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CLINICAL EDUCATION AND LAWYER COMPETENCY: THE PROCESS OF LEARNING TO LEARN FROM EXPERIENCE THROUGH PROPERLY STRUCTURED CLINICAL SUPERVISION*

KENNETH R. KREILING**

INTRODUCTION

What should law students learn from clinical education? Can clinical education be a significant factor in increasing lawyer competency? If so, how can the impact of the "clinical process" in achieving greater lawyer competence be maximized? This article suggests answers to these three important questions. In essence, the article develops a clinical methodology — a process of teaching and learning by focusing on experiences — and suggests not only that the methodology is the *means* by which lawyering skills are most effectively taught in the law school clinical setting, but also that learning the methodology should be a *goal* in itself. Clinical education should reach beyond skills training to provide the students with a method for future learning from their experiences.¹ The ability and the willingness to apply such a methodology is necessary to perform effectively and to grow professionally. Unless law school clinical education is structured to teaching a method that can be transferred to and used in the world of professional practice, the impact of clinical education on lawyer competency will be minimal. Precious educational resources will be squandered by merely providing an earlier exposure to an unreflective world of practice.

Before describing this methodology, a number of points should be made. The major underlying assumption of this paper is that the use of

* © 1980 by Kenneth R. Kreiling. All rights reserved. Many people have been kind enough to offer comments on this paper at various stages. I am particularly indebted to Gary Bellow, David Barnhizer, Bob Condlin, Gregory McHugo, and Robert Redmount for their substantive comments and to Nancy Hunt for her editorial assistance. In expressing my gratitude, however, I want to make it clear I am solely responsible for the shortcomings of this final product.

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1. I am not suggesting that there are no secondary goals of clinical education, but rather that the most important and primary goal is to be able to learn from and to internalize the process of learning from one's experiences. With respect to other potential goals of clinical education, see Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 75-79 (1979); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 883-886.

clinical programs in the law school educational process can be an effective approach for producing more competent lawyers.² This assumption is based in part on the nature of the learning environment. Traditional classroom legal education primarily is concerned with the process of learning through information assimilation.³ Usually the information to be assimilated is applied within the narrowly circumscribed confines of the instructor-defined classroom.⁴ In contrast, clinical education is primarily concerned with the process of learning from actual experience, learning through taking action (or observing someone else taking action) and then analyzing the effects of the action.⁵ The data of learning are provided primarily by the students' actual performances and experiences with clients who have legal problems. Such problems arise in a world where some facts cannot be ascertained,

2. The American Bar Association Section of Legal Education and Admissions to the Bar recognized that lawyer competence is a function of cognitive knowledge, fundamental skills, ability to apply knowledge and skills with proficiency, and proper motivation. ABA ASSOC. SECTION OF LEGAL EDUC. AND ADMISSIONS TO BAR, *LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 8-10* (1979) [hereinafter *CRAMTON COMMITTEE REPORT*]. This article, unlike some other discussions, attempts to describe a clinical method that treats all three levels of learning (cognitive, affective, and performance) in a cohesive manner. See note 10 *infra*.

3. At first glance, this statement may seem heretical. However, while the law school purports to concentrate on analytical skills, numerous factors coalesce to undermine this goal. Most classes are not in fact rigorously analytical, but are instead poor lecturing in the guise of the Socratic method. See, e.g., T. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE 153-92* (1977). The student pressure for and faculty acquiescence in providing a certain minimum substantive coverage also undermines the ability to conduct a rigorously analytical course. Other factors, such as student boredom with a slow-moving approach, the paucity of sound pedagogical alternatives to the casebook, insufficient resources, and pressures on faculty to produce traditional work product contribute to the tendency to concentrate on knowledge about law and legal institutions. See, e.g., *CRAMTON COMMITTEE REPORT, supra* note 2, at 22-27.

4. For an excellent discussion of the differences between learning through information assimilation and learning through experience, see Coleman, *Differences Between Experiential and Classroom Learning*, in *EXPERIENTIAL LEARNING 49* (M. Keeton ed. 1976). Coleman describes four steps to the information assimilation process: (1) receiving information through a symbolic medium, such as a lecture or a book; (2) assimilating and organizing information to understand the general principle; (3) inferring a particular application from the general principle; and (4) actually applying the knowledge gained. In contrast, Coleman describes the process of experiential learning as proceeding in a nearly reverse order through this sequence of steps. First, one carries out an action in a particular instance and observes the effects of that action. The observed effects provide information about a sequence of cause and effect. The next step is that of understanding these effects in the particular instance and, then, understanding the general principle underlying the particular instance. Finally, there is application through action of the general principle to a new situation within the range of generalization. *Id.* at 51-52. This article adopts a slightly more complicated model of experiential learning. See Figure 1 in text accompanying note 33 *infra*.

5. *Id.*

where personal qualities and interpersonal relationships often are crucial, where the "problem-solver" must take action and choose solutions while faced with unforeseeable contingencies. Clinical education provides a model of the multi-dimensional world of practice that traditional legal classroom education simply cannot provide.⁶ Education conducted in this true-to-life setting ensures that students have an opportunity to apply their learning to circumstances faced in actual practice.⁷

A second key assumption is that just as law school classroom education does not purport to teach all relevant substantive law, clinical education cannot attempt to teach the full spectrum of lawyering skills. A clinical program that has as its primary goal the introduction to skills will have minimal effect on lawyer competency. The law school clearly does not have the resources to teach the student how to perform all necessary lawyering skills. Furthermore, if the law school treats a large number of such skills superficially, the students will learn little. They will not understand why they are taking certain action, and therefore, will have a very limited ability to improve their performances.⁸ Because of resource limitations and the important role of motivation in competent lawyering, clinical education can foster professional growth and competence only if the emphasis for learning is focused beyond the immediate skills needed to perform clinical tasks.⁹ When the primary goal of clinical education is to teach students a method for learning from their experiences, then by applying this method they can continue to learn and to grow professionally after their formal education has ended. Practitioners who continue to learn throughout the course of their careers — practitioners who know how to learn from their experiences and who value the process of continuous growth — should be more competent lawyers.

6. Cf. Harrison & Hopkins, *The Design of Cross-Cultural Training: An Alternative to the University Model*, 3 J. APPLIED BEHAVIORAL SCI. 431 (1967) (an excellent discussion of the very different goals of university classroom education and training for actual problem solving within the context of preparing peace corp volunteers for their work in the field).

7. For a description of how experiential learning fosters both interpersonal skills and competence, see Chickering, *Developmental Change as a Major Outcome*, in EXPERIENTIAL LEARNING 83 (M. Keeton ed. 1976).

8. Bolman, *Learning and Lawyering: An Approach to Education for Legal Practice*, in ADVANCES IN EXPERIENTIAL SOCIAL PROCESSES 111,113-14 (C. Cooper & C. Alderfer eds. 1978). There is no doubt that some learning occurs from any experience. But the ability to generalize from experience and to improve performance on future occasions is not learned by most people unless they articulate why they are taking certain action and reflect upon the effect of their actions.

9. See, e.g., D. PETTES, SUPERVISION IN SOCIAL WORK 47 (1967). The CRAMTON COMMITTEE REPORT, *supra* note 2, comes to grips with the often-neglected affective dimension of lawyer competency. *Id.* at 10.

Finally, it should be kept in mind that in all clinical programs students must become involved at all levels of learning: the cognitive level, the psycho-motor or "doing" level, and the affective level.¹⁰ Clinical education thrusts students into situations where they not only must learn substantive and procedural law, but also must understand lawyering tasks and the system within which lawyers operate, confront issues of professional responsibility, integrate the foregoing types of knowledge, and take action. In addition, students must cope with the new problem of professional role identity and competence. The assumption of a professional role by the students can generate strong motivation to learn and to perform effectively.¹¹ On the other hand, the very depth of the involvement and the newness of the role make the experience potentially debilitating.¹² The gaps between knowledge and skill, on the one hand, and role demands, on the other, contribute to a high level of anxiety in most students. The anxiety, if kept within reasonable bounds, is a powerful motivator. Otherwise this anxiety can result in characteristic defense mechanisms including distancing oneself from the role involvement that is the basis of the learning process, or depending upon the supervisor, both of which inhibit professional

10. The terminology is taken from Benjamin Bloom and his colleagues. They have developed a taxonomy to articulate all possible educational objectives that indicates the general relationships between the objectives. The taxonomy involves three categories or "domains" of learning. The first, the cognitive or intellectual domain, deals with the increasingly complex sorts of understandings and analytical processes. The second, the affective or feeling domain, deals with values, attitudes, and beliefs. The third, the psychomotor or performance domain, deals with complex patterns of physical or motor activity such as lawyering activities. See *TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK 1: COGNITIVE DOMAIN* (B. Bloom ed. 1977); D. KRATHWOHL et al., *TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK 2: THE AFFECTIVE DOMAIN* (1964); A. HARROW, *A TAXONOMY OF THE PSYCHOMOTOR DOMAIN* (1979). The CRAMTON COMMITTEE REPORT, *supra* note 2, deals with the need for law schools to be concerned with all three domains. The work of Bloom and his colleagues has been utilized in ways that would be helpful to clinical teachers. See, e.g., N. STEINAKER & M. BELL, *AN EXPERIENTIAL TAXONOMY: A New Approach to Teaching and Learning* (1979); J. KETTLESON, *SOME THOUGHTS ON CLINICAL TEACHING AND LEARNING 16* (unpublished paper prepared for Clinical Teachers attending Second N.I.T.A. Workshop, Boulder, Colo., August, 1975) (upon which the above summary was based).

11. See, e.g., A. CHICKERING, *EXPERIENCE AND LEARNING* 61 (1977). "Action involves an investment of the self which induces a certain tension that is only relieved where the activity is successfully performed. This is particularly true when the action involves other persons in some way." Coleman, *supra* note 4, at 59.

12. See, e.g., C. TOWLE, *THE LEARNER IN EDUCATION FOR THE PROFESSIONS* ch. 4 (1954). Towle describes the professional fieldwork learning experience from her psychoanalytic perspective.

growth. Unless the supervisor¹³ appreciates the possibility for debilitating anxiety and properly structures the clinical experience, both to avoid overtaxing the student's integrative capacity and to facilitate the learning process, the enormous potential of the experience will not be realized.

It is the premise of this article, therefore, that clinical education should teach students a method: how to develop theories of problem solving by utilizing established lawyering theory and by generalizing from experience; how to apply these theories in the actual performance of lawyering tasks; and how to analyze the results of performance in order to test the effectiveness of the action taken and thereby improve one's theory. The first part of this article is concerned with describing a model of learning from experience and defining the type of feedback and supervisory relationship that facilitate learning. The second part of the article is concerned with the role of established lawyering theory in expediting the learning process and with other pedagogical and administrative considerations that can maximize scarce law school resources. Since adequacy of fieldwork supervision is the primary variable in determining the success of the clinical experience, the last part of the article is devoted to a suggested "supervision cycle" — a sequence of teaching from experience which is based upon insights from experiential-learning literature, from the literature dealing with feedback and the helping professions, from fieldwork training in other disciplines, and from practical experience supervising clinical law students.

I. THE METHOD: LEARNING FROM EXPERIENCE

A. *The Theory of Learning From Experience*

Lawyering is a form of behavior susceptible to observation, analysis, and change.¹⁴ Clinical legal education should take advantage of this fact. If clinical education is structured so that students can reflect upon the effects their actions produce — compare what actually resulted

13. To emphasize the close one-to-one student teacher relationship inherent in clinical education, the term supervisor will be used. I also use the term supervisor to distinguish those participants in the clinical program who may not have responsibility for fieldwork supervision, such as those who only administer the program or teach the classroom component of the clinical program. These various roles and the interrelationship between the classroom component, sound planning and administration, and fieldwork will be discussed in part II *infra*. See especially note 74 *infra*.

14. See generally Bolman, *supra* note 8. For an analogous view of the role of practice teaching, see Shaplin, *Practice in Teaching*, 31 HARV. EDUC. REV. 33 (1961).

with what they thought would result — then they will know if they are offering effective legal services. They can, if they desire, change their actions so as to provide more effective legal representation. The more frequently and explicitly this analyzing process is employed, the easier it is to generalize from experience and to develop effective theories of how to practice law. Once this “method” is learned and is integrated into a pattern of behavior, it can be used to enhance learning throughout professional life and its experiences. Simply stated, this is the method of “learning from experience.” An examination of the concepts underlying this method of learning from experience, the reasons why lawyers do not ordinarily adopt such a “method,” and the key conditions conducive to “learning from experience” is the focus of part I.

B. *The Basic Concepts of Learning From Experience*

The foundation of all intellectual growth and problem-solving ability is the formation of strategies, the development of frameworks for processing and organizing information and data that is confronted in life.¹⁵ To function in a complex environment and to maintain some degree of constancy, professionals resort to these strategies, or intellectual frameworks.¹⁶ These strategies are used to solve many diverse problems faced in professional practice.¹⁷ Unless the professional can analyze his (often tacit) intellectual framework — can determine why he took such action and what results were produced by taking such action — he cannot learn significantly from his experiences.

15. See J. PIAGET, *THE PSYCHOLOGY OF INTELLIGENCE* (1947). These strategies are constantly changing as a consequence of what Piaget describes as the “accommodation” to our environment and the “assimilation” of the lessons into our intellectual framework. This process of accommodation and assimilation, which indicates intellectual growth, is a function of the appropriateness of the match between the strategies the person already has developed and his external environment. See generally J. HUNT, *INTELLIGENCE AND EXPERIENCE* 112–13, 356–57 (1961); J. DOBY, *INTRODUCTION TO SOCIAL PSYCHOLOGY* 99 (1966).

16. See C. ARGYRIS & D. SCHÖN, *THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS* (1974) [hereinafter ARGYRIS & SCHÖN]; Bolman, *supra* note 8. Argyris, Schön, and Bolman are concerned with developing an educational experience that enables professionals to examine and learn from the relationship between their own thought and action.

17. Cf. M. BLOOM, *THE PARADOX OF HELPING: INTRODUCTION TO THE PHILOSOPHY OF SCIENTIFIC PRACTICE* 86–88 (1975) (describing elements — information, action, and evaluation — that interrelate when a professional practices problem solving). There is a hierarchy of strategies, from the specific and concrete to the more general and abstract. See J. HUNT, *supra* note 15; ARGYRIS & SCHÖN, *supra* note 16, at 9. See also text accompanying note 75 *infra*.

