* note 14. *See generally* W. PINCUS, CLINICAL EDUCATION FOR LAW STUDENTS (1980). Perhaps the best indication of the acceptance of the clinical method as part of the system of legal education in this country occurred in 1977 when the Association of American Law Schools and the American Bar Association established a joint committee to propose guidelines for clinical legal education, which published an extensive

of its effectiveness or any accepted educational basis for clinical programs.[61] Clinical legal education has been accepted because legal educators know that it has, in fact, become a significant part of the system of legal education in this country.[62] Andragogical theory provides a new and more substantial reason for welcoming this success because it shows how and why clinical legal education meets the educational needs of adult law students at the threshold of their professional careers.

Law students, of course, are a varied group. At a minimum, they are college graduates, and in many cases they have worked or have participated in some form of nonlaw, postgraduate education. Law students, therefore, clearly are adults, and the concerns that led to Knowles' andragogy thus are undoubtedly relevant to the field of legal education. Moreover, the first year of law school is uniformly perceived to be a unique experience for all law students—at least to the extent that they must be introduced to new areas of study and new methods of inquiry. As a result, the second

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report in 1980. *See* GUIDELINES FOR CLINICAL LEGAL EDUCATION, *supra* note 15.

61. *See supra* text accompanying notes 3-10; Barnhizer, *supra* note 3, at 67 ("Despite [the] expansion [of clinical programs], however, there has been a failure to sufficiently develop the theoretical dimensions of clinical legal education."). Clinicians need not be particularly defensive about the lack of an accepted educational basis for clinical programs, because clinical education is no different in this regard from the rest of legal education. *See* Lowry & Kennedy, *Clinical Law in the Area of Mental Health,* 1979 WIS. L. REV. 373, 386 ("law schools have yet to estahlish a coherent pedagogical theory of traditional legal education and are, consequently, unable to provide a critical theory of law clinics and other such innovations"); *cf.* Allen, *The New Anti-Intellectualism in American Legal Education,* 28 MERCER L. REV. 447 (1977) (Professor Allen states,

> It is probably true that the greatest obstacle before the clinical movement has not been the opposition of the law teachers who object to it on basic intellectual or pedagogical grounds. More important have been the doubts of other established faculty members, who are by no means unsympathetic to the asserted ends of clinical training but who are bewildered about how to evaluate the quality of clinical programs and instructors, how to determine what features of traditional education should be sacrificed to make way for it and how to pay for it.

Id. at 456).

62. Annual reports on clinical legal education published by the Council on Legal Education for Professional Responsibility (CLEPR) from 1971 to 1979 demonstrate the tremendous growth rate of clinical programs in this country's law schools during the past decade. *See* SURVEY OF CLINICAL AND OTHER EXTRA-CLASSROOM EXPERIENCES IN LAW SCHOOLS 1970-1971 (CLEPR 1971); SURVEY OF CLINICAL LEGAL EDUCATION 1971-1972, 1972-1973, 1973-1974 (CLEPR 1972, 1973, 1974); SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1974-1975, 1975-1976, 1976-1977, 1977-1978, 1978-1979 (CLEPR 1975, 1976, 1977, 1978, 1979). The clinical programs at 57 law schools are described in Appendix, *Selected Summaries of Law School Clinical Programs,* 29 CLEV. ST. L. REV. 735 (1980) [hereinafter cited as *Selected Summaries*]. Almost all state courts and many federal courts allow supervised student practice, usually only in the third year of law school. *See* Appendix, *Student Practice Rules,* 29 CLEV. ST. L. REV. 817 (1980).

and third years of law school must be designed to take into account that second and third year law students are different from those who first enter law school.[63] Often by their second year, and almost certainly by their third year, law students have spent a summer working in a law office and may be working part-time during the year; thus, the line between approaching entry and actual entry into the profession becomes blurred. How clinical legal education can meet the requirements of an andragogically based program of instruction for such experienced, adult law students is the subject of the following subsections.

1. Learning Through Mutual Inquiry by Teacher and Student

The recognition of adults as self-directing learners is the most important source of the departures from traditional pedagogy that are contained in Knowles' andragogy. The key methodological implication that follows from this recognition is the creation of a learning climate which includes what Knowles calls "a spirit of mutuality between teachers and students as joint inquirers."[64] The idea is that teachers and their adult students, by working together, can create a setting in which the students are both acting consistently with their self-concept and benefiting from the teaching of their co-inquirer/teacher.

