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NOT QUITE GROWN UP: THE DIFFICULTY OF APPLYING AN ADULT EDUCATION MODEL TO LEGAL EXTERNS

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INTRODUCTION

For several decades, clinical teachers have searched for a central theory or model to distinguish, and perhaps legitimize within the academic community, the experience-based method of teaching.¹ One theory popular with clinicians is “andragogy” or adult education, developed by educational psychologist Malcolm Knowles.² In 1982 Knowles’ theory of adult education, based in humanistic precepts, was popularized in the clinical field through Professor Frank Bloch’s groundbreaking article, “The Andragogical Basis of Clinical Legal Education.”³ Clinicians embraced Knowles’ theories of “self-directed learning,” “facilitated learning,” and “competency-based education” as justifications for their teaching methodology.⁴ Such concepts contrasted sharply with more traditional pedagogical models of teaching and served to differentiate clinical legal education from other approaches.⁵

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¹ DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994); David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 250-68 (1993); Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLIN. L. REV. 231 (1995).

² MALCOLM S. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION* (1980). For a discussion of andragogy, see *infra* section I.B.

³ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982), excerpts reprinted in *CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS* (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks & Susan L. Kaye eds., 1997).

⁴ Knowles, *supra* note 2, at 18-19. Self-directed learning has been described as the “mantra” of clinical legal education. Abbe Smith, *Carrying On In Criminal Court: When Criminal Defense Is Not So Sexy and Other Grievances*, 1 CLIN. L. REV. 723, 728 (1995). See, e.g., Laser, *supra* note 1 (competency-based learning); Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 ME. L. REV. 19 (1993) (facilitated learning); Janet Motley (Weinstein), *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211 (1989) (self-directed learning).

⁵ Bloch, *supra*, note 3; Gary Bellow, *On Teaching the Teachers: Some Preliminary Re-*

Despite its attractive humanistic underpinnings,⁶ the application of andragogical theory to our externship⁷ program's goals and methods at California Western⁸ has proven frustrating. We have experienced an uneasy tension between treating students as adults within an andragogical framework and implementing our own values and objectives. In fact, aspects of our program conform more to traditional pedagogy (a term Knowles uses to describe the teaching of children, rather than adults) - a concept some clinicians might disparage. Upon closer examination of andragogical theory, we have concluded that it does not provide the unifying theory for clinical legal education we had once hoped.⁹ In substantial part this is because our students have not always reached the stage of "adulthood" the andragogical method requires, and also because we feel it necessary to teach specific content.

Rather than attempting to find another unifying theory or paradigm, we reexamined and rearticulated our own values, goals, and methods. We then studied and applied educational and developmental theory to create a new paradigm - essentially a theoretical blend based on our humanistic concerns for the whole person, for self-knowledge, and for the role of lawyers in society. Our process confirms the value of theoretical frameworks; they form the backdrop against which we can evaluate and reformulate our visions and methods. For this reason, we have found andragogy to be extremely useful as a focal point for analyzing the tensions within our own teaching.

The first section of this article provides a brief background of hu-

flections on Clinical Education as Methodology, in THE COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374-90 (1973).

⁶ See *infra* text accompanying note 30.

⁷ At California Western we call our program an "internship" program, but for purposes of consistency with the jargon used in clinical literature we will refer to it as an externship program throughout this article, and to our students as externs rather than interns.

⁸ Our externship program has two primary goals: 1) helping students identify and achieve their learning objectives, and 2) encouraging students to be thoughtful problem solvers. These goals have been condensed from our four program goals originally stated in Motley (Weinstein), *supra* note 4. The program structure has two major components - the field placement and the seminar. The field component encompasses a wide variety of placements offering students an almost unlimited choice of experiences. The weekly seminar includes the requirements of written journals and assigned readings.

⁹ We were unwilling to compromise our educational purposes in order to remain true to the andragogical method. Our belief that learning goals must dictate learning methods has support among educational psychologists: "One's attitude, one's choice of content and methodology, one's view of the learner and of the teacher logically evolve from what one considers to be the overall purpose of the educational process." GORDON G. DARKENWALD & SHARAN B. MERRIAM, *ADULT EDUCATION: FOUNDATIONS OF PRACTICE* 41 (1982).

manism and andragogy, and clinicians' responses to the latter. The second section describes the application of andragogical theory to our program and the tensions we have encountered in its application. The third section analyzes why these tensions exist. We then, in the fourth section, discuss why we use a blend of educational theories consistent with our humanistic approach, and why such a blend appears to work in our externship course. Nonetheless, as to both our process and our method, concerns remain which we pose for further thought, and perhaps future writings.

I. HUMANISM AND ANDRAGOGY

Our search for a unifying paradigm for our teaching, in a sense, proceeded backwards. We began with an idea of what seemed to work and not to work in our program, and then looked for explanations. In doing so, we reviewed the literature on humanistic education in the law and found that it resonated with our personal values and, to a large degree, with our teaching. As the theory of andragogy set forth by Knowles is also based in humanism, we begin with a brief background and discussion of these ideas.

A. Humanism

Humanism is defined as the "intellectual and cultural movement that stemmed from the study of classical Greek and Latin literature and culture during the Middle Ages and was one of the factors giving rise to the Renaissance; it was characterized by an emphasis on human interests rather than on the natural world or religion."¹⁰ In the early 1960's, a group of psychologists formed an association naming themselves as "humanistic psychologists." Abraham Maslow was generally accepted as the leader of the movement.¹¹ "The main purpose of this organization . . . was to explore the behavioral characteristics and emotional dynamics of *full and healthy human living*."¹² The movement focused on the experience of living and the meaning of the experience for the individual. One element enunciated by the Association of Humanistic Psychology which is most relevant to our application of a humanistic model is "an ultimate concern with and valuing of the dignity and worth of man and an interest in the development of the potential inherent in every person. Central in this view is the person as he discovers his own being and relates to other persons and to so-

¹⁰ WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 884 (2d ed. 1983).

¹¹ CHARLOTTE BUHLER & MELANIE ALLEN, INTRODUCTION TO HUMANISTIC PSYCHOLOGY 1 (1972).

¹² *Id.*

cial groups."¹³

Other leaders in the humanistic psychology field include Erich Fromm, Frederick Perls, Carl Rogers, Rollo May, Charlotte Buhler and Viktor Frankl. While each emphasized different characteristics of the movement, their underlying commonality was a sense of movement toward self-directed self-fulfillment by individuals - a process of discovery and realization of personal potential.¹⁴ The humanistic psychology movement is interdisciplinary by nature, drawing from "other fields concerned with human experience and behavior."¹⁵

Essentially, the humanistic movement of the Twentieth Century can be seen as a holistic approach to the development of individuals.¹⁶ The application of humanistic philosophy to legal education aspires to draw forth from students, and professors alike, the recognition and realization of their highest goals for themselves as professionals and as human beings. A tenet of the movement is that these two identities cannot be truly separate.