Argyris and Schön provide a conceptual model for the task of analyzing intellectual frameworks.¹⁸ They developed models of typical professional action (referred to as "theories of professional practice") by examining the actual intellectual frameworks to which professionals resort when solving problems. Recognizing that professional practice is a sequence of actions undertaken by a professional to serve clients,¹⁹ Argyris and Schön conceptualized a "theory of professional practice" as a set of interrelated "theories of action."²⁰ By focusing on the actions — the deliberate human behavior — exhibited by professionals, Argyris and Schön developed "theories of action" and from these constructed "theories of professional practice."²¹

Since deliberate human behavior is a consequence of a person's "theories of action," behavior can be explained or predicted by attributing to the actor a "theory of action."²² Each person's "theories of action" are influenced by a body of informal beliefs that are relevant to deliberate human behavior. That is, "theories of action" depend upon: (1) *assumptions* — relevant stated or unstated suppositions, beliefs, or hypotheses about the world, including beliefs about the profession, about oneself, about others, and about the interrelation among actions, consequences, and situations, including both tacit and explicit knowledge; (2) *governing variables* — interests or outcomes that are within an individual's control and that must remain within a range acceptable to the individual to maintain constancy in his world (for example, level of anxiety, time expended, etc.) (3) *core values* — desired and appreciated criteria upon which basic behavioral choices are made (for example, informed client decision making); and (4) *action strategies* — the rules for or method of taking action in recurrent situations.²³ A

18. ARGYRIS & SCHÖN, *supra* note 16.

19. *Id.* at 6. In law, for example, a typical sequence would be interviewing a client, gathering information, preparing materials, taking action, and finalizing results.

20. "What ever else a theory of [professional practice] might be, it is first a theory. Its most general properties are properties that all theories share, and the most general criteria that apply to it — such as generality, relevance, consistency, completeness, testability, and simplicity — are criteria that apply to all theories." *Id.* at 4 (footnote omitted). Although Argyris and Schön describe their "theories of professional practice" and "theories of action" as true theories, one can certainly argue that these concepts are not really theories in the accepted sense of the term. Therefore, the terms will be placed in quotation marks to denote the special use of the words.

21. *Id.* at 63–95.

22. *Id.* at 5. For example, by observing deliberate human behavior a "theory of action" may be attributed to a trial lawyer examining a hostile witness: "When examining a witness who is hostile to my case, if I want to make his testimony appear unbelievable, I must attack his credibility."

23. See ARGYRIS & SCHÖN, *supra* note 16, at 7, 15–16, 20–34; Bolman, *supra* note 8 at 112.

"theory of action," then, is a proposition that, given certain assumptions, if a certain action strategy is followed then certain outcomes (governing variables) will result.

C. *Analyzing the Experience*

Argyris and his colleagues distinguish between two types of "theories of action." An "espoused theory" is the explanation by an individual of a theory he purports to apply.²⁴ "Theory in use" is a description of the behavior actually exhibited by the individual, the theory that actually governs his behavior, and the one which can be constructed from observations of his behavior.²⁵ If a person's "espoused theory" is inconsistent with his "theory in use" (and frequently this is the case), he cannot accurately predict or explain his actions. For example, a practitioner who purports to value client autonomy and to desire decision-making by the client may in fact act to restrict the amount of information conveyed to the client, thereby controlling the decision-making process. In such a situation, the behavior is ineffective by the practitioner's own standards. But the practitioner may not recognize that the results that actually were produced are different. Even if he does recognize the ineffectiveness of his actions to achieve certain desired results, he may not understand why the different consequences occurred. His "theory of action" is not processing and organizing the information he confronts in a way that promotes intellectual growth and problem solving.

To become aware of the ineffectiveness of professional behavior, a person must articulate his framework for problem solving — he must verbalize this "theory of action".²⁶ Once a "theory of action" has been articulated, it is testable. To articulate a "theory of action" a formula

24. For an example of such an explanation, see text accompanying note 82 *infra*.

25. ARGYRIS & SCHÖN, *supra* note 16, at 6-7.

26. *Id.* at 15. Another educator has called the inability to formulate "practice wisdom" systematically one of the unrecognized critical issues of the helping professions. M. BLOOM, *supra* note 17, at 66. One initially cannot expect the neophyte to articulate a well-developed "theory of action" given his extremely limited knowledge about the practical aspects of lawyering. One cannot have double-loop learning (learning based upon feedback from one's experience) until one has sufficient knowledge to articulate a "theory of action" or hypothesis. ARGYRIS & SCHÖN, *supra* note 16, at 18-19. The role of classroom teaching (single-loop learning) in providing a basis for a "theory of action" is considered in part II *infra*. See also note 74 *infra*.

An important related problem for the clinical education supervisor is that his ability to teach is severely and hopelessly impaired until he, too, has made his "theories of action" explicit.

can be employed: in situation S, assuming a, . . . a_n,²⁷ if you want to achieve consequence C, take action A. If a person can describe the circumstances that he faces, the assumptions underlying his assessment of the circumstances, the action that he plans to take, and the desired results of his action, then he can evaluate whether the action in fact yields the predicted results. If it does not, then the "theory of action" is disproved and the ineffectiveness of the action taken can be recognized more clearly.²⁸ The clinical experience provides a closely supervised setting in which the student can practice making his "theories of action" explicit. By requiring students to articulate their "theories of action" in recurring professional situations and by recording the way they actually behave in those situations, a system can be established for using the student's experiences to test his professional effectiveness.

Once ineffective professional behavior has been identified, there is strong motivation to learn why it has occurred.²⁹ The next step in the process of learning from experience, then, is to determine what problems caused the ineffectiveness. Argyris and Schön refer to these problems of ineffectiveness as "learning dilemmas."³⁰ Learning dilemmas arise when there is a conflict between some element of the prevailing "theory in use" and some important criteria applicable to the theory. Learning dilemmas occur for a number of reasons: because there are unforeseen conflicts or inconsistencies between assumptions, governing variables, core values, and action strategies;³¹ because the action strategy used is ineffective in achieving the governing variables; or because there is incongruity between an "espoused theory" and a

27. See text accompanying note 23 *supra*. The breadth of the ARGYRIS & SCHÖN, *supra* note 16, definition of "assumptions" demonstrates the wealth of beliefs, knowledge, and suppositions we bring to bear in formulating our "theories of action." Since these often tacit assumptions underlie our choice of action strategies and are, therefore, very important components of a "theory of action," it is important to try to articulate these assumptions. For example, assumptions about a client's expectations and his desires and abilities to participate in decisions affecting his case will largely determine how an attorney counsels his client and structures the attorney-client relationship.

28. ARGYRIS & SCHÖN, *supra* note 16, at 25. A person without training is generally unable to articulate a complete and accurate explanation of his behavior, so his "espoused theory" will be incongruent in some way with his "theory in use." There are varying degrees of incongruence and usually a person will be able to describe some but not all of his actual behaviors. In this common situation, it may be even harder for the person to recognize his ineffectiveness because his behavior is only partially ineffective.

29. Argyris and Schön explain that recognition of ineffectiveness causes people to be so motivated because inconsistency, incongruity, and unpredictability are not considered as valuable as consistency, congruence, and predictability. Individuals aspire to a sense of competence and effectiveness. *Id.* at 99-100.

30. *Id.* at 30-34.

31. See note 23 and accompanying text *supra*.

"theory in use."³² The determination as to why professional behavior is ineffective is based on exposure to these learning dilemmas.

There are specific learning dilemmas of which the supervisor of legal clinical education should be particularly aware because they occur frequently. One potentially debilitating dilemma occurs when a student's "espoused theory" is wholly incongruous with his "theory in use." If the elements of a student's "espoused theory" are central to his self-image, the resulting incompatibility between what he says and what he does — between his thoughts and his actions — can cause inner conflict and anxiety. Another frequently encountered learning dilemma arises when application of a student's "theory of action" does not achieve his governing variables or objectives. This dilemma occurs when objectives are unrealistic (the student may have set his governing variables too high), when assumptions are inaccurate (for example, maybe the disgruntled client *was* capable of making a reasoned decision), when an action strategy is inadequate, or when the inexperience of the student prohibits execution of this strategy. A third type of dilemma upon which legal clinical education supervisors should focus results when the student's governing variables are in conflict. For example, the student may want to control the attorney-client relationship and yet be warmly regarded and trusted by the client, in which case his desired outcomes are often in conflict. A closely related conflict and dilemma arises when the student's "theory in use" creates a state of affairs that becomes intolerable to the student because his behavior is in conflict with his core values. The student may win an argument on a motion by using highly aggressive behavior toward and sarcastic treatment of his opponent, and then find that the judges and his opposing counsel will not talk to or cooperate with him for the next year. Finally, dilemmas result when inconsistencies exist between governing variables and action strategies. For example, a strategy using a directed interview with closed questions may not result in the completeness of information desired.

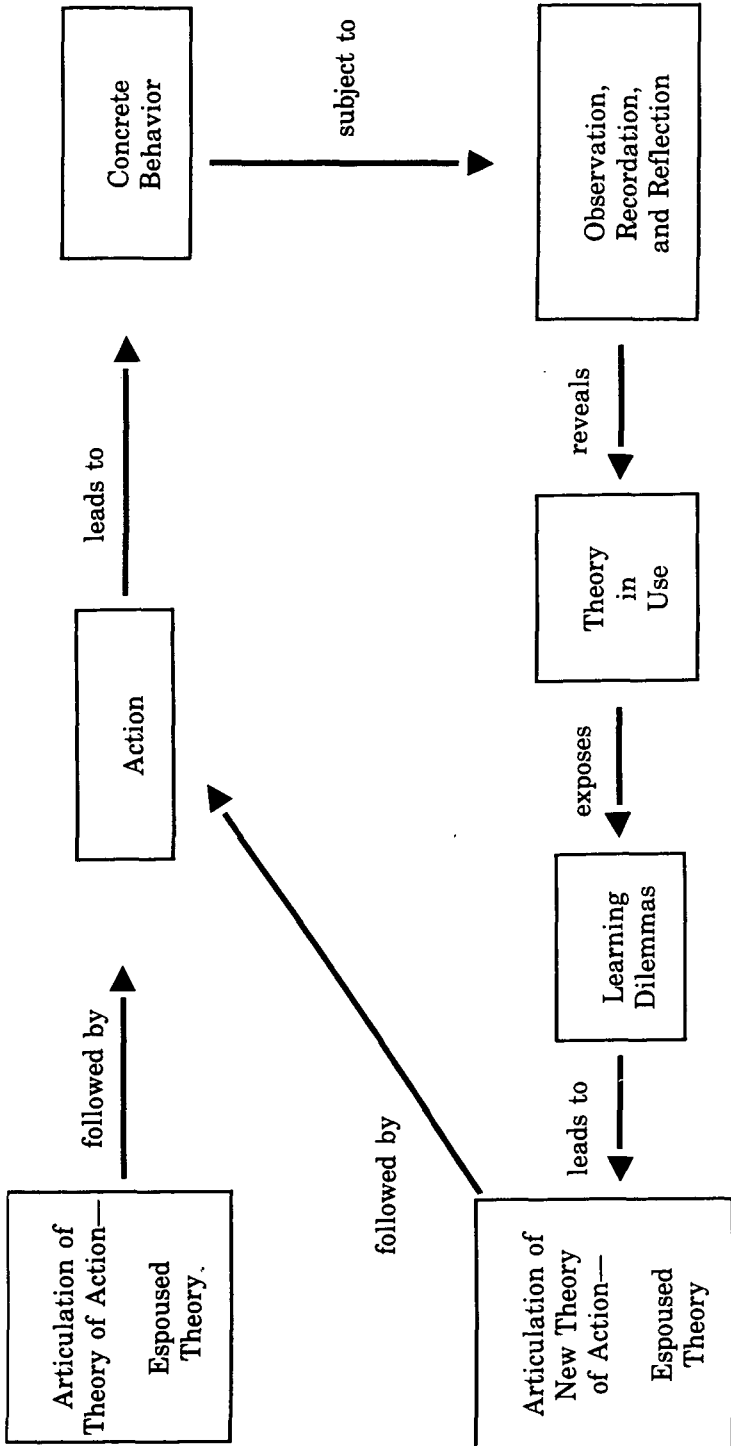
The foregoing discussion suggests that in order to effectively learn from experience, the person must become aware of the areas of ineffectiveness in his behavior. A diagram of this process of learning from experience is provided in figure 1.³³

32. ARGYRIS & SCHÖN, *supra* note 16, at 99–100.

33. Figure 1 is based *primarily* upon a depiction of experimental learning in Doherty, Mentkowski, & Conrad, *Toward a Theory of Undergraduate Learning*, in *LEARNING BY EXPERIENCE — WHAT, WHY, HOW* 23, 27 (M. Keeton & P. Tate eds. 1978) (citing ARGYRIS & SCHÖN, *supra* note 16).

The model may appear to be an unnecessarily complicated version of stimulus-response psychology. The explicit recognition of the role of the intellectual framework to

FIGURE 1



By systematically articulating his proposed "theory of action" in a given situation, taking action, and then comparing the actual results with the expected results, he will be faced with the ineffectiveness of his professional behavior. This juxtaposition of theory and fact and the identification of inconsistencies among components of the theory should, under appropriate circumstances, provide motivation to modify one's "theories of action" and promote more effective professional behavior.

D. The Effect of Existing Behavior Patterns

Mere cognitive appreciation of a process of learning from experience is not enough to make it happen. Existing values and behavior patterns exert a more powerful influence over an individual's action than does the incentive to learn. Even when people are made aware of the ineffectiveness of their professional practice, of the inconsistencies and incongruities within their "theories of action," they are often reluctant to change their behavior. People value a stable world-picture; they value being predictable and being able to predict. Established "theories of action," even those that are only partially effective, help to maintain a perception of constancy. Most people are unwilling to alter their "theories of action" unless the results of their actions fall outside a fairly broad range of acceptable outcomes.³⁴

While all existing behavior patterns influence the effectiveness of the learning from experience process, certain behavior patterns produce more resistance than others. The work of Argyris and Schön and other social scientists concerned with issues of professional competence suggests that the behavior pattern most frequently exhibited by professionals substantially limits their ability to learn from experience.³⁵ This mode of social interaction orients interpersonal relationships towards specific goals: maximizing winning and minimizing losing; acting in a rational manner; and minimizing the open expression of feelings. "Theories of action" based upon these goals result in "minimal learning, defensive and mistrustful relationships, ineffectiveness of relationships and human systems, and long-term deteriora-

process our experience and the fact that individuals often act in a manner different from their "espoused theories," however, seem to make the possibility of third-party intervention more fruitful. The more explicit model suggested herein should focus the reader's attention on crucial aspects of the learning process. For examples of simpler models of experiential learning, see A. CHICKERING, *supra* note 11, at 17; Kolb & Fry, *Towards an Applied Theory of Experiential Learning*, in THEORIES OF GROUP PROCESSES 33 (C. Cooper ed. 1975).