The clinical method of legal instruction applies this aspect of andragogical methodology in a way that is otherwise unavailable in the traditional law school curriculum. Gary Bellow and Earl Johnson describe the unique "two-way street" of the clinical experience and its contrast with traditional law teaching as follows:

> While the combative nature of the socratic method tends to substitute sparring for learning, in a setting in which faculty and students find themselves in a shared enterprise, and in which inquiry is concerned with emotional reaction as well as analysis, the classroom, although rigorous, becomes a mutual search for solutions and knowledge. The instructor receives direct feedback indicating the relevance of his conceptual approach, and is thereby forced to rethink his approaches and perceptions in light of the experiences of those whom he is teaching. If such a dynamic is implicit in the clinical methodol-

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63. This fact has led to suggestions for change in the second and third years of law school. *See, e.g.*, Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1 (1964). Most clinical programs are limited to second and third year students. Some schools, however, such as Northwestern University School of Law, have attempted to introduce a clinical component in the first year. *See* Hyman, *Clinical Education of the First Year*, 6 CLEPR NEWSLETTERS, No. 8, at 2 (Feb. 1974). Students at Yale Law School can begin their general clinical work in the second semester of the first year. *See* Wizner & Curtis, *supra* note 4, at 682.

64. M. KNOWLES, *supra* note 16, at 41.

ogy, this may be its most pervasive contribution to legal education.[65]

The sharing of responsibility for clinic cases creates the proper atmosphere for an optimum andragogical learning experience, which takes place when the teacher uses a shared experience to point out and convey to the student points of law, methods of practice, and elements of the legal process.[66] In this setting all learning does not have to come directly from the teacher; indeed, when a case is so novel or complex that the clinical teacher really must struggle together with the student, the answer may be that there is no answer, and the student both experiences and learns this limit of the rules of law.[67]

Knowles and other educators working in the field of andragogy have found that the adult students for whom a self-directed learning setting is designed do not necessarily welcome this type of environment. When first placed in the position of having to participate actively in the planning and execution of a learning experience, students can be skeptical and even resentful before coming to realize the benefits of this aspect of andragogical methodology.[68] Michael Meltsner and Philip Schrag also noted this

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65. Bellow & Johnson, *supra* note 10, at 694. The "classroom" to which Bellow and Johnson refer is a clinical classroom. *Cf.* Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 1977 B.Y.U. L. REV. 1025, 1028 ("On the theoretical plane the only difference between the Langdellian casebook method and the clinical method of law instruction is in the nature of what is collected to provide the essential material studied by the law student.").

66. Assuming at least a modicum of supervision, all clinical programs operate with students and teachers working together on cases. Clinicians differ on the extent to which students should assume responsibility. *See, e.g.*, Barnhizer, *supra* note 3, at 72 n.13 ("Obviously, the 'primary' lawyering responsibility is shared with the teacher; however, . . . the student must, to the extent possible, be given the immediate, on-line responsibility for what will happen to *his* client."); Meltsner & Schrag, *supra* note 4, at 626 (authors concluded after experimenting with various clinical models that students should have "personal responsibility for decision-making," with faculty acting "principally as a resource, raising issues but not resolving them—unless a student's chosen course will seriously endanger a client.").

67. *See* Bellow & Johnson, *supra* note 10. Bellow and Johnson noted,

> [Clinic students] sense that some of their inadequacies are shared by their instructors as well, and that solutions to problems in practice are always a matter of informed choice and always reflective of a combination of uncertainty and knowledge. As a consequence, their relationship with the faculty and supervisors in [a clinical] program causes a sense of shared purpose and equality which we believe is different from their prior experiences in law school.

Id. at 693.

68. Knowles found that "[a]dults typically are not prepared for self-directed learning; they need to go through a process of reorientation to learning as adults . . . ." M. KNOWLES, *supra* note 16, at 40. He also found, however, that once adults take responsibility for their learning, they experience "a sense of release and exhilaration." *Id.* Similarly, a study of an

problem in general terms when they experimented with various clinical models at Columbia Law School and moved toward a policy of requiring students to assume a more active role in representing clients. They noted that this change in approach affected both students and faculty: "Students and faculty had to come to terms with the passivity of the student role, and the implicit assumption of much legal education that the faculty is solely responsible for whether learning takes place."[69] Writing a few years later on their experiences with the clinical program that they eventually developed following earlier experimentation with various clinical models, Meltsner and Schrag reported instances in which students initially would be confused and even actively hostile when given responsibility for handling and administering their cases—that is, for planning and executing their clinical experience.[70]

2. Active, Experiential Learning

Experiential learning has been promoted, of course, outside of

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andragogically based program for training social workers concluded that students who were told that they would have to plan their course of study were first upset and resented the imposition. Gelfand, Rohrich, Nevidon & Starak, *supra* note 47, at 56-57.

69. Meltsner & Schrag, *supra* note 4, at 626; *see also* 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, 545 (1978) ("Most legal education today does little to foster a sense of personal responsibility or 'to encourage students to use initiative in educating themselves.' Noting 'the passive and doctrinaire qualities' of many law students, educators have been advocating greater 'student initiative and creativity in learning.'") (footnotes omitted) (quoting TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW, *supra* note 15, at 43).

70. Meltsner & Schrag, *Scenes From a Clinic*, 127 U. PA. L. REV. 1, 32-33 (1978). Meltsner & Schrag stated,

> Such [non-directive] encounters [between teacher and student] can go very badly if the participants do not take into account the norms of the law school. The intern who asks a supervisor which witnesses he or she should call and hears the supervisor say, "Do you want me to answer that question now?" may understand the dialogue in terms of a previous experience with law teachers who hide the ball and never really answer questions. If we are to succeed in the supervisory role, we must demonstrate that we have much to give and that we will give it; but that it is the interns' responsibility to decide when, where, and how to get it.