Our program goals and our teaching models¹⁷ are consistent with the values which are the basis of humanistic education.¹⁸ We attempt to approach the process of becoming a lawyer in a holistic manner, particularly focusing on self-reflection and self-directedness as essential components of the students' experiences. Our freedom from responsibility to clients and cases, and our decision not to teach traditional lawyering skills in our seminars, gives us freedom to focus on these other values. Included in our focus are lawyers' professional roles in relation to ethical and moral dilemmas, as well as larger societal concerns. These issues tend to create the greatest tensions in our work with our students.¹⁹

Similar to our program, the adult education movement is clearly

¹³ *Id.* at 2.

¹⁴ *Id.* at 49, 64.

¹⁵ *Educational Philosophy*, 1 THE HUMANISTIC PSYCHOLOGY INSTITUTE REVIEW 7 (1978).

¹⁶ "The focus of the parts to the exclusion of the whole results in peoples' lives becoming cut off from their own sense of humanity, aspirations and values, and from their responsibility towards self and others." BECOMING A LAWYER, A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 2 (Elizabeth Dvorkin, Jack Himmelstein & Howard Lesnick eds., 1981) [hereinafter BECOMING A LAWYER].

¹⁷ We use the plural of "model" because we each approach our classes and our students differently, but within the boundaries of humanistic theory.

¹⁸ See the work of the Project for the Study and Application of Humanistic Education in the Law: HUMANISTIC EDUCATION IN LAW, MONOGRAPH I, 1980, (Reassessing Law Schooling) [hereinafter MONOGRAPH I]; BECOMING A LAWYER, *supra* note 16; HUMANISTIC EDUCATION IN LAW, MONOGRAPH III, 1981 (Essays on the Application of a Humanistic Perspective to Law Teaching) [hereinafter MONOGRAPH III].

¹⁹ See *infra* Sections A.2. and B.2.

based upon humanistic values.²⁰ Its fundamental principles reflect the respect for the person and personal experience, which are the mainstays of humanism. Both humanism and adult education theory focus on experiential learning, the meaning of that experience to the individual, and an emphasis on personal growth that is promoted by a nourishing, encouraging environment.²¹ The emphasis on growth stresses process over ends - the individual is moving in a direction toward greater self-actualization, self-knowledge, fulfillment of potential, etc. The role of the counselor/facilitator, is to challenge the learner to move in that direction.²²

B. Andragogy

With humanism underlying our programmatic values and goals, we searched for concepts within adult education theory that conformed to our objectives. Andragogy, a theory extolled by clinical legal educators and grounded in humanistic precepts, seemed a logical starting place. This section discusses the assumptions and processes of andragogy and the response of adult educators and the clinical community to Knowles' theory.

1. Background

Adult educators, like clinicians, have searched for at least three decades for a unifying theory to justify their educational methodology.²³ As an attempt to establish a theoretical basis for the field of adult education, Malcolm Knowles published in 1970 his seminal work, *The Modern Practice of Adult Education*,²⁴ with a second edi-

²⁰ K. PATRICIA CROSS, ADULTS AS LEARNERS 228 (1981); DARKENWALD & MERRIAM, *supra* note 9, at 78.

²¹ CROSS, *supra* note 20, at 228.

²² See MALCOLM KNOWLES, THE ADULT LEARNER: A NEGLECTED SPECIES (4th ed. 1990), Table 4-1, The Role of the Teacher.

²³ Anne Hartree, *Malcolm Knowles' Theory of Andragogy: A Critique*, 3 INT'L J. LIFE-LONG EDUC. 203 (1984). "For at least 20 years, it seems, adult education has been in search of a theory, a theory through which to justify itself as both a necessary and a distinctive area of educational provision." *Id.*

Based on a rapid growth in the United States workforce in the 1960's, the education of adults, as well as graduate programs in adult education, had increased greatly in number. HUEY LONG, NEW PERSPECTIVES ON THE EDUCATION OF ADULTS IN THE UNITED STATES 174 (1987); Linda H. Lewis & Carol J. Williams, *Experiential Learning: Past and Present*, 62 NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION 5 (1994). See CROSS, *supra* note 20, at 220-21, for a discussion as to why a search for a unifying theory had not begun sooner.

²⁴ MALCOLM KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION (1970). The concept of a special form of education for adults was confirmed in a British document called "The 1919 Report," in which a group of theorists attempted to understand and describe the shared characteristics of adults. CYRIL O. HOULE, THE LITERATURE OF ADULT EDUCATION xxiii (1992). Knowles had been active in the field since the mid-1930's, and

tion published in 1980.²⁵ In his book, he borrows the term "andragogy" from his European colleagues,²⁶ and promotes it as a unifying theory of adult learning.²⁷ He contrasts andragogy, or "the art and science of helping adults learn,"²⁸ with the term "pedagogy," which he defines as "the art and science of teaching children."²⁹ Andragogy is, essentially, a reflection of humanistic ideals.³⁰ Its focus is on the learner and the learner's movement toward self-actualization and fulfillment, as the following section describes.

2. Knowles' Comparison of Andragogy/Pedagogy: Assumptions and Processes

(a) Assumptions

In order to distance adult education from what he considers to be

was recognized as a national leader by mid-century. *Id.* at 38. In 1951, Knowles was appointed executive director of the Adult Education Association of the United States of America. Peter Jarvis, *Malcolm S. Knowles, in TWENTIETH CENTURY THINKERS IN ADULT EDUCATION* 170 (Peter Jarvis ed. 1987).

²⁵ KNOWLES, *supra* note 2.

²⁶ For a more explicit discussion of the roots of the term "andragogy," see KNOWLES, *supra* note 22, at 51-53.

²⁷ "The field of adult education has long sought a glue to bind its diverse institutions, clienteles, and activities into some sense of unity; perhaps andragogy will give it at least a unifying theory. And, extended in its application to the concept of lifelong education, perhaps andragogy will provide a unifying theme for all of education." *Id.* at 53.

²⁸ KNOWLES, *supra* note 24, at 16, 38.

²⁹ *Id.* at 37. Though most of us would conceive of pedagogy as simply "the art, science or profession of teaching," WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 884 (2d ed. 1983), or even more simply, education as we know it, Knowles narrowed it to the teaching of children in order to distinguish it from the field of andragogy.

³⁰ "The ideology of andragogy is humanistic." PETER JARVIS, *ADULT AND CONTINUING EDUCATION: THEORY AND PRACTICE* 175 (1983). Malcolm Knowles has been described as the "most noted exponent" of the "humanistic paradigm." Stephen D. Brookfield, *Facilitating Adult Learning, in HANDBOOK OF ADULT AND CONTINUING EDUCATION* 201, 203 (Sharan B. Merriam & Phyllis M. Cunningham eds., 1990).

Knowles himself discusses humanistic influences in his work, especially the role of humanistic educators John Dewey and Eduard Lindeman, KNOWLES, *supra* note 2, at 29-32, 87-90, as well as clinical psychologists Abraham Maslow and Carl Rogers, *id.* at 39-43. For a discussion of the similarities between Knowles and Rogers, see Dennis L. Boyer, *Malcolm Knowles and Carl Rogers, 7 LIFELONG LEARNING* 17 (1984).