34. ARGYRIS & SCHÖN, *supra* note 16, at 15-17.

35. See *id.* at 63-84; Bolman, *supra* note 8, at 119-20.

tion of problem-solving processes".³⁶ Unfortunately, traditional legal education tends to reinforce this mode of social interaction.³⁷ Relationships — between student and professor, even between student and student — are characterized by persuasion, intellectualizing, competition, information suppression, manipulation, and outward conformity with limited internal commitment.³⁸

This characteristic form of professional interaction greatly impedes the ability to learn from experience. People who interact through this behavior pattern are reluctant to expose their own theories and to question theories exhibited by others — to give and take criticism — because such steps generate negative feelings. This behavior pattern creates defensiveness about ineffectiveness and makes people unwilling to accept assistance. In general, it discourages the articulation of "theories of action," an essential step in the process of learning from experience, forcing dependence on tacit theories. This, in turn, limits the opportunities for testing the effectiveness of the professional action taken.³⁹

The strong pressure against change that results from existing behavior patterns coupled with the mode of social interaction pervasive among professionals, which further impedes the process of learning from experience, makes teaching the process a difficult task. The supervisor must provide information and assistance in a manner that facilitates a willingness to confront ineffectiveness and change one's "theory of action."⁴⁰

36. Bolman, *supra* note 8, at 115. See also ARGYRIS — SCHÖN, *supra* note 16, at 17.

37. Cf. Condlin, *Socrates's New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. ____ (1981) (examining different modes of interaction used by clinical supervisors and the resulting effects).

38. Chickering, *supra* note 7, at 75 (referring to ARGYRIS & SCHÖN, *supra* note 16).

39. ARGYRIS & SCHÖN, *supra* note 16, at 17.

40. William Simon recently criticized the approach of Argyris and his colleagues. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 531-39 (1980). While Simon recognizes the educational focus of Argyris's "elaborate pedagogical approach," he tars Argyris with the brush he applies to a greatly diverse group whom he claims subscribe, to a greater or lesser degree, to what he defines as the "Psychological Vision." See note 68 *infra*. Simon argues that in situations where Argyris's collaborative Model II behavior is taught, there are strong tacit pressures toward Model II behavior that tend to obscure social and political factors. Assuming that Simon's generalized "Psychological Vision" has descriptive value and that Argyris can be fit into his abstraction without too much difficulty, Simon nevertheless recognizes the validity of the approach in many contexts. *Id.* I am concerned only with utilizing Argyris's insights in experiential learning, not with student therapy.

E. Feedback

The ability to benefit from experience is contingent upon valid feedback — accurate, objective information from the environment that helps the student determine whether his actual behavior is moving him towards his goals effectively.⁴¹ The success of the feedback process will depend primarily upon two variables: the quality of the feedback provided and the receptiveness of the student to the feedback.⁴² The latter, of course, will depend upon the quality of the feedback, but there are additional considerations that affect student receptiveness. The degree to which a student will be receptive to feedback is a function of how helpful or useful he perceives it to be. If the feedback is perceived as irrelevant to what the student was trying to accomplish, he will not think it is useful. By focusing on learning dilemmas,⁴³ the supervisor can assure that the feedback will be perceived as relevant. Student receptiveness to feedback is also influenced by subjective factors. If the feedback threatens the student's self-image, he may feel compelled to reject it; he may activate defense mechanisms to distort or block the feedback to preserve his self-image. For example, the student who considers himself oriented toward client autonomy and decision making may reject data that indicates he conducted a very controlling counselling session with his client. Because "theories of action" involve internalized beliefs that contribute to a sense of constancy and predictability, feedback that threatens these beliefs is unsettling. A

41. Unfortunately, the pervasive mode of professional interaction as described in the preceding section, see notes 34 to 39 and accompanying text *supra*, makes providing valid feedback a difficult task. See W. TORBERT, *LEARNING FROM EXPERIENCE* ch. 1 (1972).

One certainly can speculate that law school training with its highly competitive atmosphere and emphasis on advocacy rather than on collaboration makes it especially difficult for lawyers to provide and to be receptive to feedback. Bolman, *supra* note 8, confirms this speculation.

For an example of controlling and unhelpful feedback by a supervisor, see Bolman, *supra* note 8, at 126-30.

42. The process of learning from experience can be implemented by the student on his own. There are, however, several reasons why sound clinical supervision makes the method described in this paper much more effective than "going it alone." One reason, the reluctance to utilize knowledge of results, was discussed in part I section D *supra*. The supervisor can help to make the learning process explicit and thereby more effective and conducive to replication. Part III *infra* offers additional reasons why supervision is helpful in an initial professional experience. Of particular importance is the fact that the student often does not know yet what to look for. Furthermore, even if he were aware of the wealth of potential sources of feedback, his task-oriented and anxious early professional behaviors could cause myopia. The supervisor, who has a method to focus his observations, who knows the source of relevant data, and who can view the entire process with objectivity, is a much better observer and can, through his explicit method, teach the process of providing valid feedback.

43. See text accompanying notes 30 to 33 *supra*.

program for providing feedback, then, must be undertaken sensitively and must take the pervading mode of professional interaction — with its accompanying defensiveness and reluctance to deal candidly with experience — into account.

The quality of the feedback provided is an important key to a successful program to teach learning from experience. Valid feedback has several characteristics. The most important characteristic is that the information be directly observable data — data that can be checked and have not been distorted by the observer.⁴⁴ If the supervisor has any doubts about his observations, as often he should, he should check the accuracy of his proposed feedback with others who were present. This approach precludes being attributive or attempting to explain the behavior by guessing at underlying motivations. The supervisor should, for example, focus on the questions a student asked in an interview, the client's responses to the questions, and other observable facts of the interaction rather than tell the student that he was very controlling. This does not mean the supervisor can never offer an opinion or attempt to give an explanation for why the student acted as he did. It does mean, however, that before an explanation or opinion is offered by the supervisor, the student should be confronted with data that makes him aware of his ineffectiveness and that helps him unravel dilemmas on his own. In addition, this means that in order for feedback to be valid it must be provided in conjunction with the student's articulation of his "theories of action." Only then does the supervisor have criteria against which to juxtapose feedback on student action. The supervisor's primary role is to collect the data observable from the student's performance that will facilitate the student in recognizing and confronting his ineffectiveness. Only after the student has internalized the fact that his behavior is ineffective should the supervisor suggest possible explanations for the ineffectiveness.⁴⁵

If the supervisor limits his feedback to information that is observable, both the control exercised by the supervisor and the dependence exhibited by the student will be minimized. The data provides a basis for increased participation and discussion by the student which, in turn, should decrease his defensiveness and increase

44. ARGYRIS & SCHÖN, *supra* note 16, at 86.

45. A good discussion of the critique process and one upon which I have drawn for this discussion of feedback is M. Hermann, *On Looking at Lawyering: An Examination of Observation and Critique* 16–21 (unpublished paper prepared for Professor Lee Bolman at Harvard Law School, 1977).

his receptiveness to use the feedback to resolve the dilemmas.⁴⁶ An atmosphere of mutual cooperation should result.

In addition to being objective and based on directly observed behavior, valid feedback has several other characteristics. Good feedback is honest and not unilaterally controlling. Holding back or deliberate distortion deprives the student of needed data. Moreover, the student may perceive false praise and holding back of information, undermining the relationship necessary for learning.⁴⁷ Closely related to providing data that are observable is providing data that are specific. More concretely described behavior is usually easier to recognize and, therefore, to analyze and change. More specific feedback does not demoralize because it describes behavior that both the actor and the observer can agree has occurred and about which some action to change can probably be taken.

The feedback process should be checked to ensure the student understands what the supervisor is trying to convey: misconveyed or misunderstood feedback can have destructive consequences in spite of the sender's good intentions. At the least suspicion of faulty communication, the supervisor should ask the student for his understanding of the feedback. The supervisor then can clear up any misconception.

The feedback should be given as soon after the behavior as possible, assuming the student will be mentally prepared for the discussion. From a behavioralist perspective, this is probably the most important quality of feedback because motivation is a function of the immediacy of the response. Certainly, time dulls recollection of events and increases the likelihood that the data will be less specific and more evaluative.

One additional consideration, while not strictly a quality of valid feedback, should be reiterated. Feedback should be solicited or at least desired; to be effective, it must be shared. Feedback is maximally useful when the student feels he wants and needs it because he has formulated a question the feedback can help to answer. Even though the feedback is desired, it should not be used to overload the receiver or to unload on him. Overloading may cause despair about the prospect of becoming effective and, therefore, is dysfunctional; some feeling of competence is necessary for professional growth. The supervisor must be selective in providing feedback in spite of the need to supply specific data about the student's overall performance.

46. ARGYRIS & SCHÖN, *supra* note 16, at 90.

47. See part I section F *infra*.

F. *The Supervisor-Student Relationship*

The supervisor should be concerned not only with the content of the information he provides for the student, but also with the quality of the relationship between the student and himself. This is true for several reasons. First, the inherent nature of fieldwork education creates anxieties for students that can interfere with the learning process. Almost every student will need to ask for help because he is forced to start practice either before he has the essential knowledge for competent performance or, if he has the knowledge, before he has been able to assimilate it into his behavior.⁴⁸ The student cannot, as he can in the traditional classroom, hide in the back row or withdraw from an unpleasant environment. The supervisor cannot tell and show the student how to deal with particular situations in an attempt to alleviate anxiety and most easily solve a particular problem.⁴⁹ The supervisor must be concerned with developing in the student the ability to define and solve problems. Thus the student and the supervisor must work together and deal with the problem of authority inherent in the teacher-learner relationship.

Most students will be able to respond to this new learning situation and work through the problem with manageable anxiety if the relationship with the supervisor is a positive one, one characterized by mutual respect, trust, and openness.⁵⁰ If the supervisor is not sensitive to and does not attempt to meet the student's needs, minimal learning, and possibly an overall negative experience, will result.

A second reason why the supervisor should be concerned with the quality of his relationship with the student is the danger of creating a controlling rather than a facilitative relationship. While the supervisor must assume an ascendant role to protect the client's interest and may withhold some feedback to avoid overloading the student's ability to evaluate his activity, as a general principle, a controlling relationship prevents attainment of the skills needed to learn from experience. A controlling relationship not only prevents accurate feedback and generates resistance to feedback, but it also undermines the ability of

48. Cf. Towle, *The Place of Help in Supervision*, in *EDUCATION FOR SOCIAL WORK* 137 (E. Younghusband ed. 1968) (discussing similar problems that arise in social work supervision).

49. Cf. Harrison & Hopkins, *supra* note 6.

50. Cf. Selby, *The Fieldwork Supervisor as Educator*, in *EDUCATION FOR SOCIAL WORK* 152, 159 (E. Younghusband ed. 1968).

the student to become an independent⁵¹ and self-critical practitioner. Avoiding the controlling role, however, is extremely difficult because many professionals have a tendency to pre-empt others or to need an ascendant role;⁵² professionals trained to labor in an adversary system have to be especially careful. While the lawyer who excels in the heavily advocacy-related areas of lawyering may produce a good copy, he will not make a good clinical supervisor unless he can somehow shed the advocate's desire to control the situation.⁵³

Even though the stereotypical law school teacher-dominated relationship is not conducive to learning from experience and to maximizing professional growth, the supervisor should not trade his imposing coil for the therapist's chair. The purpose of fieldwork is primarily professional growth rather than psychological growth.⁵⁴ Even if supervisors were capable therapists, conflicts probably would arise between teaching and therapeutic roles.⁵⁵ Nevertheless, while it seems clear that clinical teachers should stay on their side of the fence, research suggests that educators can profitably incorporate insights from the "helping" professions.

Carl Rogers has found that in a wide variety of helping relationships, the most significant element in determining effectiveness is

51. Some dependence is implicit in professional fieldwork learning. Where the student acknowledges the supervisor's authority and accepts advice and guidance, normal reliance should be tolerated. However, when the student's dependence decreases motivation toward professional self-dependence, when the student fails to feel discomfort over being dependent, and when the student does not appear to grow less dependent upon the supervisor, the dependency should not be tolerated. See C. TOWLE, *supra* note 12, at 141-42. Typically, excessive dependence exists when the student is unable to undertake even preliminary steps, such as preliminary research or factual investigation, without first consulting the supervisor, or when the student is unable to hazard any opinion as to a proper course of conduct. After accumulated experience with similarly qualified students or based upon consultation with experienced supervisors, the supervisor will be able to recognize excessive dependency. If confronted with excessive dependency, the supervisor should explain honestly what he feels are realistic expectations for the student and should determine whether the student thinks the expectations are realistic and can be met. Since the supervisor has considerable latitude in controlling the caseload demands placed upon the student, he should utilize this flexibility to create a learning environment suited to the reasonable needs of the individual student.

52. See text accompanying notes 34 to 39 *supra*.

53. Bolman, *supra* note 8, at 120-30.

54. Developmental theorists have drawn parallels between intellectual development, moral development, and ego development. See, e.g. Chickering, *supra* note 7, at 62. The distinctions between growth in these various areas are especially blurred in fieldwork education where professional responsibility and interpersonal process dimensions are so important. Cf. M. RIOCH, W. COULTER, & D. WEINBERGER, *DIALOGUES FOR THERAPISTS 2* (1976).

55. For a good discussion of the benefits and the dangers of borrowing from counseling concepts, see M. COGAN, *CLINICAL SUPERVISION* ch. 5 (1973).

the quality of the interpersonal encounter.⁵⁶ He has found that the quality of the relationship is determined by the degree to which four conditions exist: genuineness of congruence; empathy; positive regard; and unconditionality of the regard.⁵⁷ Recent studies indicate that these four conditions necessary for successful client growth in a therapeutic relationship are core facilitative conditions for all interpersonal learning processes, including the supervisory relationship.⁵⁸

The first condition, genuineness or congruence, refers to the supervisor's ability to be freely himself in his relationship with the student. An individual is genuine or congruent to the extent that all his experiences are represented in consciousness without distortion or denial.⁵⁹ In terms of the supervisory relationship, the supervisor's "realness" and sincerity encourage trust and openness in the student. His "awareness" serves as a model for the student who must be able to explicate his "theory of action" and utilize his experience without distortion. The feedback provided by a "genuine" supervisor consists of

56. Rogers, *The Interpersonal Relationship: The Core of Guidance*, 32 HARV. EDUC. REV. 416 (1962). For a more detailed discussion of the characteristics of an effective helping relationship, see C. ROGERS, ON BECOMING A PERSON 33-58, 282-95 (1961).

57. Rogers, *supra* note 56.

58. Cf. A. ORATIO, SUPERVISION IN SPEECH PATHOLOGY 47 (1977). Oratio lists many of these studies. Instead of listing the research, I refer the reader to the references cited in Oratio.

One recent review of the literature finds a clear relationship between conditions necessary for change in the course of training for a new professional role and Rogers's core conditions for the effective helping relationship. G. Cook, *Supervisors for the Classroom: The Professional Growth of Educational Supervisors in a Program of Clinical Training 57* (unpublished D. Ed. thesis for the Harvard Graduate School of Education, 1977) (available through University Microfilms, Ann Arbor, No. 77-16, 686). The necessary conditions are that the person feels it is safe to give up the old responses and to learn something new, that the person can identify his needs and choose from a number of known alternatives, and that the change is one of self-concept (in attitude and belief), not just of behavior. The theory of learning from experience developed herein attempts to provide a process and a structure that is sensitive to the need for these conditions.