Id. at 22-23.

This aspect of the students' role in establishing a learning climate of mutual inquiry with the teacher merges to some extent with the andragogical method of sharing planning with the students. *See supra* text accompanying note 38. Closely related to this notion is the idea that students should share in the evaluation of their work, which is a technique that Meltsner and Schrag applied with some difficulties. *See* Meltsner & Schrag, *supra*, at 29. In general neither clinicians nor law faculties have resolved this issue satisfactorily. *See generally* Carr, *Grading Clinical Students*, 26 J. LEGAL EDUC. 223 (1974); Levine, *Toward Descriptive Grading*, 44 S. CAL. L. REV. 696 (1971). *See also infra* text accompanying notes 111-12.

the context of andragogical theory.[71] In fact, experiential learning is a part of any professional education program that has a clinical component. An obvious example is medical training, which often is cited as a model for law schools to consider when designing a program of clinical legal education.[72] The use of experiential learning in clinical programs ties the clinical method of legal instruction into the second key element of andragogical theory.[73]

Clinical legal education is experiential learning both in terms of what the students bring to the learning setting and in terms of the experiences that the students work through in the clinical program itself.[74] Law students, like any other adults, have their experiences in life to draw upon in learning. Perhaps more important, second year and particularly third year students often have law-related experience that they can use—and that they expect to use—in their last two years in law school. Finally, the experience of actual representation is available to the law student in the clinic. In sum, there is a role for experience in law teaching, and that role is best developed through the clinical method.[75]

The range of experiences that are available to students in clinical education programs encompasses more than the normal lawyering skills of interviewing, counseling, negotiation, and trial and appellate advocacy. To the extent that broader human relations skills are a desirable subject of learning in law school,[76] clinical legal education—with its emphasis on experiential learning—offers the opportunity to teach those skills. As Alan Stone stated, "[T]he student's experience with human problems in the legal clinic always has the potential of being emotionally real. The student is directly involved in a case and can explore its social and

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71. *See generally* Houle, *supra* note 40.

72. *See, e.g.*, Cregar & Glaser, *Clinical Teaching in Medicine: Its Relevance for Legal Education*, in LAW SCHOOL OF THE FUTURE, *supra* note 1, at 77.

73. *See supra* notes 26-27 & 40-42 and accompanying text.

74. The experiential learning content of clinical programs is an obvious point that has not been explored fully in a general context. In a recent article, Kenneth Kreiling considered the value of experiential learning techniques for both law school training and self-learning by lawyers in practice. *See* Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981). For a discussion of experiential learning as it applies to one area of law study, see Grismer & Shaffer, *Experience-Based Teaching Methods in Legal Counseling*, 19 CLEV. ST. L. REV. 448 (1970).

75. As Justice Clark observed, clinical education is successful because "experience is the law's peerless teacher." Clark, *Student Advocates in the Courts*, 1 SETON HALL L. REV. 1, 4 (1970).

76. *See generally*, Griswold, *Law Schools and Human Relations*, 37 CHI. B. REC. 199 (1956).

psychological implications in as great a depth as his motivation allows."[77]

Since clinical legal education provides law students with the opportunity to relate their own experiences, as well as their new lawyering experiences presented to them in clinical practice, to whatever is being taught in the clinical program, supervised practice can achieve the optimal level of educational meaning and impact. Preble Stolz perhaps summarized this notion best when he stated that

> attitudes towards the world—morals to use an older term—especially insofar as they influence behavior, probably come more from classmates and experience than anything that happens in the classroom. Perhaps including clinical exposure in legal education will improve the law school's capacity to reach the deeper motivations of its students and thus to influence their careers.[78]

Gary Bellow and Earl Johnson found that students handling cases in their clinic "began to be far more interested in their own experiences as a source of theoretical generalization, and far more concerned with theory as a tool for defining and understanding experience, than they were when they first started."[79] When students use the experiences that they obtain in the clinic as a tool for learning, "[t]he clinical process radically alters the usual relationship of faculty to student. The students have, at last, a body of their own experience which they can compare to the faculty's assertions and statements."[80]

3. Learning, Students' Social Roles, and Problem Solving

The final two elements of Knowles' andragogy—students' changing social roles and their readiness to learn, and students' focus on problem solving and their orientation to learning—also fit the clinical method of legal instruction. These elements, however, are perhaps less uniquely suited to clinical legal education than learning through mutual inquiry and active experiential learning.

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77. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 429 (1971). Professor Stone also observed, "If those who control legal education believe that students should develop human relations skills in law school then the legal clinic is the single best vehicle for doing so." *Id.* at 429-30.

78. Stolz, *Clinical Experience in American Legal Education: Why Has it Failed?*, in LAW SCHOOL OF THE FUTURE, *supra* note 1, at 54, 76.