It should be noted, however, that humanistic values are not confined only to andragogy, but are also evidenced in educational theory pertaining to the teaching of children. Piaget's theory of child development encourages educators to structure learning experiences that are meaningful to children at their various stages of development. See generally JEAN PIAGET, *THE LANGUAGE AND THOUGHT OF THE CHILD* (1974). Maria Montessori's educational model is based on the concept of children being naturally curious and self-evolving; experiences for learning must be based on what will stimulate and challenge them. See MARIA MONTESSORI, *THE SECRET OF CHILDHOOD* (1972). Both models focus on the student's "becoming" - that is, the growth of the whole person according to that person's present needs. For additional discussions of humanistic theory and its application to the teaching of children, see Hartree, *supra* note 23, at 205-206.

appropriate education for children, i.e., pedagogy, Knowles compares andragogy and pedagogy in terms of four underlying assumptions concerning the concept of the learner, the role of the learner's experience, the learner's readiness to learn and the learner's orientation to learning.³¹

(1) *Concept of the Learner*

In andragogy, the concept of the learner is one of increasing self-directedness, a quality which the facilitator/teacher must attempt to nurture. This attribute of self-directedness varies in terms of individuals and circumstances.³² In pedagogy, the teacher's role is to decide what, when, and how the learning will occur; the learner is completely dependent on the teacher's choices.³³

(2) *Learner's Experience*

The learner's experience is valued as a resource for learning in andragogy, as adults learn better from their own experiences. Consequently, andragogical teaching methods include discussion, problem-solving, field experiences, and simulation - methods that focus on the learner's own experiences. By comparison, pedagogy places little value on the learner's experiences; hence teaching methods are transmittal in nature - lecture, assigned readings, and audio-visual presentations.³⁴

(3) *Readiness to Learn*

According to andragogical theory, adults are ready to learn a subject when they experience a need to learn it. Therefore, the sequence and timing of adult learning should conform to individual rates of development, rather than conform to specified curricular or institutional needs. It is the facilitator's role to help the adult learner discover her need to learn in certain subject areas. In contrast, pedagogists believe that sufficient pressures, such as fear of failure, create the desire to learn. Thus, learning can be by a standard progression, rather than

³¹ KNOWLES, *supra* note 2, at 43-54, chart at 43-44. In his later work, KNOWLES, *supra* note 22, Knowles added two additional categories: the learner's need to know and the learner's motivation to learn. Because these two additional categories essentially repeat three and four of the previous categories, they are not discussed herein.

³² In specific situations, adults may be dependent rather than self-directed; therefore, pedagogical method might be more appropriate. KNOWLES, *SUPRA* note 22, at 64. (Knowles uses, as an example, his need for didactic instruction in a course on nuclear physics, about which he knows nothing.)

³³ *Id.* at 43, 45-46.

³⁴ *Id.* at 44, 49-50. This classification ignores the precepts of child learning developed by Montessori, *supra* note 30, and Piaget, *supra* note 30.

oriented to individual needs.³⁵ Adults' orientation to learning is one of developing increased competencies in chosen areas that have immediate application. Pedagogical learners learn according to pre-ordained and sequenced subject matter, which may be useful at a later date.³⁶

(4) *Orientation to Learning*

Under precepts of andragogy, learners need to know why they must learn something; it is the facilitator's duty to provide this information. Learners are motivated to learn by internal pressures, such as job satisfaction and self-esteem.³⁷ In pedagogy, learners only need to know what they must learn in order to pass the course. Pedagogical motivators include the external pressures of grades and the teacher's approval.³⁸

(b) *Processes*

Based on the above described assumptions, Knowles describes the application of andragogy in educating adults as a five-step process. The first stage involves setting the "learning climate" as one of comfort, informality, and mutuality of respect between teacher and student.³⁹ In the second stage, the learner diagnoses his learning needs by setting up, with the facilitator, models of competency against which the learner can assess his gaps in knowledge.⁴⁰ The third stage is the planning process, in which the learner and facilitator translate diagnosed needs into educational objectives, design experiences to accomplish the objectives, and then evaluate the level of accomplishment.⁴¹ The learner conducts the learning experience in step four, and in the final step, evaluates and rediagnoses his learning needs.⁴² Knowles

³⁵ KNOWLES, *supra* note 22, at 41, 51-52. This classification similarly overlooks the precepts developed by Montessori, *supra* note 30, and Piaget, *supra* note 30.

³⁶ KNOWLES, *supra* note 22, at 44, 53.

³⁷ KNOWLES, *supra* note 22, at 55-58, 63.

³⁸ *Id.* at 55-58, 63.

³⁹ KNOWLES, *supra* note 2, at 47.

⁴⁰ *Id.* at 47-48.

⁴¹ *Id.* at 48.

⁴² *Id.* at 48-49. In terms of programmatic, rather than individual development, Knowles adds one stage and breaks down stage 3 into two stages, describing the stages as follows:

- 1) The establishment of a climate conducive to adult learning;
- 2) The creation of an organizational structure for participative planning;
- 3) The diagnosis of needs for learning;
- 4) The formulation of directions of learning (objectives);
- 5) The development of a design of activities;
- 6) The operation of the activities;
- 7) The rediagnosis of needs for learning (evaluation).

contrasts this methodology with pedagogy, in which the learning climate is formal, the relationship between teacher and student is hierarchical, learners are viewed as dependent, passive recipients of the teacher's instruction and will, and learners ultimately are judged by the teacher, not by themselves.⁴³

Knowles attempts to soften the dichotomy he establishes between andragogy and pedagogy in a second edition of his book, *The Modern Practice of Adult Education*, and in his later work, *The Adult Learner, A Neglected Species*. In both books, he explains that he no longer views andragogy as "good" and pedagogy as "bad," but views the concepts as two opposite ends of a spectrum, with their potential simultaneous use dependent on the learner's age.⁴⁴

B. Critique of Andragogy/ Development of Other Models

Malcolm Knowles is a respected leader in the field of adult education⁴⁵ and the foremost spokesperson for andragogy in the United States.⁴⁶ His work in developing the theory of andragogy has had a tremendous and far-reaching influence in the field of adult education.⁴⁷ Nonetheless, it also has been criticized.⁴⁸ Despite critiques of

Id. at 59.

⁴³ *Id.* at 47-49.

⁴⁴ KNOWLES, *supra* note 2, at 43; KNOWLES, *supra* note 22, at 63-65. Despite his stated positional shift, Knowles maintains his disparagement of "the ideological pedagogue" who refuses to move the learner toward self-direction, KNOWLES, *supra* note 2, at 43; KNOWLES, *supra* note 22, at 63-65, and continues to describe pedagogy in pejorative terms, *id.* at 54-55. For further critiques of Knowles' dichotomy, see CROSS, *supra* note 20, at 223; Hartree, *supra* note 23, at 205 G. Thompson, *The Complete Adult Educator: A Reconceptualization of Andragogy and Pedagogy*, 15 CAN. J. U. CONTINUING EDUC. 6-8 (1989).

⁴⁵ HOULE, *supra* note 29, at 33 ("He has always been a deeply respected, but individualistic leader, impatient with forms and routines and concerned with human relationships")

⁴⁶ CROSS, *supra* note 20, at 225.