59. Rogers, *supra* note 56, at 417. Two examples may help the reader understand this concept. Assume the supervisor says to a clinical student: "I'm *not* disappointed at your showing during the argument on the motion. It wasn't a *real* bad job. I was just pointing out *all the problems* in your argument." The supervisor *is* disappointed and his language is confusing the student. Or suppose, is yawning and frequently glancing at his watch as he listens to a student describe his interview and research. If the supervisor tells the student: "That was a really good presentation," the student will be aware of the falseness. In the first example there is incongruence between what the supervisor actually experienced and what the supervisor was aware of experiencing. In addition, there is incongruence between his experience and his communication. In the second, the incongruence is between awareness and communication. These examples are modification of two examples provided in C. ROGERS, *supra* note 56, at 340-401. This kind of incongruent behavior does not encourage the trust and openness necessary for open, effective communication. How can the student respond to or benefit from feedback unless he is willing to ask the supervisor what he really means?

his actual observations and his feelings about what he is experiencing, unlike attributive or highly evaluative remarks which do not encourage further productive discussion. Rogers views genuineness or congruence as the crucial condition, but one which clearly is not easy to achieve because it is synonymous with psychological adjustment, maturity, and openness to experience.⁶⁰

Empathy or empathetic understanding refers to the supervisor's ability to perceive the student's world and to communicate significant fragments of that understanding.⁶¹ The supervisor should be able to sense the student's anxiety and confusion as if it were his own yet without being hamstrung by it. If the supervisor cannot appreciate the position of the novice professional, he probably will not be able to help the student understand the problems that arise and find solutions to the problems. In feedback terms,⁶² without empathy the feedback is not valid because it comes solely from the supervisor's subjective frame of reference without addressing the problem as it is perceived by the student. Without empathy, the feedback process fails to create a climate in which the student and supervisor can reach a common understanding of the problem. Supervisors must listen and observe empathetically in order to receive more of the student's subtle expressions and to help him probe the significance of his experiences.

The third condition, positive regard, refers to the ability of the supervisor to experience a warm, positive, and acceptant attitude toward the student.⁶³ This attitude should exist regardless of the particular behavior of the moment: it is nonjudgmental. If the supervisor cares for and accepts the student, as a person, and communicates this respect to the student, the student should feel comfortable about expressing whatever feelings or problems he is experiencing without fear of approbation. This does not mean that the supervisor must value equally all of the student's behaviors or experiences, but it does mean that he values the student as an individual who has experiences and behaves in certain ways. If the attitude of the supervisor toward the student is not positive, or if the relationship is one that fluctuates depending upon whether the supervisor approves of the student's conduct at the particular moment, the student will not feel safe, and he is less likely to participate and,

60. G. DUSSAULT, A THEORY OF SUPERVISION IN TEACHER EDUCATION 121 (1970). Dussault develops an elaborate theory of supervision based largely on Rogers's theory of therapy and personality change.

61. Rogers, *supra* note 56, at 419.

62. See text accompanying notes 41 to 47 *supra*.

63. Rogers, *supra* note 56, at 420.

therefore, to learn. Note, however, that the supervisor can freely express his own feelings about the student's conduct (his feelings are also important for his genuineness) and still experience positive regard for the student.

Rogers emphasizes that the effectiveness of the interpersonal relationship is directly related to the unconditionality of the positive regard, and has called unconditional positive regard the fourth necessary condition for the sake of emphasis. In the supervisory context, this means the more the supervisor is able to value the student in a total rather than in a conditional way, the greater the potential for learning from experience.⁶⁴ The supervisor must strive, therefore, to accept the student without reservations and must avoid being judgmental about the student's attitudes, level of sophistication, feelings and conduct.⁶⁵

One additional factor is necessary to achieve a maximally effective interpersonal relationship: the conditions must be communicated to and perceived by the student. This means that not only must the supervisor be aware of his own attitudes, but also he must be aware of how the student perceives these attitudes.⁶⁶ Empathy, for example, might be interpreted as lack of involvement and unconditional regard as indifference. The student must perceive the elements for what they are in order for growth to occur.⁶⁷

Rogers' core facilitative conditions promote the collegial, noncontrolling relationship that the experiential literature stresses is so important.⁶⁸ The conditions provide an environment in which valid

64. Again, an example may be helpful. Suppose the supervisor's attitude towards a student is dependent upon how he values the student's performance: "That would be a good argument if it were well-organized." The supervisor is channeling the student into a mold — is accepting some aspects of the student's behavior but is disapproving of others — and it is unlikely that the student can learn and change with respect to the behaviors that the supervisor cannot accept. See C. ROGERS, *supra* note 56, at 54.

65. Rogers, like many other students of the learning process, is concerned with developing in each individual a potential to solve problems creatively by himself. See note 15 *supra*. If the supervisor can discuss the student's attitudes, performances, beliefs, etc. and at the same time can encourage the student to examine his own feelings and experiences and to find his own meaning in them, the student will not be channeled into a narrow mold which precludes creative problem-solving ability. See C. ROGERS, *supra* note 56, at 280-81, 283. A more general benefit of unconditional positive regard is that it promotes self-esteem and self-confidence. The supervisor can critique a performance or question the appropriateness of a student's attitude toward his client without making a judgment that the student is incompetent or a bad person; critique should be undertaken because the supervisor cares about the student and about the student becoming effective.

66. Rogers, *supra* note 56, at 422.

67. *Id.*

68. *Id.* William Simon asserts that Carl Rogers is the most important theoretical influence on many of the lawyers who promote the "Psychological Vision." Simon, *supra*

feedback and student receptiveness can be maximized. The student must know that the supervisor can be trusted to help him when he takes the risk of acknowledging his need for knowledge, skill, information, and emotional support. If Rogers is correct, substantial self-awareness and professional growth will occur only if the supervisor cares and projects the image that he cares.

One final aspect of the supervisor's role should be mentioned. The student's ability to compare his performance with an articulated "theory of action" implies that he can appreciate that lawyering is a behavior susceptible to and requiring detailed analysis and that he can learn to set his own high standards for lawyering tasks. The supervisor must encourage the student to utilize a critical and reflective approach in evaluating his standard of practice. The student must be encouraged to aim beyond the typical standard of the marketplace, a standard often based on "theories" that do more to make the lawyer's work easier than to serve the clients, and that include elaborate rationalizations for ineffectiveness so as to make it easier to externalize failure.⁶⁹ The law school clinical education program must start the student along the road to excellence.⁷⁰ The program must encourage and the supervisor must

note 40, at 506-20. Simon generally attacks the "Psychological Vision" as an alienated community of two (lawyer and client, teacher and student) that obscures social, economic, and political needs and influences, and in fact constrains rather than liberates. Simon, *supra* note 40, at 506-11. Simon appears to misinterpret what Rogers means by the authentic self and unconditional positive regard. There is nothing inherently asocial in these concepts. As Salvatore Maddi, an authority on personality theory, notes: "Rogers assumes that what is consistent with the maintenance and enhancement of the individual's life is also consistent with the maintenance and lives of the people around him." S. MADDI, *PERSONALITY THEORIES: A COMPARATIVE ANALYSIS* 68 (1968). The fully functioning person, "far from being disinterestedly antisocial . . . will value, appreciate, enjoy, and support other people." S. MADDI, *supra*, at 77. Simon's view of positive regard as reflected narcissism seems to be based on an incorrect supposition that individual potentialities are inherently incompatible with social norms, an inadequate understanding of "positive regard," and a failure to consider that the person supplying the regard must be "congruent" with his feelings.

69. Bolman, *supra* note 8, at 114. See also Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*. 34 NLADA BRIEFCASE 166 (1977).

70. Recent research indicates that a sound clinical experience may be the only way to teach professional responsibility effectively. Attempts to teach professional responsibility have generally been a failure, probably because they ignore the affective dimension and treat the professional responsibility curriculum as any other substantive law school course. Cf. Luban, *Calming the Hearsed Horse: A Philosophical Research Program for Legal Ethics*, 40 MD. L. REV. (1981) (suggesting a philosophic approach to the teaching of professional responsibility). They may even result in a negative learning experience. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*. 1979 A.B.F. RES. J. 247, 272-75. See also Barnhizer, *Clinical Education at the Crossroads*, 1977 B.Y.U. L. REV. 1025 (urging that clinical education is uniquely suited to teaching professional responsibility).

reflect the complex of personal characteristics, attitudes, and values necessary for competent lawyering.⁷¹ There is no justification for squandering precious resources to teach the mediocre practice of law. The supervisor of clinical education, confronting a student during a formative stage in his professionalization process, can provide an attitudinal and learning model sufficiently strong to insulate the student from external pressures toward mediocre practice.

II. MAXIMIZING PROGRAM IMPACT

Clinical legal education is not without problems. The foremost of these problems is the limited law school resources to fund such an intense form of one-to-one learning from experience.⁷² The resource limitations can be overcome, to some degree, by utilizing pedagogically sound and efficient practices. Examples of such practices are: introducing students to models "theories of action" and to the underlying concepts of the process of learning through experience; utilizing classroom or small group teaching and orientation to free up the supervisor's time for matters that only can be taught effectively in a one-to-one relationship; carefully selecting the cases and sequencing the tasks to be performed in the fieldwork placement; carefully coordinating the content of the group learning with the fieldwork experience; and carefully selecting and training the supervisors.

A. *Introduction to Theory*

Many law students beginning legal clinical programs have had no prior experience performing the tasks with which they will be confronted. Most lack knowledge necessary to articulate adequate "theories of action" for these tasks. Without the basic understanding required to formulate coherent "theories of action," students are forced to go through the educationally inefficient and highly discouraging route of muddling through the task.⁷³ To expedite the learning process

71. CRAMTON COMMITTEE REPORT, *supra* note 2, at 10.

72. See generally *id.* at 22-27; Swords, *Including Clinical Education in the Law School Budget*, in CLINICAL EDUCATION FOR THE LAW STUDENT 309, 347 (CLERP 1973); Swords & Walwer, *Cost Aspects of Clinical Education*, in AALS-ABA COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION REPORT 133 (1980).

73. We often overlook the fact that a person who purports to be a good helper must also be able to work with theory; without theory and the ability to theorize, one muddles through, is often ineffective, and cannot generalize from experience. See generally, M. BLOOM, *supra* note 6. An educator is always confronted with the problem of providing an effective mixture of theory and experience with respect to professional problem-solving skills. Cf. Coleman, *supra* note 4, at 58-60.

and to increase the chance of a professionally adequate performance, the fieldwork supervisor or a classroom teacher must provide the basic information necessary to initiate the process of learning from experience.⁷⁴

A major issue facing the supervisor who seeks to develop skills for learning from experience is choosing a level in the hierarchical network of "theories of action" at which he wants to concentrate. Some "theories of action" are general and are intended to apply to many tasks; other "theories of action" are specific and are intended to apply to a few particular tasks. For example, the supervisor can choose to deal with the specific process of information gathering involved in the initial client interview. Or, he can focus on a more general process that cuts across client interviewing and other forms of information gathering. Finally, he can concentrate on the comprehensive process of problem solving as a whole.⁷⁵ At least theoretically, the more potent pedagogical choice would be to develop what could be called a meta-strategy, a

74. This part of the article continues to employ the term supervisor with the recognition that the supervisor may not in fact be responsible for the initial explication of lawyering theory and models of the basic lawyering tasks. While part II section D, *infra*, suggests that the supervisor must be able to formulate and teach lawyering theory, he may be limited to overseeing the fieldwork by his choice or by considerations of program efficiency. The teacher of the more theoretical classroom component can handle many more students than the fieldwork supervisor. One of the supervisors with good large-class teaching skills or a regular faculty member might teach the classroom component, or various supervisors might teach different aspects of lawyering theory in a team-teaching approach. Furthermore, a clinical program may involve placements in diverse settings. In such a program, the large classroom component may be appropriate only for teaching the elements common to all fieldwork experience. In any event, the supervisor will be doing at least some group teaching. See part II section B *infra*.

If the fieldwork supervisor is not the primary classroom instructor and/or administrator, the fieldwork supervisor must establish and maintain close contact with these people to determine the goals and content of the clinical component. For example, the assignment of cases by the supervisor should be undertaken only after he understands the objectives and sequencing of the non-fieldwork component. See text accompanying note 96 *infra*. If one views the fieldwork experience as the core of a skills-oriented fieldwork course, the supervisor largely controls the implementation of the course. The supervisor can negate the instructor/administrator's choice of course objectives by failure to coordinate efforts. The supervisor controls (1) the selection of learning experiences which contribute to the objectives, (2) the organization of the learning experiences to maximize their cumulative effect, and (3) the majority of information about educational progress of students upon which the evaluation of the effectiveness of the educational program in attaining its objectives can be undertaken. Thus the supervisor and the instructor/administrator must work together closely to set and achieve goals for the program.

75. A good example of attempting to delineate the elements of the interpersonal competence that underlies the numerous skills necessary for the helping professions is found in P. BREEN, T. DONLON & V. WHITAKER, *TEACHING AND ASSESSING INTERPERSONAL COMPETENCE — A CAEL HANDBOOK* (1977).

strategy or a "theory of action" that can be used to solve many diverse professional problems and that will promote cumulative learning from professional experiences.

As the supervisor decides upon the level of the "theories of action" he will focus on, he must keep in mind that learning is a function of the appropriateness of the match between the "theories of action" the student has already developed and the external environment he is to face.⁷⁶ At the initial stage of his lawyering experience, the student needs a relatively concrete and simple model with which to work; he lacks the experience to derive a sound "theory of action" from a highly abstract model.⁷⁷ Thus the supervisor should provide students with basic models that appropriately match the experiences they will encounter in their clinical education work.

Another important issue for the supervisor is choosing the vehicle to use for transmitting this basic knowledge to the students. The use of textual materials and lectures can expedite the students' formation of appropriate "theories of action" and of basic lawyering skills needed to perform professional problem solving. The process of using readings, lectures, and other traditional modes of teaching as well as demonstration tapes and simulations of lawyering tasks permits the students to approach their clinical work with a rudimentary cognitive appreciation of the processes involved. Use of this method of teaching should also save supervisory resources for work on individual and nonrecurrent problems. The supervisor, however, should be careful not to overload the students with information; he must not disregard the probable novelty of practical lawyering skills to most students. Although the need to apply this knowledge in the near future will provide strong motivation to learn, if the student does not have the time to fully assimilate the information its introduction will be unhelpful. The supervisor must be careful to structure the information so that the students can readily grasp the interrelationships among the various materials for their

76. See note 15 *supra*.

77. The foregoing discussion distinguishes between models for teaching purposes on two levels. First, how broadly is the model applicable? Breadth seems to be largely a function of abstraction. See note 75 *supra*. A second level focuses on the degree of complexity. How many factors have been taken into consideration in development of the model, and how complex are the interrelationships between these factors? If the model is too abstract, the student has insufficient experience from which to derive a specific application. Similarly, without experience the student may not be able to weight the factors and disregard those factors that may not be important in a particular case. Students simply do not have the cognitive tools to understand and apply highly abstract and complex theories at this stage of their development. See text accompanying notes 15 to 17 *supra*.