79. Bellow & Johnson, *supra* note 10, at 693.

80. *Id.; see also* Bellow, *supra* note 8, at 384 ("The significant difference in teacher-student interaction in clinical programs is that the instructor is dealing with people who have acted, who have confronted in concrete form some of the problems of choice and judgment basic to the role involved . . . .").

Since law students are about to make one of the major social role changes of their lives—becoming a lawyer—they are naturally ready to learn about law and lawyering. Regardless of the method of instruction, they will view whatever they learn as some form of preparation for solving problems that they will face in their professional careers. One need not enter into the debate over the quality and relevance of every part of the law school curriculum to recognize that—at least to some extent—legal education generally is andragogically sound in the categories of readiness to learn and orientation to learning.[81]

Nevertheless, the clinical method of legal instruction does apply andragogical methodology in these areas more directly and regularly than does traditional legal education. When a student who is about to become a lawyer enters a clinical learning environment and is taught through actual representation of a client in a legal dispute, optimal compliance with the andragogically dictated sensitivity to the student's readiness to learn is attained.[82] Thus, one commentator has observed that "[t]he student response to the challenge of situations of 'professional responsibility' while participating in the clinic depends on his thinking of himself as a lawyer."[83] Similarly, notwithstanding the recent appearance of some innovative problem-oriented law school casebooks,[84] clinical legal education epitomizes andragogy's problem-centered methodology. Not only are issues and material presented as problems, but also "legal training is immediately useful. The student *must learn* or he

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81. *See generally supra* text accompanying notes 51-59. Traditional legal education and andragogy also are similar in their immunity from Knowles' criticism of traditional pedagogy as "premised on an archaic conception of the purpose of education, namely, the transmittal of knowledge." M. KNOWLES, *supra* note 16, at 37. He notes that the time span of social change is shortening while life expectancy is lengthening—an observation that also holds true for the time span of changes in the law and, presumably, the average life expectancy of lawyers—and concludes that "it is no longer functional to define education as a process of transmitting what is known; it must now be defined as a lifelong process of discovering what is not known." *Id.* at 38. Quality traditional legal education, starting with the first year of law school, is oriented toward teaching students to understand and to participate in the future development of the law. *Cf.* Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 263 (1978) ("The aim of all education, even in a law school, is to encourage a process of continuous self-learning that involves the mind, spirit and body of the whole person.").

82. *See* Bellow & Johnson, *supra* note 10, at 693 ("Handling cases gave the students a concrete and immediate incentive to learn.").

83. Miller, *Living Professional Responsibility—Clinical Approach*, in CLINICAL EDUCATION FOR THE LAW STUDENT, *supra* note 3, at 99.

84. *See, e.g.*, L. SODERQUIST, SECURITIES REGULATION: A PROBLEM APPROACH (1982).

will be embarassed before real clients, lawyers and judges."[85]

C. *Toward An Andragogically Based Model for Clinical Legal Education*

As previously discussed, proponents of clinical legal education usually have supported their case by emphasizing the new areas of study that can be introduced into the law school curriculum.[86] Most critics of the clinical method also have focused on the substantive content, arguing that what is taught in clinical programs need not or should not be taught in law school at all.[87] Only recently have clinicians begun to go beyond the debate over the value of the substantive content of clinical programs to look critically at their own methodology and its implementation.[88] These efforts differ fundamentally from the literature on effective models for clinical instruction, which are concerned primarily with questions of technique,[89] and from guidelines for clinical legal educa-

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85. Meltsner & Schrag, *supra* note 4, at 608.

86. *See supra* text accompanying notes 3-5.

87. This type of criticism is levelled most often at the teaching of lawyering skills, which is an area in which traditional law teachers seem to have tremendous faith in post-formal education, on-the-job training. Dean Carrington, for example, has stated that "[u]niversities should be especially slow to invest heavily in skills training if there are better instruments readily available. And so there seem to be. . . . If professionals could be induced to acquire skills by means of work supervision, this would be the optimal method." Carrington, *The University Law School and Legal Services*, 53 N.Y.U. L. REV. 402, 431 (1978). He also believes that the use of "programs of continuing legal education [are] the best method of transmitting legal skills." *Id.; see also* Manning, *Law Schools and Lawyer Schools—Two-Tier Legal Education*, 26 J. LEGAL EDUC. 379, 381 (1974) ("our law schools, as presently designed, staffed, and financed, are basically ill-adapted to try to take on the function of training for litigation"); Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140, 152 (1971) ("the law school should not take on the full responsibility of training students in practical matters, but should leave such skills to be acquired after graduation"). For a discussion of the relation between these issues and the teaching of professional responsibility, see Smith, *Is Education for Professional Responsibility Possible?*, 40 U. COLO. L. REV. 509 (1968).

At least one commentator has suggested that the introduction of clinical programs into the traditional law school curriculum actually has been detrimental to legal education. *See, e.g.*, Allen, *supra* note 61, at 455-57. Professor Allen's position on this point, however, is ambivalent. "The issues raised by the new anti-intellectualism cannot be characterized as a conflict between clinical and classroom instruction. . . . Nevertheless, candor requires it to be said that certain aspects of the clinical movement have contributed to the rise of the new anti-intellectualism." *Id.* at 456.