⁴⁷ Brookfield, *supra* note 30, at 201-02.

⁴⁸ Educators have questioned whether Knowles' concept of self-direction is a state of adulthood, or an aspiration of adults. Hartree, *supra* note 23, at 205-206; Mark Tennant, *An Evaluation of Knowles' Theory of Adult Learning*, 2 INT'L J. LIFELONG EDUC. 113, 114 (1986) (questioning whether andragogy is based on adult ability or need). Some have questioned whether it is a theory or simply a philosophy, Hartree, *supra* note 23, at 203-210 (Knowles' theory lacks an epistemology and coherent discussion of empirical evidence); Jarvis, *supra* note 24, at 171-172 (no conceptual foundation for the characteristics of andragogy). Others have asked: 1) If it is a theory, is it overly broad? CROSS, *supra* note 20, at 221 ("Theory broad enough to cover the spectrum of learning situations in adult education is necessarily so broad that it offers little guidance to either researchers or practitioners."); 2) Does it unnecessarily reject the virtues of traditional liberal arts education? Steven Weiland, *Ungarnered Harvest: Adult Learners and Liberal Education*, 43 LIBERAL EDUC. 477 (1977) (danger in ignoring traditions of adult education); 3) Is there too much emphasis on individual development as opposed to societal change? Daniel D. Pratt, *Andragogy after Twenty-five Years*, 56 NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION 15 (1993) and 4) Finally, where is the proof of its value? Weiland, *supra* note 48, at

andragogy, it was Knowles' publication of his theory that helped to lay the foundation for a model of adult education and open the dialogue among other educational theorists. From the humanistic and developmental underpinnings of andragogy, other theoretical models, models of learning, models of teaching, and models of adult development have emerged.⁴⁹

At the same time educational theorists were discussing the principles and expanding the application of andragogy, so too were clinicians. The adoption of andragogy by clinical legal educators was perhaps more wholehearted - at least on the surface - than adoption by other educational theorists, as the following section illustrates. This is not surprising since most legal clinical educators, and law teachers in general, do not have the theoretical grounding in education which would provide a basis for critique.

C. *Clinical Legal Educators' Responses to Andragogy*

In 1982, Frank Bloch's article entitled *The Andragogical Basis of Clinical Legal Education*⁵⁰ hailed andragogy as the appropriate justification for clinical legal education. Bloch attempted to legitimize clinical legal education's place within the law school academy by attaching its methodological foundations to Knowles' "adult learning theory."

At first blush, the concepts implicit in Knowles' theory seem to be a natural fit with the goals of clinical legal education. Knowles' terms of "facilitated learning," "development of competency models," "experiential learning," and "problem-solving" are familiar to those involved with clinical legal education. However, upon closer examination, Bloch's analysis falls short of its stated conclusion. "Adult learn-

484; LONG, *supra* note 23, at 176-177. Many of these critiques confirmed questions that arose for us in the examination of our own program.

⁴⁹ See, for example, the theory of "humanalogy" which focuses on the similarities as well as differences in adult and child learning, Russell Knudson, *An Alternative Approach to the Andragogy/Pedagogy Issue*, 3 LIFELONG LEARNING, THE ADULT YEARS 10 (1980); the theory of "perspective transformation," based on the concept that transformative learning takes place when humans critically reflect upon new experiences which they assimilate into their structure of assumptions, J. Mezirow, *Perspective Transformation*, 9 STUD. ADULT EDUC. 153 (1977); the theory of "constructivism," which dictates that knowledge is constructed by the one who experiences it; therefore it cannot be taught but only learned, Philip C. Candy, *Constructivism and the Study of Self-direction in Adult Learning*, 21 STUD. EDUC. ADULTS 95, 102, 107 (1989).

Based in part on andragogical foundations, additional models for adult learning have been constructed by CROSS, *supra* note 20, and discussed in *infra* Section III. See PETER JARVIS, *ADULT LEARNING IN THE SOCIAL CONTEXT* (1987); DAVID A. KOLB, *EXPERIENTIAL LEARNING* (1984); Lewis Jackson & Doug MacIsaac, *Introduction to a New Approach to Experiential Learning*, 62 EXPERIENTIAL LEARNING: A NEW APPROACH 17 (1994).

⁵⁰ See *supra* note 3.

ing theory” may not be the unifying educational theory justifying/underlying the field of clinical legal education that he claims, because it may be impossible to have one teaching theory fit the multitude of variables that can arise in the triads of teacher/student/client (in house programs) and of teacher/student/supervising attorney (externship programs).

Bloch’s attachment to “adult learning theory” seemed to build on articles written earlier by noted clinical legal educators. In 1973, Professor Gary Bellow, in his essay entitled *On Teaching the Teachers: Some Preliminary Reflections On Clinical Education as Methodology*⁵¹ noted that legal education had yet to begin to develop a theory of instruction or an educational model which relates how things are presented to how things are learned.⁵² Although Bloch’s article attempts to provide a singular theory, it fails to recognize the tensions articulated by Bellow regarding the difficulties that may be encountered within the context of clinical legal education. Bellow saw the potential tension that might exist if a student was asked to perform skillfully and simultaneously be self-critical.⁵³ He noted that this tension might cause the clinical teacher to be more directive.⁵⁴ Essentially, Bellow recognized that one educational method was not going to fit or answer the needs of all clinical students.⁵⁵

In 1979, David Barnhizer wrote his article, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, identifying sixteen separate behavioral and attitudinal traits of clinic students, each of which call the clinic supervisor to a different teaching relation-

⁵¹ Bellow, *supra* note 5, at 374-90.

⁵² *Id.* at 374.

⁵³ *Id.* at 390.

⁵⁴ *Id.* Other articles involving the need for supervisors to become more directive in order to protect clinical program clients include the following: Kate Bloch, *Subjunctive Lawyering and Other Clinical Extern Paradigms*, 3 CLIN. L. REV. 259 (1997); Robert G. Conklin, *Socrates’ New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD L. REV. 223 (1981); George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher’s Duty to Intervene*, 26 GONZ. L. REV. 415 (1990); Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L. J. 301 (1986); Michael Meltsner & Philip G. Schrag, *Scenes From a Clinic*, 127 U. PA. L. REV. 1 (1978); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-94).

⁵⁵ Bellow, *supra* note 5, at 388. Bellow’s clinical methodology encompassed a number of educational devices such as:

- a. Presentation: lectures, readings, or direct reactions to student responses;
- b. Mutual inquiry and discussion;
- c. Demonstration and example; and
- d. Role-playing and other forms of simulated enactment.

The challenge to the clinical teacher was selecting the right device to enhance the learning of the clinical student.

ship.⁵⁶ The description in the article is an interesting example of the wide variety of challenges facing teachers in individualized learning. Again, like Bellow, Barnhizer indicates that one methodology alone will not work for all clinical law students. However, Bloch mistakenly assumes that although Bellow and Barnhizer both articulate the value of clinical education as teaching methodology, neither of them, nor anyone else at that point in 1982, had developed a “coherent theoretical framework, and as a result, their observations tended to be idiosyncratic.”⁵⁷ It is our sense that Bellow and Barnhizer both recognized that one teaching methodology is not going to work for all clinical law students.