"theory building".⁷⁸ This means the supervisor must be careful in choosing the materials to use.

The supervisor should choose materials that will familiarize the students with basic governing variables and will provide the background information necessary to develop tentative, provisional "theories of action." Even though considerably more explicit and better structured materials recently have been made available for use by clinical instructors,⁷⁹ the supervisor must look for certain characteristics when choosing the materials he will use.⁸⁰ The supervisor should look to the language of the materials to determine its susceptibility to generating testable "theories of action" by the students. He should be sure that the concepts are defined in operational terms; that the relationships between the concepts are sufficiently explained so that a "theory of action" can be derived from the materials; that the derivable theory has predictive potency and is testable so that effects are observable and learning can occur; that the material is logically consistent; that the material is sufficiently broad and applicable to merit the student's investment in studying and operationalizing the material into a theory, but at the same time not too abstract.⁸¹ In addition, the supervisor must be concerned with the status of the "theory of action" derivable from the materials vis-a-vis research. He should be sure that the derivable theories square with current social science study and investigation.

If the material meets the criteria above, it should provide information from which the student can formulate a provisional "theory of action," and the process of learning from experience can begin expeditiously. An example may be helpful. If the student will be responsible for client contact, he needs a basic understanding of how to

78. See J. BRUNER, TOWARD A THEORY OF INSTRUCTION 41 (1966). Just as the good casebook editor carefully structures the materials to promote maximal understanding, the clinical supervisor must exploit the interrelationships among the various skills taught. For example, there are many tasks that can be subsumed under information gathering that have elements in common. Counseling involves most of the elements of the interpersonal relationship taught in interviewing but, *inter alia*, adds the element of "strategizing," or the ability to generate and weigh alternatives.

79. See, e.g., G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELLING: A CLIENT-CENTERED APPROACH (1977).

80. The discussion of choosing material for effective theory building is based on M. BLOOM, *supra* note 17, at 89-99.

81. For example, in Carl Rogers's theory of core facilitative conditions for interpersonal growth, discussed in text accompanying notes 56 to 68 *supra*, the concepts are clearly defined, the relationship between the conditions and the dependent variable is explained in general terms, and the theory has been applied to a variety of interpersonal encounters and has been proven to predict the effect of the presence or absence of the conditions. See A. ORATIO, *supra* note 58.

interview a client. He must be aware of both the need to obtain the relevant information and the need to facilitate a relationship with the interviewee which will encourage a free flow of information and future cooperation. He should be aware that the client's intelligence and ability to recall, the degree of the client's trust, the ability of the attorney to be empathetic, the client's expectations of the attorney-client relationship, and the questioning technique utilized by the attorney are all important variables in the process. He should be aware of the various questioning techniques or strategies (for example, open-ended v. close-ended, leading v. nonleading, broad scope v. narrow scope) and their relative advantages and disadvantages, as well as other common interviewing techniques (for example, silence, repeating key portions of the narration, nodding, expressions of understanding).

With this basic understanding and some discussion with the supervisor, the student can articulate a tentative strategy to deal with the task that confronts him.⁸² "Given a client who has limited intelligence, is shy, and does not yet trust me, together with a need for complete information because of a lack of other credible witnesses, I see that I need to build a close and trusting relationship. Therefore, I will use broad, open-ended questions as much as possible (using narrow and leading questions only when the client seriously wanders off the point or when important details are omitted) and sincere reassuring techniques to demonstrate to the client that I am truly concerned with his plight." This "espoused theory of action" provides a framework against which to measure the student's actual performance, and will ensure that observation and discussion of his performance will be fruitful.

While provisional "theories of action" are important components of a successful clinical program, providing such models through materials and discussions before the clinical experience begins is not without potential dangers. Clinical supervisors should remember that the students' initial dependence on such theories to compensate for lack of practical experience may prevent the student from carefully examining the models and the suitability of the models for a particular purpose or for the student's emerging professional style. The ability to grow professionally requires that the student adopt suggestions for his practice only after careful thought. Thus, the student must be encouraged to critically assess the models advanced in the classroom

82. For a discussion of the concepts behind this process, see notes 15 to 33 and accompanying text *supra*.

component and in any supervisory conferences.⁸³ The potential fallibility and possible unrepresentativeness of the supervisor's approach should be discussed. The behavioral goal is to have the student utilize the better professional literature and practical approaches to solve problems, test the resulting "theory of action," and modify the theory in terms of his experience. This critical use of literature and practical approaches is fostered by the supervisor's demonstrating a healthily skeptical attitude toward the literature and the model "theories of action" (including honest expression of doubt about his own theories and the tentativeness with which he approaches them) and by showing how different approaches work well for different lawyers. Such an approach will ensure that the supervisor is a helpful role model, acting in a matter consistent with the process he is trying to teach his students.

B. *Further Use of the Classroom or Group Setting*

In addition to providing cognitive understanding of the tasks the students will frequently confront, the supervisor should introduce necessary information about fieldwork agency policy, personnel, and practice. The classroom or small group setting is well suited for this purpose.⁸⁴ The most helpful sources of law, model pleadings, and materials on tactics should be introduced to the students.⁸⁵ The supervisor should concentrate on collecting helpful resources, preparing necessary materials when nothing adequate exists, familiarizing the student with these resources, and, where necessary, explaining how the resources can be used most effectively. The students must be sufficiently oriented to the placement and exposed to helpful materials so that the supervisor's time will not be occupied by requests for information easily available elsewhere.⁸⁶

The supervisor also can use a group setting to set the tone for the supervisory relationship. The pressure-packed nature of the clinical

83. See part III *infra*.

84. See note 74 *supra*.

85. Annotated bibliographies and agency-prepared practice manuals are particularly helpful.

86. Of particular importance, the relevant agency or firm personnel should be introduced, basic policies explained, and helpful resources within the placement and elsewhere in the community discussed. The student must appreciate the importance of the agency's or firm's maintaining an effective working relationship with other lawyers, agencies, and courts and be urged to promote or at least preserve the relationship even when he confronts individual and bureaucratic ineptitude. The importance of the process of careful case recording should be explained and illustrated. This process is particularly important in fieldwork placements where a succession of students may work on the same case and the client's tolerance is taxed enough without having each student reinterview him several times.

education experience should be explained so that the student will realize that his anxiety is a normal reaction. The supervisor's initial lawyering experience can be related and any prior student experiences elicited. Proper use of the supervisory resources should be encouraged: the supervisor should make clear that he encourages the student to express his anxieties and his need for assistance during his initial professional experience, but also that he expects the student will attempt to conceptualize the task and propose a course of action on his own if the student is able.

The supervisor should pay considerable attention to the image he projects in this introductory meeting with the students. This initial image is of tremendous importance in establishing a positive, trusting relationship with the supervisees. The supervisor must be aware of the potential role conflicts between the aspects of his job: as a representative of an educational institution with a commitment to sound pedagogical practice; possibly as a representative of a firm or agency with its own standards, procedures, and obligations to the client; and, finally, as a helper. He should share this difficulty with his students, including the fact that he is ultimately responsible for adequate representation of the clients in the students' caseload. He should explain that he might have to intervene in rare circumstances and take over representation to ensure conformity with the highest standards of professional responsibility. But, in spite of his necessarily divided loyalty — which is not inconsistent with the students' professional growth — he should make it clear that his primary interest is their professional growth.

Group supervision can be used after the clinical experience has begun to explore commonly confronted tasks and problems of professional adjustment.⁸⁷ In addition to efficiency, group supervision has the

87. The "professional seminar" is frequently used as a device to explore problems and integrate theory and personal experience in the helping professions. The "case conference" is an ubiquitous teaching technique in the medical sciences. The former deals heavily with problems of adjustment to professional role and would seem to offer significant insights into exploring problems of professional responsibility. Dr. David Singer of the Antioch University Northeast Psychology Faculty has suggested that the "prosem" could be used in clinical legal education to integrate conceptual learning about the law, practical experiences in the clinic, and the experience of self-in-role. D. Singer, *Adult Development, the Self, and the Dynamics of Joining a Profession: Implications for Legal Education* (unpublished paper prepared for delivery at the January, 1981, meeting of the Law and Psychiatry Section, A.A.L.S., in San Antonio, Texas). See also M. RIOCH, W. COULTER & D. WEINBERGER, *DIALOGUES FOR THERAPISTS* (1976) (describing a seminar for graduate clinical psychology students including lengthy transcripts from the seminars and the authors' comments).

advantage of involving students in the process of helping a colleague to learn from his experience, a process in which they can contribute substantially, especially if they have seen the performance or are otherwise provided with data about the task performed. The process can help prepare students for the type of collaboration necessary for successful practice and professional growth, a facet of practice traditionally neglected by legal education.⁸⁸

The supervisor initially should select dilemmas that do not involve decisions of a highly personal nature as topics for a group learning situation; pleading decisions would be a good starting point. Technical problems seem to be less threatening than those with more interpersonal dimensions. As students become more familiar with giving beneficial feedback⁸⁹ and become better at collaboration, topics that involve interpersonal competence can be discussed more easily.

One authority on educational supervision suggests that the role of a supervisor in group supervision should be considerably less direct than in individual supervision.⁹⁰ The supervisor should view himself as a catalyst and a resource more than as a formal group leader. The supervisor should suggest topics and pose questions, but allow the participants ample time to respond to his and others' questions and not attempt to answer most of the questions raised. Particularly, he should avoid summarizing and critiquing the discussion since this may cause the less experienced members of the group to look to him for definitive resolutions of the problems. Such action might inhibit the expression of ideas that the participants would offer but do not because they fear the ideas may be rejected by the authority figure, a phenomenon often confronted in the large classroom. After all, a primary benefit of the group experience is exposure to a variety of approaches, a multiplicity of perspectives. The problem discussion should facilitate appreciation of varying goals, assumptions, and strategies. Consensus should not be sought as an end in itself.

Maximum learning will occur when the learner assumes responsibility for the group discussion. The supervisor should, therefore, consider making participation voluntary when problem solving is the focus of the group supervision. Participation is not required to protect the client since the supervisor will get together with the student-lawyer

88. See CRAMTON COMMITTEE REPORT, *supra* note 2, recommendation 5, at 4; Bolman, *supra* note 8, at 134.

89. See notes 41 to 47 and accompanying text *supra*.

90. R. MOSHER & D. PURPEL, SUPERVISION: THE RELUCTANT PROFESSION 149 (1972). The discussion that follows is based largely on Chapter 7 entitled "Supervising Teachers in Groups."

individually to check his performance for adequacy. However, the difficulty of establishing group trust would suggest that a stable group composition should be sought.⁹¹ The supervisor should explore students' anxieties about participating in the group format so that the group can move forward with its problem-oriented mutual learning. In spite of the desirability of achieving group stability, the supervisor should be ready to counsel out students who do not function well in a group supervision setting. Some students will react in a manner that inhibits the group's ability to proceed with the defined tasks. In a short-term, task-oriented group, there simply is not time to teach effective intragroup behavior.

Experiences need not be identical to make group discussion fruitful. In fact, it has been suggested that diversity of experience reduces competition and might result in reaching a high level of participation relatively early.⁹² As the students become more comfortable with the group learning experience, they can be asked to assume increasing responsibility for picking topics for discussion. Hopefully, the students will volunteer for analysis by the group some recordings or transcripts of their own performance or detailed explanations of problems that they faced on a case.

Group supervision not only should save precious resources, but also should facilitate mutual learning, a result consistent with the primary goal of clinical education: learning from one's own and others' experiences. If the experience of sharing openly with his colleagues is successful, the student will be motivated to continue this type of experience long after the fieldwork experience has ended.

C. *Choice of Experiences and Skills*

Another severe constraint on rigorous learning from experience in clinical programs is the natural limitations imposed by the actual world of practice in which the learning is to take place. The supervisor must carefully select the skills to be taught and screen the clinical experiences to promote both the primary goal of reflective learning from one's experience and the secondary goal of some proficiency in a limited number of lawyering skills.⁹³ The choice of skills to be taught, of course,

91. A significant portion of time is initially required to define the purposes of group supervision and to establish a fruitful context for learning. The opening meeting thus develops ground rules and expectations that can be frustrated by late entrants who have not subscribed to the common task and agreed upon the ground rules.

92. R. MOSHER & D. PURPEL, *supra* note 90, at 160.

93. I have taken the position that the overriding goal of clinical education is to impart the means to grow professionally through learning to solve problems by applying established theories of practice and to criticize results in order to refine these theories. Much has been written about the potential goals of clinical education. See, e.g., Barnhizer,

must be heavily dependent upon the type of work the placement entails (for example, corporate counseling or legal aid or defender work). To select the relevant skills, supervisors should determine the frequency of the occurrence of certain tasks and the relative importance of various tasks and skills.⁹⁴ One recent report suggests that law schools should concentrate on fundamental skills necessary for competence in all or most areas of practice such as factual investigation, interviewing, counseling, and negotiation.⁹⁵ Thus, the placement should, to the extent possible, concentrate on these preponderant skills.

The supervisor's role can be eased and the educational experience heightened if he initially selects a reasonable number of "teachable" experiences for the students (for example, avoiding cross-examination of an expert in complex litigation, or interviewing a highly belligerent and emotionally disturbed client). If the cases selected pose a relatively standardized pattern of tasks, most of the background material or theory

supra note 1; Gee & Jackson, *supra* note 1. It does not seem profitable to cover this ground anew other than to make two brief points. First, as Gary Bellow points out, the uniqueness of clinical education is primarily the fact that it is a *method* (which utilizes placing the student in a lawyer's role) and can be adapted to serve many goals. See Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973). Second, while providing an opportunity to learn how to apply one's legal learning in the real world, the CRAMTON COMMITTEE REPORT, *supra* note 2, sensibly suggests that this generally be done through the skills most utilized by lawyers. See CRAMTON COMMITTEE REPORT, *supra* note 2, at 3, 15.

94. The ideal choice of cases and other factors, of course, must be tempered by the available work to be done. This may require that the student learn from cases that are not ideal pedagogical vehicles and in a setting that is not ideal for reflection. The inability to select an ideal learning environment is, in large part, a function of cost.