88. Professor Barnhizer examined the clinical method of legal instruction primarily in the context of teaching professional responsibility. *See* Barnhizer, *supra* note 3, at 71-72. More recently, however, Professor Condlin sought to determine generally how clinical law teachers teach. *See* Condlin, *supra* note 9.

89. Articles of this type have dominated the literature on clinical legal education, and

tion, which seek to establish the characteristics that clinical programs should have without any particular reference to a theory of learning.[90]

Andragogy can be extremely useful in this critical examination of clinical methodology because it can provide the coherent, theoretical framework of a methodology-based justification for clinical education that has been missing in the attempts to establish various content-based justifications. As discussed above, andragogy has become established as a significant theory of instruction for adult learners, and its methodology is consistent with the general methods used to implement clinical programs.[91] When viewed as an educational basis for clinical legal education, andragogy can be useful to clinicians in their attempts to improve the clinical method of law teaching, to take full advantage of a clinical setting for legal instruction, and to establish clinical legal education as an essential element of professional legal education.[92]

Andragogical theory need not provide a single, definitive model for clinical legal education to be useful. Indeed, uncritical reliance on the principles of andragogy is unwarranted if for no other reason than because andragogy is still a developing field.[93] Nonetheless, the four central elements of andragogy[94] suggest the

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many of them have proved to be immensely valuable to other clinical teachers. *See, e.g.*, Andrews, *The North Carolina Sentencing Seminar: An Experiment in Controlled Clinical Legal Education*, 28 J. LEGAL EDUC. 317 (1977); Meltsner & Schrag, *supra* note 4; Oliphant, *Reflection on the Lower Court System; The Development of a Unique Clinical Misdemeanor and a Public Defender Program*, 57 MINN. L. REV. 545 (1973); Silverberg, *Law School Legal Aid Clinics: A Sample Plan; Their Legal Status*, 117 U. PA. L. REV. 970 (1969).

90. The most recent example of this type of work is found in the 1980 guidelines for clinical legal education published by the Association of American Law Schools and the American Bar Association. GUIDELINES FOR CLINICAL LEGAL EDUCATION, *supra* note 15; *see also* Allison, *The Evaluation of a Clinical Legal Education Program: A Proposal*, 27 VAND. L. REV. 271 (1974); Gorman, *supra* note 4, at 561-73.

91. *See supra* notes 16-18 & 60-85 and accompanying text.

92. *Cf.* Barnhizer, *supra* note 3, at 70 (clinical legal education is now in the phase of "[c]onsolidation, reflection and refinement of . . . experimental findings" and is moving into the phase of "[c]larification and assertion of the proper role of clinical education in relation to the total curriculum").

93. *See supra* text accompanying note 21. Of course, clinical legal educators can contribute to the developing field of andragogy. Thus, a study could be undertaken to evaluate the effectiveness of traditional and clinical law teachers in the context of the major methodological elements of andragogy. Questionnaires and noting scales have been developed to measure teaching methods in relation to andragogical theory. *See* M. Kerwin, Development of an Instrument to Measure the Teaching Behavior of Adult Educators (1980) (unpublished report available from Educational Resources Information Center, Washington, D.C.).

94. *See supra* notes 33-45 and accompanying text.

beginnings of a model for clinical legal education that addresses the three major issues which legal educators have debated in this field: The use of actual clients rather than simulations, the method and extent of supervision by clinical faculty, and the types of cases to be handled in a clinical program.

1. Actual Client Representation

An andragogically based model for clinical legal education should rely heavily on actual client representation.[95] A relationship based on shared, mutual inquiry simply cannot be established through the alternative technique of simulation. An effective, competent simulation must be pre-planned so that even if the instructor participates in the simulation, the law student knows that there is nothing like shared inquiry or a co-counsel relationship between student and teacher. In fact, it is likely that the instructor would not participate at all in the simulation and instead let the student work through the problem alone.[96] In an actual client setting, on the other hand, the student and teacher are forced to work together at every step in the case because crucial decisions may have to be made at any time that could be critical to the client's claim or defense.[97] As a result, a co-counsel relationship develops between the student and the teacher that continues throughout the student's involvement in the case and offers the student opportunities for valuable learning experiences both at expected and unexpected moments during representation.[98] The differences between the use of actual clients and the use of simulations in establishing an atmosphere of mutual inquiry can be seen perhaps most clearly in the area of decisions on case strategy. Such decisions are so important in actual client representation that the clinical instructor

95. This proposition means that *all* students would be engaged *primarily* in the representation of actual clients, but it is not meant to denigrate the value of simulations as a *supplemental* method of instruction. Simulations can be particularly valuable in a clinical program when they are used to help prepare students for interviewing, taking depositions, and certain other aspects of trial work.