Bloch’s article may have been instrumental in helping to develop a body of clinical literature on the nature and theory of clinical supervision.⁵⁸ As a result, many clinicians in the late 1980’s and early 1990’s believed that, in order to implement Knowles’ theory of adult learning in the clinical context, their supervisory role required them to be “nondirective.”⁵⁹ Challenging this belief in 1993, Professors Stark, Bauer, and Papillo wrote an interesting article entitled *Directiveness in Clinical Education* which studied, among other things, the extent to which clinicians were committed to nondirective supervision.⁶⁰ The article noted at the outset that

[m]any clinicians are committed to supervising nondirectively, giving students broad authority to plan and carry out lawyering tasks and to learn from their own performance. This was consistent with

⁵⁶ Barnhizer, *supra* note 1, at 143-45.

⁵⁷ *Supra* note 3, at 325.

⁵⁸ Several articles on self-directed learning and experiential education appeared after Bloch’s article was published, although not all of them cite to Bloch, making it difficult to know the degree to which his article influenced other clinicians. See Jane Aiken, David Kiplow, Lisa Lerman, J.P. Ogilvy & Philip Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); Hoffman, *supra* note 54; Minna Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Michael Meltsner, James Rowan & Daniel Givelber, *The Bike Tour Leader’s Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989); Shalleck, *supra* note 54.

Although Bloch’s article dealt expressly with in-house clinical programs, his articulation of Knowles’ theory of adult learning and self-directed learning found its way into the externship clinical literature as well. See Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989); Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Education*, 69 NEB. L. REV. 537 (1990); Morton, *supra* note 4; Motley (Weinstein), *supra* note 4; Robert Seibel & Linda Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413 (1996); Marc Stickgold, *Exploring the Invisible Curriculum*, 19 N.M. L. REV. 287 (1989).

⁵⁹ James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Education*, 3 B.U. PUB. INTEREST L.J. 35 (1993).

⁶⁰ *Id.* at 37-42.

Clinicians writing about supervision theory where they have endorsed the view that student autonomous decision-making facilitates adult learning.⁶¹

Their findings indicated that although many clinicians espoused the notion that it was desirable to be nondirective, in actuality, more clinicians were being directive with their students than originally thought.⁶² The study indicated many legitimate reasons why nondirective supervision was neither in the students' nor in the clients' best interest.⁶³ In fact, the study found that the same supervisor could be directive with a student in one type of lawyering task and nondirective with the same student with respect to a different task.⁶⁴ According to the study's conclusion, clinicians believe that one educational theory of supervision is not going to fit in all circumstances; there are too many variables involved, including the ability of the student, the task that the student was performing, and the motivation of the student.⁶⁵

In seeming support of the application of adult education theory to clinical legal education, Professor Fran Quigley wrote:

A central tenet of adult learning theory is bolstering the learner's ability to be a self-directed learner *in the future* through opportunities for reflection on the lessons gained through experience. The parallels between adult learning theory and effective clinical law teaching begin with the shared reliance on experiential learning and opportunities for reflection.⁶⁶

In a later section of his article however, Quigley highlights the tension and the potential inconsistency that may develop in a clinical setting when a clinical teacher attempts to apply adult learning theory to his clinical students.⁶⁷ He demonstrates the apparent paradox that may exist in adopting adult learning theory as the educational model for clinical legal education: In order to implement adult learning theory in his teaching, Quigley resorts to a form of presentation that appears to be pedagogical, not andragogical, namely, content-based teaching.⁶⁸

⁶¹ *Id.* at 35.

⁶² *Id.*

⁶³ *Id.* Also see Hoffman, *supra* note 54, at 310-11 for an interesting discussion concerning why the clinical teacher must adapt his teaching techniques in terms of directiveness or nondirectiveness.

⁶⁴ Stark et al., *supra* note 59.

⁶⁵ *Id.* at 51-54.

⁶⁶ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 48 (1995) (emphasis added).

⁶⁷ *Id.* at 37.

⁶⁸ *Id.* at 62-63. Quigley states: "Therefore, broad-based objective empirical data on social justice issues, as well as cross-cultural and comparative perspectives on justice issues from a variety of disciplines, often must be presented to students to fully inform their

Our own writings, too, have concurred with the clinical literature in favor of self-directed learning as the predominant theory of clinical legal education.⁶⁹ We strive to construct a learning environment that is predicated on student self-directed learning and a reallocation of control that makes it easier for the student to raise issues of interest to the student. However, as will be more fully developed in the following section, in spite of our desire to be more egalitarian with respect to learning agenda and control issues, we encounter difficulties.

II. APPLYING ANDRAGOGY TO OUR TEACHING

We approached the challenge of identifying our teaching paradigm with some understanding of the strengths and weaknesses of our externship program. Having, for years espoused “self-directed experiential learning” as the mantra of our program, we focused our examination on andragogy. Our primary question was to what extent we actually were using the andragogical model as our teaching paradigm. We found we used andragogical theory less than we had assumed. As a result of this examination we have come to understand that there are tensions in our attempts to use adult education methods. These tensions arise in large part because a variety of factors inhibit students from being “adults” as learning theorists might define them, and also because, in order to teach content which conforms to our humanistic ideals, some of our processes are necessarily teacher-directed. Below we describe our processes and the tensions we face in our efforts to use adult learning theory⁷⁰ in our two program components - the field placement and the seminar.

A. Our Field Component

1. Description and Application of Adult Learning Theory

Students intern in a wide variety of placements including courts, public agencies, and private offices, for twenty to forty hours each

reflection after their disorienting moments.” *Id.* at 63. This statement seems to imply that the teacher is using a pedagogical method of teaching. Content based teaching is the delivery of substantive based material from the professor to the student. Similarly, see J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996) for an interesting discussion on the use of journals to encourage students to be self-reflective learners. Ogilvy recognizes that he uses the journals as a pedagogical device to encourage students to be more effective self-learners.

⁶⁹ Morton, *supra*, note 10; Motley (Weinstein), *supra*, note 4; Seibel & Morton, *supra*, note 58; *California Western School of Law Supervising Attorney Handbook*, (1994)(on file in the California Western School of Law Internship Office).

⁷⁰ In our use of the term “adult learning theory,” we refer to the andragogical model and related theories based on assumptions regarding prior experience and development associated with the state of adulthood. For further discussion of adult development theory, see *infra* Section III.

week. They obtain five to ten units of pass-fail credit for the field component, one unit of credit for every four hours spent at their placement. To enroll in the program students must attend an orientation and submit an application which includes their resume, a statement of their goals and three self-selected placement choices. The clinic faculty then meets with each student privately to ensure that students' placement choices meet their goals. Once students have begun their externships, they meet individually with their clinic professor at least three times during the course of the semester to discuss progress towards their goals and to raise any concerns or questions they may have. Students also submit a placement evaluation after completion of their work.