95. CRAMTON COMMITTEE REPORT, *supra* note 2, at 9-10, 15-16. As clinical research and teaching materials become more sophisticated, we may be able to generalize even further and concentrate on the interpersonal competence which underlies all of these skills. See, e.g., P. BREEN, *supra* note 75. A danger in this suggestion, however, is the apparently inherent conflict between interpersonal competence as viewed by the helping professions (and epitomized by Carl Rogers) and the kind of manipulative skills often involved in negotiation and fact gathering. See, e.g., Bolman, *supra* note 8, at 116. A helpful summary of research into developmental change generally and interpersonal competence in particular which recognizes the two models of professional effectiveness is Chickering, *supra* note 7, at 78. The overlapping questions of what basic interpersonal skills underlie the more specific lawyering skills (thereby opening up a wealth of relevant literature) and the extent of the tension between personal competence in general and advocative skills in particular are ones which should command considerable attention of legal educators.

Three recent surveys that reflect the view of law students and the practicing bar as to what skills are important are Pipkin, *Legal Education: The Consumers' Perspective*, 1976 A.B.F. RES. J. 1161; Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978); and Zemans & Rosenblum, *Preparation for the Practice of Law — The Views of the Practicing Bar*, 1980 A.B.F. RES. J. 1.

needed to perform these tasks can be taught in a classroom setting that precedes the actual performance rather than in a one-to-one setting.⁹⁶ Keeping the number of tasks reasonable will allow for a relatively deep exploration into "theories of action" and may permit preperformance simulation of actual performances. Being selective also helps to prevent overloading the student and should foster thoroughness. These considerations clearly mandate careful planning by and coordination among those persons responsible for curricular decisions for clinical programs, those responsible for any classroom component, those responsible for clinical supervision, and those representing any agencies that may be used for clinical placements.⁹⁷

Even a well-planned clinical program will cost several times the amount of more typical law school instruction. Pressures exist to utilize non-law school programs and personnel in order to reduce the costs of clinical training. These existing programs are less preferable and should be used as a substitute for the law school program only if the law school can exert sufficient control over the program to guarantee that it meets sound educational objectives. There are techniques that can help make an existing program (or a program conducted jointly by the law school and an agency) more closely approximate the ideal.⁹⁸ Most of these techniques involve the following elements: insuring that the program meets and that the agency agrees to certain goals; exercising control over the tasks to be assigned to the students; coordinating the fieldwork component with the classroom component; and insuring adequate supervision by maintaining a strong role in selecting, training, and supervising the supervisors. Unless the law school can establish these elements, there seems to be no sound educational reason for the law school to become involved in outside programs.

D. *Upgrading the Role of Clinical Supervisors*

Typical current views of the clinical supervisor, to the extent much thought has been devoted to the topic, prevent clinical education from reaching its full potential. Few are willing to recognize that the role of the fieldwork supervisor is indeed a very difficult one; it requires the ability to abstract and theorize (as required of the traditional teacher), the ability to translate theory into practical solutions so as to bridge the

96. See text accompanying notes 73 to 83 *supra*.

97. See note 74 *supra*.

98. The CLEPR Newsletters describe some of these efforts. A more complete discussion of these imaginative efforts, while highly important, is simply beyond the scope of this article. However, I want to make the point that non-law school resources can be used relatively effectively, but only if the law school exerts considerable control.

gap between theory and practice, and a substantial skill in interpersonal relations. If clinical education is to realize its potential for producing competent practitioners (in the full sense of the Cramton Committee Report⁹⁹), law schools simply must make clinical teaching sufficiently rewarding to attract and retain talented people.¹⁰⁰ The typical second-class status afforded clinical teachers is one barrier to attracting such people. The high student-supervisor ratio, the consequently heavy work load, the longer work year, and the general difficulty of doing significant research and writing while supervising clinical programs are also major barriers. Because there is too little time to be reflective about what one is doing, supervisors often "burn out," feeling that they have had little opportunity for professional growth.

The law schools must provide time for clinical supervisors to explore the relevant social science and learning theories. The clinical supervisors must have time to contribute to the scant literature concerned with the theory behind teaching lawyering skills, the process of learning from experience, and the necessity of bridging the gap between legal theory and practice.¹⁰¹ Moreover, this type of research and writing must be rewarded as highly as the more traditional published work.¹⁰²

As Rogers points out, the interpersonal conditions that facilitate professional growth are, in principle, easy to grasp but difficult to achieve in actual life experience.¹⁰³ Supervisors should be selected on the basis, among other criteria, of the interpersonal skills and maturity necessary to be able to teach successfully in a one-to-one fieldwork relationship. Because of the difficulty of achieving the conditions necessary for maximal learning in the fieldwork relationship, the

99. See note 2 *supra*.

100. David Barnhizer describes difficulties facing the clinical teacher, *supra* note 1, at 135.

101. I have previously mentioned two very important skills which should be fostered through the fieldwork experience: interpersonal skills and the ability to solve problems. See, e.g., notes 17, 75, and 95 *supra*. There appears to be substantial overlap between the "metastrategies" of problem solving and learning from experience, that is, between the strategy with which Bloom is concerned, and the one with which I am primarily concerned in this article. There is also considerable overlap, if not a direct relationship, between effective interpersonal skills and learning from experience, as Argyris and Bolman point out. Many have bemoaned the low ability of lawyers and others in all three areas. Some have asserted that all three can be learned, but I am unaware of any attempt to define the overlap between these processes or to advance a model for explicitly teaching all three simultaneously. I must plead guilty to glossing over this important topic and hope that others interested in clinical education and lawyer competency will explore the topic with educational psychologists and kindred souls.

102. CRAMTON COMMITTEE REPORT, *supra* note 2, at 4.

103. Rogers, *supra* note 56, at 422.

unskilled supervisor should be given skilled supervision to develop in the supervisory role¹⁰⁴ and should be given an opportunity to collaborate with fellow supervisors so that the supervisors can grow in their demanding roles.

III. THE SUPERVISION CYCLE

Conscientiously following an adequate model of supervision can increase the efficiency of the clinical program, freeing up time from trivial or unnecessary tasks for pedagogically sound tasks and can, therefore, increase learning. The final part of this article suggests a model "supervision cycle". The cycle is based upon a model for supervision of graduate student-teachers developed after substantial experience with and study of the supervisory process at the Harvard Graduate School of Education.¹⁰⁵ The cycle implements the conditions suggested earlier for maximal learning from experience¹⁰⁶ and incorporates the most successful features of the author's supervisory experience. The cycle is presented not as a rigid prescription¹⁰⁷ but as a suggestion for properly structured sequence of the major tasks of supervision and as a device to emphasize important aspects of and insights into the supervision process.

This suggested "supervision cycle" traces fieldwork supervision from the initial meeting with the student to the final evaluation and termination of supervision. It includes six stages: 1) initial conference, 2) preperformance conference, 3) observations, 4) preconference analysis and strategy, 5) post-performance conference, and 6) final evaluation and

104. At least in the beginning, until a body of skilled supervisors has evolved, law schools might utilize experienced supervisors from other helping professions or might employ "interventionists" like Argyris and Bolman. Bolman describes one attempt to train clinical teachers, *supra* note 8, at 117-20. See also Traux & Mitchell, *Research in Certain Therapeutic Skills in Relation to Process and Outcome*, in HANDBOOK OF PSYCHOTHERAPY AND BEHAVIOR CHANGE 299 (A. Bergin & S. Garfield eds. 1971).

105. See R. GOLDHAMMER, CLINICAL SUPERVISION (1969) (from which the notion of a supervisory cycle was taken). See also R. MOSHER & D. PURPEL, *supra* note 90 G. Cook, *supra* note 58; M. Cogan, Supervision at the Harvard-Newton Summer School (unpublished mimeograph, Harvard Graduate School of Education, 1961).

106. See part I sections E & F *supra*.

107. A few supervisors seem to be natural one-to-one teachers. Others, through experience and a keen ability to learn from their experience, will evolve a sound supervisory technique. The discussion should, however, make it clear that a sound approach to supervision generally and a sound plan for a conference in particular are necessary for substantial student learning to take place. "A lack of proper supervision will most likely mean that students will spend their efforts on routine and meaningless projects with little prospect for intellectual growth." Gee & Jackson, *supra* note 2, at 888. I am painfully aware that much of the discussion of the supervision cycle may seem naively idealistic in light of the demands upon the supervisor's time.

termination. Stages 2-5 will be repeated several times during the supervision of any student in the course of the clinical education experience. Another stage should be added to the cycle as frequently as possible, that of supervising the supervisors, because the beginning supervisor is faced with many of the same difficulties as the student in clinical education and similarly needs assistance.¹⁰⁸

A. *Initial Conference*

There are at least three general purposes to be achieved during the initial conference with each supervisee. The conference provides an opportunity for initial assessment of the supervisee and ascertainment of his goals, can be used for initial case assignments, and sets the stage for the supervisory relationship. If the supervisor has not utilized a group orientation to fieldwork,¹⁰⁹ this initial conference will have to be more comprehensive than the discussion below suggests.

The supervisor and the student can use the first meeting to determine why the student took the fieldwork course, whether he has any particular substantive areas of interest, and whether he has any particular learning goals for the course. While few students at this stage of their legal careers have carefully conceived professional goals and interests, the supervisor invariably discovers that some students are primarily interested in the interpersonal aspects of lawyering, some want an overview of practice to help make a career choice, and others want to develop specific skills. This type of information is helpful in "breaking the ice" with the new student and in determining which cases would most interest and motivate, and therefore be most educational for, the student.

In making the tentative evaluation of the student's current ability to cope with fieldwork, relevant factors should be considered: previous lawyering and relevant helping experiences and training; interpersonal skills; emotional maturity; general motivational level; problem-solving aptitude; diligence; and any physical or social circumstances that might interfere with his adoption of the professional role.¹¹⁰ Students seem to

108. See note 104 and accompanying text *supra*.

109. See notes 85 to 87 and accompanying text *supra*.

110. C. TOWLE, *supra* note 12, at 86-133. One colleague, who is an accomplished supervisor, feels this attempt to devise student interests and appropriate cases is not fruitful and assigns cases randomly. My earlier suggestion that the student will articulate, at least to some degree, special interests and problems and that he and the supervisor can "customize" caseload and supervision is also greeted with some skepticism. I think my colleague's skepticism overlooks the important role of motivation in learning. See Redmount, *A Conceptual View of the Legal Education Process*, 24 J. LEGAL EDUC. 129, 134

respond well to questions seeking the above information when they understand that the information is needed to help arrange a good education experience, an experience that is interesting and manageable for the students. If the student expresses any apprehensions about fieldwork, then he and the supervisor can plan for experiences and supervision that will best obviate the anticipated problems. If, for example, the student is particularly fearful of the initial court appearance, the supervisor can simulate the event to allow for practice until the student feels adequately prepared. Alternatively, a very basic task such as seeking a continuance or entering a plea could be arranged. Even if the above suggestions for conforming the experience to the individual students are unacceptable to all supervisors, it is nevertheless important to tailor the learning situation to account for the educational maxim that pedagogy must provide different tracks to the same general goal to account for considerable individual differences.¹¹¹ With respect to fieldwork education, more than intellectual ability is important; the factors listed above should also be considered.

The supervisor should have preselected cases suitable for initial assignment to his supervisees. These and later cases should be selected with three factors in mind. First, the cases should contribute materially to the objectives or goals of the course. Too often students are assigned cases or narrow aspects of cases that the experienced members of the office abhor. These cases probably offer a challenge only to the student's persistence, often involve a skill not covered by the classroom component of the course or require research at which the student may already be proficient, and probably do not involve the student in overall case strategy. Rather, the cases that are assigned should involve experience in performing the tasks discussed in the classroom component or covered by the readings, and should include tasks the supervisor can conceptualize with the student and adequately critique after the student has performed. Second, the case should be selected so that the initial demands follow, or coincide with, the classroom component as much as possible. A classroom discussion of the task to be performed will

n. 14 (1972). "Educational programs should reflect the interests and capabilities of different students and should give them opportunities to respond at the time, in the manner, and at the pace best suited to the individual." Quinn & Sellars, *The Role of the Student*, in IMPLEMENTING FIELD EXPERIENCE EDUCATION (J. Duley ed. 1976). The preliminary evaluation must, of course, be very tentative because of the absence of performance data at this stage. Furthermore, this accommodation to students' interests must be undertaken in light of the case selection considerations outlined in part II C *supra*.

111. J. BRUNER, *supra* note 78, at 71.

insulate the supervisor from having to engage in repeated general discussions of the task with individual students and will allow him to concentrate on more particular problems. Of course, as the student gains confidence in his ability to diagnose the problem and to espouse a tentative "theory of action," the need for this general task orientation greatly declines. Finally, the tasks that must be performed in the near future should be sequenced so that foreseeable tasks will be within the capacity of the student with sound supervision.¹¹² The case could start with a task, such as interviewing, with which the student has indicated some familiarity until the student develops some confidence in understanding his theories of that case. With respect to specific tasks, the assignments should progress from relatively easy to more complex. Thus, direct examination could be illustrated first by an uncontested divorce hearing and be followed by a contested case where objections to the examination can reasonably be expected. The experienced supervisor, familiar with the agency or firm case load, should be able to envision a representative series of sequential experiences to satisfy the foregoing principles, subject, of course, to modification to meet individual and agency needs.

Initial assignments should be limited to a few cases, probably one or two cases in most part-time fieldwork placements.¹¹³ The case load can be built up gradually as the supervisor can see more clearly the student's needs and abilities. The initial case, particularly when it involves an immediate client interview, can be an unsettling experience.¹¹⁴ Thus, the first case should allow the student to perform satisfactorily. The case should require the student to undertake a fairly immediate task, but one that will provide for future assignments building upon the initial task.¹¹⁵ Selecting an opened case file, which gives some picture of the client and his situation and an example of how information is recorded, serves the dual function of orienting the student to his client and teaching the importance of adequate file development.

112. C. TOWLE, *supra* note 12, at 157; D. PETTES, *supra* note 9, at 39. Some would argue that bewilderment and possible failure are strong motivators. I do not argue that failure can have no educational purpose, but that in an initial fieldwork placement which is certain to lead to at least limited failures and in which motivation is already high, little can be gained by heightened anxiety and much can be lost.

113. D. PETTES, *supra* note 9, at 68; J. Kettleson, *Field Supervision in the Lawyering Process Course* (unpublished memorandum, Harvard Law School, 1975).

114. *Cf.* D. SCHUSTER, J. SANDT, & O. THALER, *CLINICAL SUPERVISION OF PSYCHIATRIC RESIDENTS* 155 (1972) (an example of this phenomenon in another helping profession, psychiatric medicine).