96. Some find this to be the unique advantage of simulations because the student can practice independently without doing any harm to the mock client. *See, e.g.*, Harbaugh, *supra* note 15, at 211; Meltsner & Schrag, *supra* note 4, at 597.

97. How closely the instructor should supervise the student is itself an issue that should be determined according to andragogical theory. *See infra* text accompanying notes 108-10.

98. Of course, a simulation could be constructed in which the student and the instructor work together either after an initial interview or before the taking of a deposition or the commencement of a mock trial. Even this limited amount of shared lawyering, however, would be unusual in a simulation. *See supra* note 95 and accompanying text.

must examine and participate in the student's analysis and judgments. In a simulation setting, it is most likely that the instructor would not participate in any case strategy at all, and the advantages of such an experience would be lost.

Although an actual client representation setting makes it possible for the student and the teacher to establish a continuous co-counsel relationship, the proposition does not follow that the teacher and the student should work together on every aspect of all the student's cases. The optimal andragogical setting is one in which students are given the opportunity to learn through their own initiative by working together with—rather than being dominated by—the teacher. When students and teachers work together on actual cases, a true "climate of adultness" consistent with the self-concept of law students is maintained because the students practice together with their instructors in a setting in which their participation means something not only to themselves, but also to the instructors with whom they work. A teacher representing an actual client in conjunction with a student relies heavily on the student's work and, therefore, is deeply concerned with how the student performs during the represention. In such a setting, even though the instructors are set apart because of the knowledge that they can convey to students who are working with them, they are not removed entirely from the process of learning, as tends to be the case with simulations. Instructors thus are far less likely to engage in the type of one-way transmittal of knowledge that is antithetical to andragogy.[99]

Actual client representation is also necessary to involve law students in andragogically sound active, experiential learning. Although role playing is a type of experiential learning,[100] law students must be allowed to practice law on behalf of real clients if a clinical program is to take full advantage of the role of experience in adult learning. Actual client representation is real and, therefore, andragogically effective.[101] Simulations, on the other hand,

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99. This does not mean that clinical teachers who are engaged in actual representation of clients will never sit down and lecture to their students concerning some aspect of the case. In some situations a one-way transmittal of knowledge is necessary because of the complexity or the particular circumstance of the case. *See infra* text accompanying notes 108-09.

100. *See supra* text accompanying notes 40-42.

101. *See* Sacks, *supra* note 4. Professor Sacks notes,

> If an experience seems real, the beneficial effects on students are likely to be several. Students have more interest in the subject matter and are better motivated to learn. They work harder and pay closer attention to what is happening. They tend to learn

are recognized as imaginary and thus are less effective as learning experiences, since law students may not be willing to relate what they were taught in simulations to other lawyering experiences that they have had or will have outside of law school.[102]

Similarly, while clinical legal education possesses the potential to take full advantage of law students' readiness to learn, the lack of reality inherent in simulations can undermine that potential. When representing actual clients, law students are in fact lawyers; accordingly, they are fully aware that what they are learning relates to what they came to law school to learn. In a simulation setting, however, students can become unsure about the relationship between the simulation and actual practice of law, and, consequently, they can become less interested in what the teacher is trying to teach.[103]

2. Close Supervision by Clinical Faculty

Proper implementation of andragogical methodology in a law school clinical setting requires that clinical faculty supervise students closely and directly.[104] Probably the most important element of an andragogically sound model for clinical supervision is the establishment of a co-counsel relationship between the student and the teacher. This method of supervision allows students to learn through mutual inquiry, which is consistent with andragogical theory,[105] and to make the most of the learning opportunities that are available through actual client representation. Placing students outside of a law school controlled setting in which they are likely either to work unattended or to be limited to observing the "real lawyers" in the office would dilute the educational value of having students represent actual clients. Both of these circumstances are

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things at a deeper level and thus to remember them longer.
Id. at 294.

102. *See* Meltsner & Schrag, *supra* note 4, at 608 ("Students are highly skeptical that role play reflects reality, that the models of conduct extrapolated from role play are valid outside of a law school or that the simulations created by the instructors abstract the appropriate elements from reality.").

103. *See supra* text accompanying notes 81-85.

104. Clinical faculty should be qualified law teachers who are dedicated to teaching law students by using the clinical method. Issues of the teachers' status and standing in the law school community do not bear directly on the questions that arise in implementing an andragogical approach. *See* Leleiko, *The Opportunity to be Different and Equal—An Analysis of the Interrelationships Between Tenure, Academic Freedom and the Teaching of Professional Responsibility in Orthodox and Clinical Legal Education*, 55 NOTRE DAME LAW. 485 (1980).