Our program goal of helping students identify and achieve their learning objectives is rooted in andragogical method. Assumptions regarding the learner's inner drive for self-direction, the role of the learner's experience, i.e., the learner's reality, the learner's readiness to learn, orientation to learning, need to know, and motivation to learn, are all applicable to our program, particularly our field component. We attempt to set an informal learning climate as we encourage our students to grow increasingly self-directed. We see our role as facilitators, helping students learn what they need. In our application process and in our first meeting with them, we ask students to diagnose their own learning needs. Then, we facilitate the translation of articulated needs into educational objectives and help students design experiences to accomplish their objectives. Students' orientation to learning is toward developing increased competencies in their chosen fields - competencies which have immediate application. They are motivated essentially by self-esteem and job satisfaction.⁷¹

Our supervising attorneys' willingness to participate in this process is a critical aspect of our program. We encourage our students and supervising attorneys to discuss in their first meeting the students' learning goals and methods of achieving them, thus creating the basis for a "learning contract."⁷² We encourage weekly meetings between students and attorneys to discuss and evaluate the students' progress.

⁷¹ Thus, a student who wants to be a deputy district attorney formulates her own learning goals and methods towards achieving that end, beginning her process of self-directed learning. Her objective, based on prior learning and/or experience, is to develop increasing competencies necessary to the job. Specifically, such objectives may include doing her own preliminary hearings, handling court calendars, and learning practical aspects of search and seizure law. Later, her goals may shift toward more sophisticated aspects of trial work and research, or networking for job opportunities among departments at the District Attorney's Office. She is self-motivated to perform well.

⁷² The learning contract is another concept advanced by Knowles and popular among clinicians. See KNOWLES, *supra* note 2, at 19; Aiken et al., *supra* note 58.

Supervising attorneys are required to review and sign their students' time sheets and to complete both mid-semester⁷³ and final evaluations of the students' development.

2. *Tensions in Applying Adult Learning Theory to Our Field Component*

Unfortunately, the idealism with which we have designed our program goals and methodology does not always conform to the reality of our programs. In truth, we experience tensions in treating students as "adults" and, at the same time, making sure they have the quality of externship experience we believe they should. There are also tensions between our approach to students' learning and our maintenance of quality placements for our program. The tensions arise primarily when we ask students to be self-directing and at the same time ask them to confront their supervising attorneys.

While most of our students come to us eager to begin their transition to law practice, some have little or no sense of goals and with resistance to the process of introspection.⁷⁴ Although the program is voluntary, some students seem to feel they "have to" enroll in the externship in order to be able to list on their resume some kind of lawyering experience; they have been told this will be helpful when they graduate and seek employment. Knowles did not believe this external motivation to be the kind of self-direction necessary to engage the learner in the process. Some students have given little thought to what might be appropriate externship placements for them.⁷⁵ Some students have not thought about what skills they would like to develop and how the externship will fit in with their overall professional goals; in fact, they may have developed no more of an overall goal than of eventually getting a job.

In the adult education models, the adult learner not only has a clear idea about what she needs to learn, but is also actively engaged in examining how what she is learning pertains to her needs. In fact, the adult learner may come to the educational setting as a result of self-reflection, which indicates a need or desire for further formal learning. Adult learners see their educational pursuits as opportunities to grow both personally and professionally. As part of their desire

⁷³ This is a point at which we again ask our students to reassess their goals.

⁷⁴ Possible reasons for students' lack of self-direction are their lack of real-world experience upon which to base their learning objectives, their participation in a passive form of learning up to this point, and their developmental level. For further analysis of these and other reasons, see *infra* Section III.

⁷⁵ We have heard explanations for selections such as, "My roommate did that internship and really liked it," where the roommate had an interest in an area of law not shared by the student.

to learn and grow, these adults will engage with the instructor to discover their learning needs. When our students do not behave in accordance with this model, we must prioritize between an andragogical approach of letting students eventually come to their own goals,⁷⁶ or providing a more directive approach (what Knowles might label a "pedagogical" approach). We do some of each.

Although the ideal adult learner would voluntarily come to us to discuss her externship objectives, participating eagerly in the process, most law students, accustomed to a passive system of learning, do not. Therefore, we structure their entire process of goal formulation, evaluation, and reformulation. Students must meet with us at designated times throughout the semester and articulate their goals each time. Students' timeliness and attitude toward their private meetings with us are part of their grade, thus there are external motivators as well.⁷⁷ In order to motivate the occasional complacent student, clinic faculty resort to lecturing about the job market and the importance of taking advantage of the field placement experience. We also remind them of the importance of being wise consumers and getting "their money's worth" from their experience. The few students who are particularly recalcitrant about fulfilling their course requirements are threatened with consequences such as being involuntarily withdrawn from the program and/or a failing grade. A true adult educator might not be so directive nor use external motivators to re-orient students; however, we believe it is in our students' interest to do so.

There are also times when a student who is self-directed chooses a particular externship placement for what we might consider the wrong reason. For example, a student who has previously performed work in a certain legal setting may apply for an externship in that same setting. Perhaps the student is comfortable and does not want to bother looking for new placements. Perhaps the student senses that her continuation at the placement will enhance her prospects of a job offer there. Or, the student could be shy and find it very difficult to go through the process of interviewing new supervising attorneys - some of this shyness may even be culturally based. If the externship will not provide a new learning experience, but, rather, more of the same, it does not satisfy our notion of providing new challenges, an

⁷⁶ We are restricted in our approach by our course time frame of 14 weeks - not enough time for the ideal self-learning process to occur in our more recalcitrant students.

⁷⁷ Our rationalization for grading timeliness is that for some of our students there is no internal motivator to assist them in participating in this process; because we believe in the usefulness of the process so much so that we have made it a requirement, it would be inconsistent on our part to ignore noncompliance. We tell our students that being on time for meetings is part of being professional, which we believe, but which may not be particularly persuasive for them when they are prioritizing their activities.

essential component of the placement.

If we are to treat the student as an adult learner in the “Knowlesian” sense, we should facilitate her challenging herself by persuading her to move to a new placement. The true adult learner would accept the challenge and re-formulate her goals. A tension arises when we are unable to motivate the student to critically analyze her own objectives or to take a new externship, and we believe a more directive approach is in the student’s interest. To what extent should we exercise our priorities for the student (a challenging, stimulating field experience) over the student’s own objectives (comfort; perhaps even a job)? Is the student mature enough to articulate and seek her own objectives? Is it right for us to impose our educational values on her?

What we do in these circumstances is to be as direct as possible with the student. We tell her we do not approve of her choice and why. In fact, we believe that this kind of directness is not authoritative, but an honest dialogue in which the teacher shares concerns about and aspirations for the student. The humanists and adult education theorists share in the idea that it is sometimes appropriate, out of respect for the individual’s true potential, to be confrontive and challenging.⁷⁸ But even our directness does not always alleviate the tension. Though we may allow her to proceed with her own objectives, it is of little comfort to say to the student, “It’s your choice, you are an adult,” while at the same time questioning within ourselves that conclusion.⁷⁹

On occasion, a student may simply not want to challenge herself. For example, a student externing with the Public Defender’s Office – a placement requiring highly motivated, self-initiating students – may decide to take on as few challenging projects as possible. Her reasoning might be that her other law school course work requires more time, or perhaps she even confesses to us that she wants to relax a bit in her final year, i.e., taking the path of least resistance. She may not have been as interested in criminal trial work as she had thought at the time she applied for the program, or we simply may have misjudged her motivation to challenge herself.