115. *Id.*

The student as well as the instructor will be concerned with trying to establish a satisfactory working relationship at the conference. The student will be interested in establishing a secure relationship to facilitate his initial professional experience. The instructor is interested in establishing student trust but must stress the importance of the student's active participation in the relationship. Establishing individual goals, course goals, and evaluation criteria should facilitate trust, reduce anxiety, and alleviate the fear of arbitrariness by establishing performance criteria. Possible doubts about supervisor competence and interpersonal style should also be minimized through this open sharing of responsibility.

B. *Pre-performance or Planning Conference*

The supervisor should meet with the student to discuss each significant activity that the student plans to undertake on his cases. Examples of such important tasks are filing a pleading, arguing a significant motion, or conducting a hearing or negotiation. The planning conference has three major purposes. First, the conference is necessary to provide a framework for subsequent fruitful discussion of the student's performance. Second, the conference should be held to assure a satisfactory level of preparation, thereby protecting the client. Third, the supervisor can provide knowledge and skill assistance, reassure the student, and rehearse the student's plan, thereby reducing the anxiety and improving the student's performance.

The supervisor should use the conference to test the student's understanding of the client's legal problem. Discussion of the legal problem will reveal whether the student has an adequate understanding of the factual circumstances and the controlling law. Often the student has over-researched the legal issue, and a slight sharpening of his factual perception in light of the issues will suffice. Since the beginning student typically has an unwarranted low estimation of his ability to sift through a complicated factual situation, the successful refinement of the law-fact dialectic will often greatly increase the student's confidence in his understanding of the problem.

After the problem has been adequately identified, the student should be asked to propose his provisional "theory of action." Of particular interest are the objectives or goals of the student in undertaking the action, the action strategy the student intends to follow, and the assumptions upon which the strategy is based.¹¹⁶ The supervisor and student require this common understanding to achieve fruitful post-performance feedback. Observation of performance and

116. See note 23 and accompanying text *supra*.

subsequent feedback are helpful in proportion to how they demonstrate whether or not the student met articulated goals, whether the goals were realistic and compatible, whether the student could conform his behavior to his purported action strategy, and whether the assumptions underlying his strategy were correct. Without such a structured and useful way of utilizing performance for a learning experience, the subsequent critique of performance may not seem relevant to the student.

In addition to the long-range purpose of the inquiry into goals and strategy, the planning conference has immediate and short-term benefits. The supervisor can utilize a combination of critical analysis and his own practical experience to help the student evaluate his goals, his assumptions, his model of the task to be performed, and his proposed course of action. For example, a student may want to destroy the opposite party on cross-examination. The harsh treatment of the witness may, however, create sympathy for the opposite party. Pointing out this unintended consequence undoubtedly will influence the student to modify his strategy.¹¹⁷

The supervisor also can use the conference to suggest possible goals and strategies or even to give a brief demonstration of how a strategy might proceed. The inexperienced student simply cannot be expected to generate numerous alternative conceptual models and action strategies, and to expect him to do so would only raise his anxiety level. But in terms of optimizing the learning experience, the student must be involved. At this point, he should be involved in generating, discussing, and weighing the relative merits of the alternative goals, assumptions, and action strategies that might be used in formulating a "theory of action," rather than being told what the supervisor intuitively thinks is the best course of action. The process of strategizing or meticulously deciding upon a course of action is itself a key element in learning to set one's own high standards of practice.¹¹⁸

117. The heavy reliance on preperformance refinement of strategy represents a departure from pure experiential learning that is required by professional responsibility and agency standards. The student, thus, may learn more from preperformance collaboration with a supervisor than from actual performance. In terms of a model of professional learning, however, the ability to work with professional colleagues is an important dimension of learning and increasing professional competence.

118. Bloom describes professional problem solving in terms of a seven-stage program that he feels represents a consensus among the writers concerned with the problem-solving process. M. BLOOM, *supra* note 17, at 114-37. See also G. BELLOW & B. MOULTON, *supra* note 79, at 998 (discussing problem solving in the context of legal counseling). This important "strategy" and the process of problem solving cut across all lawyering activity. Consideration certainly should be given to including the process among the skills explicitly taught. See note 95 and accompanying text *supra*.

One helpful technique is to have the student simulate the performance, utilizing role-played judges, adversaries, witnesses, or even the real witness if friendly to the position of the student's client. The role-playing can highlight a flaw in the projected strategy as well as demonstrate that the student has confronted the problems he will face in the actual performance.¹¹⁹ It is especially effective to videotape or audiotape the role-playing sessions so that the student can appreciate the subtleties of performance that are difficult to capture verbally. If videotape is used, however, the student may need reassurance because often he will be demoralized by what he feels is a lackluster performance.

The analysis of the rehearsals then can be used by the student to reformulate his proposed course of action. If he has anticipated probable flaws in his performance and revised his proposed "theory of action," he will have a deeper understanding of the task and a heightened confidence in his ability to perform. Needless to say, his performance also will have improved as a result of the extra preparation. The supervisor, however, must be aware of two possible dangers of overpreparation. First, the student should not be drained of all enthusiasm and spontaneity so that the real performance appears to be a rote one. Second, the student should realize that most but not all problems can be anticipated. Being too dependent on a prearranged plan can preclude the flexibility necessary to meet any unexpected events. The preperformance preparation, thus, should include not only discussion of possible alternative outcomes but also discussion of the student's having to roll with some unanticipated punches. Initial task simulation can include "surprise" developments that help prepare the student to deal with the inevitable contingencies. Essentially, good preparation discourages rigidity and promotes the flexibility necessary for effective action.

During the course of discussing the definition of the problem, the proposed goal and strategy, and the possible changes, the supervisor must encourage the student to discuss problems he anticipates in the task performance. The supervisor should provide reassurance to alleviate anxiety. The level of preparation encouraged by the foregoing discussion will generally ensure adequate performance and this fact should be conveyed to the student. The supervisor should continue with his efforts to avoid controlling the relationship and to encourage maximum student participation; he should inquire about any aspects of the performance that the student particularly wants to study and

119. I often explicitly tell the student that I am playing a cantankerous role and that he will have faced nearly the worst possible situation in the role-played episode.

encourage the student to contribute to the format of the post-performance conference. An attempt to reach at least a tentative agreement with the student with respect to the priority of topics for the later conference demonstrates the student's responsibility and important role in learning, and emphasizes the fact that the conferences are valuable learning devices and should not degenerate into social events.

Conscientious use of the planning conference, then, should convey three very important messages to the student: first, that preparation is important, can help alleviate anxiety, and will improve performance; second, that discussions of projected performances with fellow professionals and resultant feedback refine one's conception of the task and contribute to learning; and third, that the supervisor takes his task and the student's professional growth seriously. Trust can be engendered at this less threatening stage of planning which, in turn, should facilitate later analysis of conduct and probable ineffectiveness.

C. *Observation*

The observation and recording of student behavior should be undertaken in light of the goals of the clinical program: teaching the student to learn from feedback and to adopt a critical attitude toward standards of practice. The observational stage thus should enable the supervisor to provide valid feedback. Mere observation and recording of the supervisor's reaction to the task will not suffice. Valid feedback¹²⁰ implies that the supervisor record oral conduct verbatim and action as it takes place.

The most obvious source of feedback data is what the student says. But the supervisor must also try to capture the characteristics of the delivery as well. The effectiveness of the performance is often determined by characteristics such as tone (sarcasm, condescension, uncertainty in presentation), volume (weakness, carnival-like barking), ability to modulate in order to stress a point and to avoid audience boredom, pacing of presentation, and appropriateness of overall mood of the presentation (don't cross-examine a seventy-year-old grandmother with the pleasure and disdain reserved for an alleged perjurer).

The supervisor also must try to record the physical conduct of the performance. Does the student needlessly gesticulate, repeat testimony, respond with nervous filler phrases such as "thank you" or "I see," grimace or otherwise acknowledge a harmful development, slouch, appear to read from his notes, avoid eye contact with witnesses and

120. See part II section E *supra*.

trier-of-fact, pace unnecessarily, or engage in the innumerable other forms of conduct that undermine an otherwise sound strategy? These types of undesirable conduct are often unconscious reactions to stress and are likely to appear in the neophyte's performance. They should be abandoned before they become habitual.

The interaction with key participants provides another extremely important source of feedback since the student's ability to relate to jury, witnesses, judge, and other lawyers will determine the effectiveness of his effort. The supervisor should attempt to capture both the quality of the interaction and the reactions of the significant parties to the interaction. To demonstrate the quality of the interaction the supervisor might focus on whether the student listens to and follows up on the response of the witness, argues with rather than responds to the judge's question, or delves deeply and unnecessarily into sensitive personal matters with a juror on *voir dire*. To illustrate the reactions of the participants to the student's conduct, the supervisor might focus on whether the judge makes remarks indicating irritation or impatience with the student's performance or a juror frequently glances at the clock or otherwise appears bored. With respect to these interactional aspects, objective collection of data is extremely difficult since one tends to describe behavior in terms of what one thinks is the underlying motivation. It is also especially important, however, to collect this interactional data since the student particularly needs assistance in recreating physical and interactional conduct of which he often seems unaware. Nervousness and inexperience seem to result in concentrating on task-oriented behavior with little ability to perceive and recall subtle interactions.

The supervisor cannot physically record all behavior, nor would he want to, since only a discrete number of problems can be discussed adequately with respect to each performance. The supervisor should concentrate on behavior reflecting topics discussed at the planning conference, usually behavior that raises learning dilemmas¹²¹ or that reflects a pattern of problem behavior of which the supervisor is aware from previous performances or discussions with the student. Practically, of course, the supervisor should concentrate on recording some of the performance episodes accurately rather than recording nearly everything badly and finding, upon later editing, that he has nothing but sketchy data. Time limitations will preclude a thorough learning-oriented discussion of all deficiencies in a student's performance.

The supervisor can use videotape and audiotape to accurately record most behavior. He should be prepared to spend considerable time

121. See notes 30 to 33 and accompanying text *supra*.

reviewing and editing or marking portions of tape for discussion if he resorts to tape. Review of unimportant aspects of the tape will squander valuable discussion time. Audiotape fails to capture all but the most rudimentary interactional aspects of behavior and even then loses much of the color of the interaction. Supplementation by the supervisor's transcript is necessary to provide data on the physical dimensions of conduct and on interaction. Videotape can graphically capture the physical aspects of the student's performance but may not provide the reactions of other participants that a good supervisor who scans the environment can provide. It is certainly desirable for a student to see himself on videotape at some time to appreciate his "style." Nevertheless, extra time required for effective utilization of the tape in the conference and limitations on capturing other participants' reactions pose serious limitations on videotape use.¹²²

Systematic observation instruments have been devised by psychologists, social psychologists, and educators to record small group and classroom interaction.¹²³ Effective use of the instruments requires training. The instruments are probably most helpful with respect to lawyering tasks in which interpersonal skills are especially important, such as client interviewing and counseling. Supervisors can, of course, prepare their own simple instruments to expedite and focus data collection. For example, a checklist can be used to record physical mannerisms or to record offers, counter-offers, and concession points in a negotiation.

An effective technique for recording data is to adopt a multicolumn note-taking scheme. The first column can be used for student words, the second for tone or presentation and physical accompaniment, and the third column for participants' reactions to the student. Thus, the supervisor can organize the performance dimensions in a manner permitting easy access to the data in an accurate chronological framework. The supervisor should save a fourth column for his later use in making comments and planning for the post-performance conference with the student. The data will be readily at hand during the discussion without the time-consuming need to transfer this data to another source.

122. The most advantageous use of videotape, but one that requires the assistance of trained operators, is to utilize a multicamera split-screen system that can simultaneously record participants in different physical locations.

123. See DeMichalak, *Supervisory Conferences Improve Teaching*, 3-4 FLA. EDUC. RES. DEVELOPMENT COUNCIL RES. BULL. 13 (1969) (giving examples of instruments designed to prepare for supervision). A good overview can be found in M. COGAN, *supra* note 55, ch. 12.

Careful observation and recording by the instructor should provide a model for the student's systematic observation of lawyering behavior. This should increase the student's ability to give valid feedback and, therefore, to learn from his behavior and to help others learn from theirs.

D. *Analysis and Strategy*

The fourth stage of the process expressly recognizes that supervision, like other forms of teaching, requires considerable familiarity with the subject matter or data and careful planning. Careful preparation rather than rigid planning should be the focus at this stage because the student must have input as to how the conference will proceed if the relationship is to be open and collegial. With this important consideration in mind, this stage is

. . . intended for two general purposes: first, in *Analysis*, to make sense out of the observational data, to make them intelligible and manageable; and second, in *Strategy*, to plan the management of the supervision conference to follow, that is, what issues to treat, which data to cite, what goals to aim for, how to begin, where to end, and who should do what.¹²⁴

The analysis of data is, in part, a continuation of the editing of data collected during the observation stage. In addition to this further editing function, however, the supervisor must organize the data to raise a discrete number of issues for discussion. A day-long trial or administrative hearing, for example, could involve two or three direct examinations and lengthy arguments to the judge or hearing officer. Only by considering the data with respect to these similar tasks together and selecting salient examples of behavior will a manageable, discussible pattern emerge. The supervisor profitably may recall previous student performances involving the same task to facilitate the search for student behavior patterns.

The supervisor tentatively should limit the topics he plans to raise at the conference to what he feels is a discreet number of the most important issues. He already has discussed the course goals and evaluation criteria which should reflect the goals in measurable behavioral terms, and also may have ascertained any particular goal or interest of the individual student. The more recent preperformance meeting with the student will have disclosed issues the student feels

124. R. GOLDHAMMER, *supra* note 105, at 63.

should be discussed in light of his performance. The preperformance meeting also has elicited the performance goals, an action strategy, and the assumptions upon which the student's theory and strategy are based. Juxtaposition of the student's actual performance with these preperformance guidelines poses the "learning dilemmas" discussed earlier.¹²⁵ Similarly, confronting the student with undesirable and unplanned consequences should provide strong motivation to examine the theory with which he said he was operating. Thus, the topics to be stressed at the conference generally will be ones that will motivate the student to examine and to change his behavior or underlying theories and assumptions.

The supervisor must be cognizant of the student's ability and personality when planning the conference. Past experience with the student will help him ascertain desirable tactics for the session. Can the student respond to a question asking him to recall the data or should the supervisor cite the relevant data? If the latter, should the supervisor ask the student to respond to the data cited or should the supervisor first volunteer his interpretation of the data and ask the student to respond to his interpretation? How much of the desired agenda can be covered without demoralizing the student or causing defensiveness? The supervisor will have to devote more attention to planning for a conference with a very insecure student or a student with significant learning blockages. Analysis of a generally favorable aspect of the performance or assurance that an important goal of the student was met (positive reinforcement) should be used whenever possible. It can be used to reduce tension prior to initiating the performance discussion or to raise morale after discussion of less favorable aspects of the performance. In any event, the supervisor must conceive a balanced approach to the analysis of the student's performance. An overly critical format will destroy self-confidence and motivation. At the same time, positive reinforcement that is not based on good performance — a false laudatory approach — may seem patronizing and may be destructive of mutual trust. The supervisor must balance the need for an open (sharing important feelings and observations) and noncontrolling relationship against the danger of simply unloading on the student which will probably destroy the relationship and preclude learning.¹²⁶

125. See notes 30 to 33 and accompanying text *supra*.

126. The apparent departure from the Rogerian model of congruence may initially seem bothersome. I do not believe, however, Rogers intends that the helper must resort to a stream of consciousness critique. What Rogers seems to require is that the helper be conscious of his feeling without distorting them, not that the helper share every bit of critical data unless withholding that data affects his ability to be congruent.