105. *See supra* text accompanying notes 97-98.

totally at odds with the type of shared responsibility for learning that andragogical theory envisions.[106]

Clinical faculty, however, must do more than just work together with students on cases. Clinical instructors must be willing and able to teach their students once a proper andragogical setting is established. Although the teacher and the student working together as co-counsel create Knowles' "spirit of the mutuality,"[107] the teacher is largely responsible for taking advantage of this setting and turning it into an effective learning opportunity. A law teacher working on a case with a law student must be able to guide the student toward learning whatever lawyering skills or substantive material the student needs to know to participate effectively in handling the case. This guidance can be provided without undermining the co-counsel relationship between the teacher and the student or sacrificing the teacher's responsibility to teach, particularly if the teacher follows the andragogical prescriptions of being sensitive to the student's role as a self-directed learner in planning the learning experience and of giving the student the opportunity to choose how to make the most of the learning opportunity. Thus, the teacher and student should share the assignment of responsibilities in a particular case.

Since clinical teachers are still teachers and their co-counsel are still their students, the possibility always exists that mutual inquiry will be forsaken and that the teacher will take control of the representation by lecturing to the student and directing him or her to do what the teacher knows—or has determined—must be done.[108] An andragogical model would specifically discourage this type of supervision, except to the extent that it is necessary to ensure competent representation in a particular case. Instead of ex-

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106. *Cf.* Meltsner & Schrag, *supra* note 4, at 590 (authors became "concerned by the passive roles in which students were sometimes cast" in a test litigation clinic at Columbia because "they were not equipped to handle the responsibility"). *See generally* Frakt, *Supervising Students in Legal Clinics Outside the Law School*, 3 CLEPR NEWSLETTER, No. 2, at 1 (Oct. 1970).

107. *See supra* text accompanying note 35.

108. The use of the clinical method does not necessarily result in a satisfactory relationship between the teacher and the student. Data discussed in a recent article by Robert Condlin suggested to him that "only the more stylized forms of manipulative classroom technique may be absent from clinical practice instruction—that the substance of practice instruction may track the patterns that clinical teachers profess to avoid." Condlin, *supra* note 9, at 226. Professor Condlin's data consisted of transcripts of supervision sessions held by eleven clinical teachers at seven law schools. *Id.* at 249, n.66. *See also* Himmelstein, *supra* note 69, at 541 ("A clinical seminar can function, albeit unsatisfactorily, with authoritarian instructors and submissive or blindly competitive students.").

tensive lecturing and excessive direction, students should be encouraged to decide when to ask questions and when to explore for answers on their own. In other words, the student should help the teacher decide when the teacher needs to direct and teach, and when the student can be left alone.[109] Close supervision, therefore, does not mean a constant faculty presence.[110]

Evaluation, of course, is an important element of any educational program, and students in a clinical setting must be evaluated as well. Although traditional grading methods usually are based on the one-sided evaluations of students by teachers—which is disfavored in andragogical theory—the solution is not necessarily to eliminate grades or to reduce the rigor of the evaluation process by means of a pass/fail system.[111] Instead, the student, together with the instructor, should assess the student's performance at critical points during representation in order to evaluate the work in the case, to determine the student's learning needs and to measure the student's overall progress. Just how students finally are graded or evaluated at the end of the course is not so important, since the positive, andragogically based process of shared evaluation between the student and the teacher already will have taken place.[112]

3. Cases Selected for Educational Value

Although the use of actual client representation and close, direct supervision by clinical faculty are the most important elements of an andragogically based model for clinical legal education, andragogical theory can be implemented most effectively in a law school clinic if the cases that are selected for law students maximize the educational value of their clinical experience. This does not mean that by adopting this approach law school clinics must forego representing groups of clients that traditionally have been underrepresented or providing a socially valuable by-product of legal services to the community. Indeed, cases arguably should

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109. Meltsner and Schrag followed this approach at Columbia and experienced some difficulties. *See supra* note 70.

110. *See supra* note 66.

111. The implications of adopting a pass/fail system, as opposed to letter or numerical grades, are more complex than a simple reduction in the rigor of evaluation. *See generally* Lempert, *Law School Grading: An Experiment With Pass-Fail*, 24 J. LEGAL EDUC. 251 (1972).

112. Regardless of whether the clinical work is graded or simply "passed," the basis for the grade or pass should be the evaluations of the student's work and the student's progress during the course of representation. *See generally* Carr, *supra* note 70.

be chosen that demonstrate the positive role which the legal profession can play in society in order to instill in law students a responsible professional attitude at a time when they are particularly receptive to learning about the profession.[113]

One goal in an andragogical case selection process should be to choose from among all the types of cases that are available the ones that are the most likely to appear to students to be relevant both to their changing roles as student lawyers and to their upcoming entry into the legal profession. In other words, to maximize law students' readiness to learn from a clinical experience, the cases must present real legal disputes and must require the use of lawyering skills. Thus, an andragogical model would include a case selection process that would favor cases such as administrative appeals from denials of various public benefits and contested eviction proceedings in which law students can act as lawyers, rather than cases such as multiple debt actions without viable defenses that require financial counseling and cases involving routine applications for benefits that can be resolved by a case worker or a social worker.[114] For similar reasons, students should be able to choose to the extent possible those cases that appear most interesting to them.