Theories of adult learning do not expound upon such a scenario. Adult learners *are* self-motivated. If we applied andragogy here, we would allow the student to follow her own path, whether it be toward her other course work, or perhaps toward another externship experience. Yet certain tensions then arise: The student is failing in her

⁷⁸ See *infra* note 122.

⁷⁹ We are aware that we face an inherent conflict of interest; we may be tempted to rationalize our approach in an effort to ensure satisfied graduates, making it difficult to say “no” to students’ wishes.

responsibilities to the Public Defender's Office and to the program, making a poor impression at her placement and having a negative impact in the classroom. If we find that the student's lack of motivation is not the fault of the placement, our preferred course of action is to push our intern toward accepting her responsibility and encouraging her to find a type of work within the externship placement that will challenge her. We would discuss the importance of her responsibilities, as well as external motivators (the effect her attitude may have on her evaluations and her course grade). We would also discuss what other types of work, appellate, for example, she might find more interesting at her placement.

Another tension in our application of adult learning theory occurs when students are reluctant to be honest with their supervising attorneys about dissatisfactions they are experiencing with their externships. Students want to please their attorneys, in hopes of getting favorable recommendations or even job offers. Being assertive in expressing needs, rather than simply adapting to the office "flow," is naturally uncomfortable. There is tension between the student's perception of her need to "fit in" and our perception of the student's learning needs (which may include learning to be assertive), as well as our need to ensure the quality of our field placements.

The true adult educator might question the student, but certainly not intervene; an adult learner's own objectives should take priority. In contrast, our clinical faculty will tend to push the student more than an adult educator might to express her needs. And, we might intervene directly with the supervising attorney should the circumstances warrant it.⁸⁰

Thus, because not all our students conform to the image of "adult learners," we believe it is sometimes appropriate to set limits, conditions and consequences which affect student choice, but that will challenge students to move to a new level of understanding of themselves and the legal profession. As a result, we provide a more rigid structure and are more directive than Knowles might sanction.⁸¹ Despite

⁸⁰ In such situations, we give substantial deference to students when considering our potential intervention. First, students need to trust their faculty supervisor in order to feel safe disclosing any dissatisfaction. Once a student does make such a disclosure, the faculty member must work sensitively with the student in a cooperative problem solving endeavor, allowing the student to take the lead, except in extreme circumstances. This might mean no intervention on our part, or an intervention with the cooperation of the student. Our concern about not breaching the students' trust in us, and our respect for our students as adults who must participate in solving their own problems underlie this approach. See Bloch, *supra* note 54.

⁸¹ One of our students, a successful educational consultant, confirmed this:

In reading this substance and philosophy behind CWSL's approach to the internship program, I was particularly struck by the notion that it is based upon adult learning

this seeming contradiction between our methodology and adult learning theory, the same humanistic values that underlie andragogy, particularly our desire to help our students grow, also underlie our conscious application of a more teacher-directed methodology.

B. Our Seminar Component

The major focus of our seminar component is to encourage students to be thoughtful problem solvers. Our conception of the qualities of a thoughtful problem solver are humanistically based in that they focus on the whole person. Such qualities include: being a person who is aware of her own motivations, desires, stresses and concerns, and who is able to attend appropriately to these in relationships with clients and other professionals; being conscious of the multiple influences, feelings, and concerns of clients and tending to them in a sensitive and professional manner; having a firm grounding in her personal values and addressing them as ethical dilemmas arise in practice and in making decisions about accepting clients, performing pro bono work, etc.; and recognizing her professional strengths and weaknesses and striving to improve her knowledge and skills in a conscious effort toward self-development.

Although our goal of helping students become thoughtful legal problem solvers is humanistic, we have found that it is not always accomplished through andragogical methodology. The humanist-based content of our seminar component, as well as the level of adulthood students have reached, require a more directive methodology in executing our goal.

1. Description and Application of Adult Learning Theory

Externs meet one hour each week in classes taught by clinic faculty. Each class has no more than fifteen students. Homework includes submission of weekly journals and assigned readings. Grades are based on journal-writing⁸² and class participation.

The goal of encouraging students to be thoughtful problem solv-

theory. Initially I was perplexed by this because my sense of Malcolm Knowles' view of adult learning is that it should take the learner from where s/he is to where s/he wants to be, that it is problem-focused and recognizes the array of experiences the adult brings to the learning experience. My initial reaction to the substance and form of the CWSL internship was one of too much structure in the seemingly rigid adherence to completing forms, monitoring of minutes, and a constant sense of reporting and accounting.

⁸² Students are graded on the depth of their analysis in their journal-writing. For example, we want to hear not only what they have done at work that day, but what they have learned about what they have done, and how such learning fits or does not fit their conception of the legal profession.

ers grows out of humanistic and andragogical assumptions about the nature of the adult individual. The self-reflection, attention to others and self-directedness called for to achieve this goal are adult attributes; the kinds of life experiences upon which choices and learning in this area can be founded are also particular to adults. Our hope is to develop each student's willingness and ability to reflect upon ethical and moral issues of law practice as well as personal and professional development needs, eventually without our prodding. In encouraging them to do so, we attempt to make as relevant as possible the issues students read about and discuss by drawing on examples from their externship experiences.⁸³

Aspects of our teaching methods, though varied according to professorial style, also conform to theories of adult education. All members of the clinic faculty attempt to set an informal climate for learning. Some of us base our reading assignments and class discussions on students' journals, thus tying seminar discussions directly to students' experiences. Others use weekly readings consisting of articles on issues such as stress, billing practices, client confidentiality, and the role of pro bono work, and ask students to discuss them in light of their experiences. Some use student facilitators to replace the professor in leading class discussion, and some allow inspired students to design their own topics and assignments for class discussion.⁸⁴ Overall, we believe our approach is humanistic, both in class and outside of it, in our attention to the development of our students who are in the process of self-actualizing. Our interactions with our students are based on respect, and we attempt to engage them in a cooperative learning effort as both their mentors and comrades in life-long learning.

2. *Tensions in Applying Adult Learning Theory in Our Seminar Component*

In reality, however, the tensions we have mentioned between teaching what we believe to be a humanistic content and consistently treating our students as mature adults, often require more directive methods to accomplish our goals. This approach is evident in our seminar classes, reading assignments, and our journal requirement. Most of our students, we surmise, would prefer not to attend class at all, nor do any readings. They are far more interested in their on-the-job training and survival than in discussing the ethical issues or moral dilemmas lawyers face. Hence, a certain tension exists in creating a

⁸³ Cole, *supra* note 58.

⁸⁴ Morton, *supra* note 4.

mandatory classroom component focusing on issues that students have only occasional interest in studying.