E. *Post-Performance Conference*

This conference is the heart of the supervisory process, the point at which the student reflects upon and learns from his experience. At this stage, the supervisor must exercise care to encourage student participation in the conference and to keep the focus of the conference on important issues at the same time. While the planning discussion stressed the importance of analyzing the data in terms of learning dilemmas and recurrent problems, the post-performance conference should be a mutually-undertaken analysis that helps develop the student's own capacity to assume the feedback and self-supervisory role.

The first purpose of the post-performance conference is to assist the student in accurately viewing his own performance. The student, particularly early in the fieldwork experience, often is preoccupied with controlling anxiety and following his intended course of action. Because of this preoccupation and his inexperience in observing lawyer behavior, he frequently needs help in reconstructing important incidents before he can undertake effective analysis. The supervisor's data can allow the student to become an observer of as well as a participant in the performance.

The relative inexperience of the student also requires the supervisor to assist the student in seeing his performance from the perspective of other participants in the system. The supervisor can point to the reactions that other participants had to the student's conduct. By virtue of considerable experience within the system, the supervisor is familiar with the role expectations of significance to others and can suggest possible explanations for the others' conduct that might not occur to the student. Asking the student to replay his role or that of another participant dramatically recreates the encounter and greatly facilitates in understanding the interpersonal dimension of the performance. The supervisor's relative distance from the situation and his experience also enable him to provide a third focal function for the student, that of assisting the student in identifying recurrent patterns in his conduct.

The concepts of feedback and mutual responsibility suggest that once one of the priority problems identified by the participants is raised in the post-performance conference, an examination of the raw data should proceed. Such an examination should precede any conclusions about the behavior for two reasons. By concentrating on raw data, unnecessary inferences should be avoided. It is much more helpful to ask the student to confront specific conduct and analyze why the conduct was ineffective than to tell the student that his conduct was defensive or controlling. The latter type of feedback probably will not

help the student to understand the conduct or to become more effective. Working from raw data also minimizes attributive feedback, the bane of the open relationship, and facilitates the student involvement necessary to effect change in the student's conduct.

Assuming there is some agreement on the conduct in question, the supervisor and supervisee should undertake an analysis leading to an understanding of the dilemmas and patterns of ineffective behavior. As suggested above, the explanation is begun by contrasting observed data with the goals, assumptions, core values, and strategies the student has earlier articulated, thereby providing structure to what is often an ill-conceived process.

In spite of his planning prior to the conference and concentrating on the data he observed at the student's performance, the supervisor will still be faced with instances of defensiveness and other learning barriers. This means flexibility is required to arrive at explanations of the ineffective lawyering. The supervisor may confront the student with the conduct and request an explanation. The supervisor may seek an explanation by indirection or by conducting a Socratic dialogue. He may disclose his explanation of the student's conduct and seek the student's reaction. Finally, the supervisor might not press for an explanation of the conduct but might merely teach what would be the conventional lawyer's behavior under the circumstances.¹²⁷ Even when clearly taking the initiative to explain student behavior, however, the supervisor should be sure to encourage and allow student input. Research on the supervisory process in other disciplines indicates that students perceive conferences as more effective when they are encouraged to express opinions and ideas and to discover possible solutions to problems.¹²⁸

Typically, explanations for the dilemmas involve sensitive matters, further emphasizing the need for a trusting, open relationship. For example, were the student's goals naively unrealistic? If so, will the experience be utilized positively to make the goal setting more realistic? The student might continue to operate with an incongruous "theory of action" because of his need to conform his "espoused theory" with this self-image. For example, the student who advocates that the client make the decisions may in effect control the decision through the data and advice he gives the client.

Possible explanations for the student's learning difficulties often mentioned in the supervisory literature must be considered by the supervisor: lack of aptitude; knowledge deficiency; a problem in the

127. For a much more complete inventory of the pedagogical tools available to the clinical supervisor, see Barnhizer, *supra* note 1, at 109.

128. A. ORATIO, *supra* note 58, at 81-82.

supervisory situation; possibly too great demands on the student; lack of experience; lack of physical energy or motivation; conflict of lawyering demands with self-concept; or some interfering emotional problem. The latter might be merely a temporary, exceptional, stress-caused problem. Assuming adequate supervision, a possible indicator of interfering emotional problem is the fact that the student has not progressed beyond the beginning student's feelings of incompetence and dependence. If the student demonstrates a concern for his client's welfare and for his own professional competence, future fieldwork success seems likely.¹²⁹

If the supervisor feels the problem is a significant barrier to professional growth, he should discuss it (if the student is willing to discuss the problem) in spite of the supervisor's possible instinct to spare the student unpleasant revelations. The sooner the barrier is explored and resolved to the satisfaction of the student, the more benefit the student will receive from the fieldwork experience. If the blockage is substantial and cannot be resolved with the assistance of a skilled supervisor and a customized learning experience, professional counseling and the student's suitability to related aspects of the lawyer's role should be explored.

Another task of the supervisor is to help the student formulate plans to improve his performance. Again, the supervisor is urged to allow the student to suggest the proposed solutions, but the supervisor's experience seems to make this phase particularly susceptible to raising alternatives. The supervisor can be helpful at this point if he illustrates suggestions through a short demonstration so the student has some meaningful frame of reference for discussion of the alternative. The student can, of course, role-play an alternative strategy at this point or in conjunction with a subsequent preperformance conference. Participants should logically analyze the proposals and their experiences, but the ultimate test must await subsequent performance opportunities. At this point, the supervisor is essentially seeking a commitment by the student to test the new tentative "theory of action."¹³⁰

The last objective stems from the original goal of teaching the student how to learn from experience and to provide and utilize valid feedback. The supervisor should endeavor to teach the student how to supervise himself, to stand back and observe his and the others' behaviors, and to analyze important sequences in light of his goals, action strategies, and assumptions about the lawyering world. This

129. A more comprehensive discussion of professional educability can be found in C. TOWLE, *supra* note 12, at 395-411.

130. ARGYRIS & SCHÖN, *supra* note 16, at 158-60.

implies that the process of learning be made explicit which should increase the likelihood of replicability. The supervisor must be willing to take the additional time to be explicit about observational strategy, accurate reporting, juxtaposition of behavior against preperformance articulations, and suggestions for improvement. The willingness of the supervisor to become an active participant, putting his theories and behavior on the line, not only presents a model for the student but also facilitates the helping relationship itself. The student is asked frequently either to perform or to supply the reasons why he failed in his attempt. He will feel more willing to participate fully in the supervisory relationship when the supervisor also demonstrates some vulnerability.¹³¹ Realistically, however, the supervisor may initially adopt a more heavily expository role and, after the student has observed the technique of learning from experience, increasingly rely on the student to conduct the conference.

The supervisor, in addition to being open and using the different teaching modes discussed earlier,¹³² has other facilitative mechanisms and insights available and should not be overwhelmed by the prospect of conducting careful analytical supervision. The simple incentive of feedback or knowledge of results is a greater motivator to the inexperienced student. The satisfaction of solving perplexing dilemmas is also a very positive influence and will compensate for the highlighting of embarrassing conduct. If the supervisor accepts the student and acknowledges the student's feelings, the student will be much more likely to express his feelings. The supervisor should be introspective enough to recall the anxiety and the great need for new knowledge posed by his and previous students' initial practice experience and should be willing to share these recollections.

Possibly even more important, the supervisor's expectations must be reasonable for the student at that time. The beginning student cannot measure up to the supervisor's standards for himself, nor can he measure up to a previous student who performed so well toward the end of his fieldwork experience. Accepting the student for what he is and entertaining realistic expectations for the student should ordinarily keep student defensiveness within bounds. Finally, the supervisor has substantial flexibility in tailoring the student's experience. If the student and supervisor share problems and perceive that the experience has moved along too rapidly, the case work can be slowed down, simpler preliminary tasks can be assigned, additional supervision with simulation can be provided, or a problem case can be reassigned.

131. R. GOLDHAMMER, *supra* note 105, at 63-67.

132. See text accompanying notes 127 and 128 *supra*.

In summary, the conference should concentrate on a mutually acceptable and discrete number of student problems. Ordinarily, an earlier discussion will define the problems. After the topic has been introduced, the participants should examine the relevant raw data before proceeding to an explanation of the data. Once a problem has been diagnosed, suggested alternatives can be evaluated and the student can be asked to reformulate his relevant "theory of action." The process of learning from experience should be made as explicit as possible to facilitate the student's ability to observe and to learn from his experience.

The foregoing discussion is not meant to suggest that the supervisor should never give immediate feedback or hold the post-performance conference directly following a student performance. At least two advantages will result from a conference conducted as soon as possible after the performance. The event will be fresh in the student's mind and often he is particularly eager for and open to feedback while the experience is immediately at hand. Furthermore, an experienced supervisor can undoubtedly conduct a beneficial post-performance conference with little formal preparation. While this discussion was intended to emphasize the amount of preparation necessary to effect maximal learning, certainly skill and experience will greatly shorten the preparation process.

F. *Evaluation and Termination*

The process of evaluation is a continuous one that begins in the initial conference with the student; it is necessary for purposeful teaching. But evaluation is an ineradicable human tendency that often gets in the way of good teaching because it is not offered in a manner that generates discussion and learning.¹³³ As during the earlier stages of the cycle, the tendency of the more experienced practitioner to engage in a judgmental assessment based upon some tacit theory must be guarded against. Plainly, evaluations depend upon normative judgments about lawyering in general. Earlier open discussion of models and "theories of action" should help minimize the negative aspects of evaluation. Resort to feedback based on data rather than opinion is a second safeguard.

The regular supervisory sessions evaluate specific aspects of the student's work. Formal evaluation sessions that thoroughly review all aspects of the student's work and learning are recommended periodical-

133. M. COGAN, *supra* note 55, at 62.

ly during and at the end of the fieldwork. The formal evaluation sessions should compare the student's work and progress with the evaluation criteria derived from course goals and the student's own fieldwork goals. The student should have already received a copy of the evaluation criteria by which his level of performance can be measured. The supervisor and student should also have discussed, and be able to recall from notes or memory, the specific goals, interests, and anticipated problems of the individual student. The use of shared goals and evaluation criteria further safeguard against the judgmental tendency in evaluation. The evaluation criteria, in addition to objectifying and opening up the process, also provide orientation for the student and help alleviate anxiety by defining expectations.

The supervisor should request that the student review the evaluation criteria and conduct as much of the evaluation as he can. Recall that maximal student participation in supervision is sought and that self-learning and self-evaluation of behavior were stressed as fieldwork goals. The supervisor, however, should have prepared his evaluation beforehand and certainly must be willing to share his data and conclusions with the student. Students are quite good at identifying the weaknesses in their practice after several supervisory conferences. They also are quite insightful in evaluating their progress toward the course goals with which they have become familiar. Student involvement minimizes the tendency of evaluation, including grading, to affect the supervisory relationship.

The student certainly may experience difficulty in trying to explain the reasons for failure to attain evaluation criteria or his objectives. The supervisor should be aware that attempts to explain what may be perceived by the student as failure can be disturbing and should accept the student's discomfort as normal.¹³⁴ The supervisor should be sure to cite specific instances of conduct for which explanations might be more readily available rather than seek very abstract explanations that are not helpful in facilitating behavior change. When the student does not wish to respond to or cannot respond to the failure to meet the goals, the supervisor should resort to the other teaching techniques discussed in the previous section.¹³⁵

The supervisor should prepare a written final evaluation and should give a copy of the written evaluation to the student prior to the termination conference. The supervisor should then alter his evaluation based upon the discussion with the student, giving credit to the

134. D. PETTES, *supra* note 9, at 116.

135. See text accompanying note 127 *supra*.

student's ideas where appropriate. The parties might want to consider a jointly signed report.

The supervisor and student should begin the process of termination well in advance of the final evaluation session. The importance and content of proper transfer summaries should be carefully explained. The supervisor and student should facilitate a painless transfer by anticipating problems that might arise before the new student takes over. Particularly, the student should contact each client and explain the arrangements made to ensure adequate representation and to assure the client that he will be conscientiously represented in the future.

The final evaluation report and conference should not end in a confusing whirlwind of last-minute teaching attempts. Rather, the supervisor should concern himself with a summary of the level of progress and the problems that deserve the future attention of the student. The supervisor should be concerned with continued professional growth and should make helpful suggestions for this continued growth.

CONCLUSION

Clinical education is a process of learning from experience. The clinical educator, therefore, must be deeply concerned about how one learns from experience. In light of limited law school resources, he must efficiently combine traditional types of learning with the clinical method. He must understand the pivotal role of feedback in the process of learning from experience and must know how to provide good feedback. As he teaches the importance of the interpersonal dimensions of lawyering, he must be able to facilitate a productive learning relationship with the student. A sound model of the supervisory process will provide a helpful structure and will ensure that the foregoing insights into one-to-one teaching from experience will be applied.

Once the student lawyer has realized that lawyering is not all native ability and tacit craft, has been able to construct and apply lawyering theory, and has been successful in improving his theories and performance, he should value the process of learning from experience and gain self-confidence in his ability to practice effectively. This sense of confidence which results from success is necessary for increasing professional competence.¹³⁶ The ability and willingness to be reflective and methodical about practice are necessary conditions for lawyer competency and high professional standards.¹³⁷

136. Chickering, *supra* note 7, at 78-81.

137. See generally CRAMTON COMMITTEE REPORT, *supra* note 2. The law school, as Pipkin notes, has failed to inculcate norms to govern later professional conduct. Pipkin,

The methodology of learning from experience developed in this article suggests that the gap between theory and practice can be bridged and that properly conducted clinical education can be used as a springboard for lawyer competency. In addition to teaching basic lawyering skills, clinical education can and should serve the more basic and more important function of teaching the student *how* to bridge theory and practice, how to *learn* from his experience so he can continue to learn long after he has finished law school. This can only be accomplished if the law school provides carefully planned fieldwork and supervision and makes the supervisor's role more attractive.

supra note 70. Similarly, one must suspect that the law school's minimal involvement in teaching about and sometimes outright disdain for solving real problems and learning from one's experience may provide a tacit message about the lack of importance of these skills. The law school may speak about professional competence, but its programs suggest that what counts is being able to "think like a lawyer" which is, in fact, to be a successful armchair lawyer.