This application of andragogical theory does not mean that cases would be selected to teach students how to handle a particular type of problem or how to practice in a particular court; instead, cases would be chosen because they emphasize the fundamental elements of law practice. In this way the maximum number of students will be motivated to learn, and what they learn will have the broadest impact on their future practice. The use of a limited range of cases that allow the instruction to concentrate on general principles of trial practice, the lawyering process, or professional responsibility, will make the absence of certain other types of cases that are not usually represented in the clinical caseload

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113. *Cf.* Himmelstein, *supra* note 69, at 521 ("Law students seem bored and uninspired by the present form of legal education. Many are searching for a professional identity to match their aspirations, and are disappointed in what they find."). *See generally* Swords, *supra* note 4.

114. Proper case selection is an extremely important aspect of clinical methodology independent from andragogical theory. Which cases should be chosen and how to achieve a proper balance of cases in a clinical setting are problems that some commentators have addressed in limited contexts, but which need fuller consideration. *See, e.g.*, Barnhizer, *supra* note 3, at 71; Meltsner & Schrag, *supra* note 4, at 626. Of course, valuable clinical cases exist in which law students can participate as lawyers together with other, nonlawyer professionals. *See, e.g.*, Lowry & Kennedy, *supra* note 61.

irrelevant.[115] The important point from an andragogical perspective is that students must be able to relate what they are learning from the clinic experience to their own projected future careers. Clinical programs operating under this type of case selection process will capitalize on law students' particular readiness to learn and their orientation toward learning; they will also avoid the danger of becoming a narrow, mechanical course in how to file a divorce or how to defend against a public housing eviction in the local trial court.

Finally, case selection can be important both in the establishment of an atmosphere of mutuality between the student and the teacher and in the creation of a setting for active, experiential learning. The most routine types of cases such as uncontested, no-fault divorces should be excluded because a meaningful co-counsel relationship cannot be established when students are handling cases that are too simple to require any serious work by the faculty. On the other hand, other relatively routine matters, such as certain tort cases, can be valuable learning experiences because there will be genuine mutual inquiry between the student and the teacher whenever they work together preparing a particular case or handling that particular case on behalf of a client.[116] Extremely complex cases can present similar problems if students are unable to assume any significant responsibility in the client's representation. In such a case students effectively would be removed from the active experience of representing a client, or they would be limited to performing such simple tasks that the establishment of a co-counsel relationship would be impossible.[117] This problem can be

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115. In fact, clinical programs have begun to expand the subject matter coverage of their caseloads. Thus, a number of law schools have begun to offer federal income tax clinics in cooperation with the Internal Revenue Service. *See generally Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan,* 10 CLEPR NEWSLETTER No. 4, at 1 (1978). There also have been proposals to use clinical methods to teach traditional subjects. *See, e.g.,* Daurer, *Expanding Clinical Teaching Methods Into the Commercial Law Curriculum,* 25 J. LEGAL EDUC. 76 (1973). For descriptions of a representative sampling of law school clinical programs, see *Selected Summaries, supra* note 62.

116. If routine cases are used, the teacher should not permit the extensive use of form pleadings or form questions for discovery or trial. Unless students are given at least some responsibility for drafting pleadings and formulating questions in their cases, they may well feel that they are not really participating in the representation, and, as a result, an opportunity for active, experiential learning may he lost.

117. Meltsner and Schrag experienced precisely this problem in their test litigation clinic at Columbia. *See* Meltsner & Schrag, *supra* note 4, at 590-91. For an earlier description of the test litigation clinic at Columbia, see Meltsner, *Clinical Education at Columbia: The Columbia Legal Assistance Resource,* 24 J. LEGAL EDUC. 237 (1972). While having the

avoided, of course, by assigning students manageable portions of complex cases and by choosing cases that are challenging but still within law students' capabilities.[118]

IV. CONCLUSION

Clinical legal education offers law students the opportunity to work together with faculty on cases that present the types of problems which law students want to learn how to solve. Andragogical theory holds that adult learners such as law students should be taught through mutual inquiry between teacher and student, through the use of actual experience, and with the recognition that students are ready and oriented to learn about that which they perceive to be relevant to their current social roles and professional goals. The clinical method of law teaching adds an important andragogical component to professional legal education; at the same time, andragogy provides both a theoretical basis for clinical legal education and some suggestions about a model for implementing the clinical method. Clinical legal education works in large part because it is andragogically sound. Legal education in general can benefit from andragogical theory,[119] and the recognition of the andragogical basis of clinical legal education perhaps can hasten the integration of the clinical method into the mainstream of legal education.

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clinical teacher do the work on a complex case so the student can observe a model has some advantages, andragogical theory would not find this approach appropriate for adult learners.

118. Many clinical programs include law reform or otherwise difficult litigation in their caseloads. These cases can be used most effectively when individual students' participation is tailored to their respective capabilities.

119. *See supra* text accompanying notes 51-59. Teaching methods developed by clinical law teachers can be of great value to all law teachers as they seek to improve legal education in general. *See* Munger, *Clinical Legal Education: The Case Against Separatism*, 29 CLEV. ST. L. REV. 715 (1980).