Although an adult educator is generally responsive to learners' needs and objectives concerning how they spend their time, we may be less responsive because of our belief in the importance of having students consider their professional roles from a broad perspective. As a result, the classroom component and readings are required. We dictate to students their classroom learning goals; we do not ask the students what they think the goals should be or what the students would like them to be. For the most part, we, not the students, create the content for the class in terms of readings and class discussion.⁸⁵ Moreover, the class is graded, so students' motivation to become "thoughtful problem solvers" in this context is external more often than internal.

The journal-writing assignment as part of the class is based in part on andragogical principles of self-reflection and experiential learning. Our hope is that, in reflecting on their externship experiences and learning, they will become more thoughtful lawyers.⁸⁶ But there is tension when students are unwilling to engage in the process at a level we feel is necessary. Although an adult educator might allow students adverse to or uncomfortable with journal-writing to engage in other self-reflective processes of their own choosing, we do not. Even the students who see no purpose to journal-writing must submit their journal entries every week to participate in the program. The journal is graded, so the motivation for writing is, again, often more external than internal; students may temporarily emulate, though not adopt, professorial values in order to earn a good grade.

In short, because becoming a thoughtful problem solver, according to our definition, is our goal for the students, not necessarily the students' goal for themselves, we believe achieving that goal requires a more directive approach. Although, once again we depart from andragogical processes, we believe our content - in essence, training our students to be thoughtful professionals - takes priority over strict adherence to tenets of adult learning theory.

⁸⁵ Some of us have experimented with the concept of leaving the goals, content, and format of the class up to the students. Some students rise to the occasion, but the majority do not. They are in class primarily because we require it, not because they want to be there. They are not interested in investing their energy in creating structure and content for a one-unit seminar when their primary goal is to gain experience in the practice of law.

⁸⁶ Ogilvy, *supra* note 68.

III. WHY WE EXPERIENCE THESE TENSIONS: LAW STUDENTS ARE NOT ALWAYS "ADULTS"

Knowles describes adult learners as self-directed, self-motivated people who bring a lifetime of experience to the learning process. Adult learning theory is necessarily built upon theories of adult development.⁸⁷ The tensions we experience in applying adult education methodology, particularly in our seminar component, can be explained, in part, by applying adult development theories to law students. The adult development theories are useful for thinking about the levels of "adulthood" at which we find students. Our knowledge of these levels, allows us to better understand students' needs and how to help them more effectively accomplish their goals. One helpful model for undertaking an examination of these theories is K. Patricia Cross' Characteristics of Adults as Learners (CAL),⁸⁸ a model which integrates the major schools of adult development theory.

Essentially, the qualities of an adult learner upon which Knowles and other learning theorists rely are present in varying degrees among law students, but in some are not fully developed at the time they reach our program. By applying Cross' model, we can understand why some law students do not possess the qualities of adult learners as learning theorists might envision, and therefore why the andragogical process is not always useful or successful in a clinical setting.⁸⁹ In this section we examine the Cross model, apply it to law students, and discuss additional factors that must be considered in determining the appropriateness of adult education methodology in law school.

A. Description of the Cross Model

Unlike the area of child development, the field of adult development was relatively unexplored until the 1950's.⁹⁰ The fields of psy-

⁸⁷ We use the term adult development theory broadly here to refer to all explanations for the changes which occur in an individual's attitudes and behaviors during the life span after adolescence, rather than its narrow use referring to psychological or ego development.

⁸⁸ Cross, *supra* note 20. We selected Cross' model because it integrates so many of the developmental theories we examined in our research and those cited by other clinicians.

⁸⁹ Even a true adult learner might not share our concern with and values for professional responsibility and ethical issues that we believe to be essential to our seminar component. For example, while we believe a consideration of the role of pro bono work in the profession to be an important issue for our students, someone just preparing to enter the profession might have other concerns that take priority over this topic. We frequently hear from our students that they cannot imagine having time for pro bono work when they are starting out - the topic seems irrelevant to their present needs. More likely they would prefer a topic such as how to get a job.

⁹⁰ Janet Z. Giele, *Adulthood as Transcendence of Age and Sex*, in THEMES OF WORK AND LOVE IN ADULTHOOD 151 (Neil J. Smelser & Erik H. Erikson eds., 1980)[hereinafter THEMES OF WORK AND LOVE].

chology, sociology, human development and education have all examined the concept of adulthood, but there is no uniform definition we might use to categorize our students. Although chronological age has been used as a definition of adulthood, qualifying all law students as adults (post adolescence), this is not of much help when we examine students' readiness to learn as adult learners.⁹¹

Cross' Characteristics of Adults as Learners is a helpful model because it eliminates the need for a uniform definition of "adult" and instead, reminds us of the need to consider the multiple aspects of adult development theory. The model is graphically represented as follows:

CHARACTERISTICS OF ADULTS AS LEARNERS (CAL)⁹²

Personal Characteristics

Physiological/Aging

Sociocultural/Life Phases

Psychological/Developmental Stages

Situational Characteristics

Part-Time Learning Versus Full-Time Learning

Voluntary Learning Versus Compulsory Learning

1. *Personal Characteristics*

Each *Personal Characteristics* category, i.e., Physiological/Aging, Sociocultural/Life Phases, Psychological/Developmental Stages, is based upon an extensive body of research that looks at adulthood through that particular lens.

(a) "*Physiological/Aging*"

Physiological aging is a given, predetermined fact and is based upon chronological age. Theories of development based upon aging focus primarily upon the intellectual and physical capabilities that accompany physical growth and decline.⁹³

(b) "*Sociocultural/Life Phases*"

"Sociocultural/Life Phases"⁹⁴ refers to the adult socialization pro-

⁹¹ *Id.* at 153 (differences between people are larger than similarities based on age).

⁹² *Id.*

⁹³ We do not deal further with physiological aging as a factor in our discussion, as this is generally not a subject of concern in dealing with our students.

⁹⁴ "Life phases" is the name given to the differentiated periods of development by the-
orists who study development from a sociocultural perspective. *See generally* CROSS, *supra*
note 20. In this article, "sociocultural" and "life phases" will be used interchangeably.

cess, the engagement of the individual in society. Examples of significant life phases include leaving home, marriage, and becoming employed.⁹⁵ "Just as there seem to be timetables based on laws of inner growth, so, too, is the life course shaped by timetables governing our roles and careers in various social groups and institutions."⁹⁶ The focus of the sociocultural perspective is on age groups rather than individuals. Life phases describe the way culture, class, occupation, religion, gender, ethnicity, etc., affect roles and attitudes.

Traditionally, within the sociocultural framework, individuals have been viewed as if on a track which moves from adolescence to young adulthood, defined by the beginning of movement into career and family.⁹⁷ To a large degree, phase theories are based upon chronological age.⁹⁸ Thus, for example, the age range of twenty-three through twenty-eight is identified as a time for marrying, establishing a home, becoming a parent, obtaining employment, being fired, or quitting a job, and entering into community activities.⁹⁹ As a result of these experiences, people in this age group exhibit certain attitudes and behavior distinct from individuals in other age groups as described in the Table at Appendix I.

(c) "Psychological/Developmental Stages"¹⁰⁰

Unlike the sociocultural approach, which is based on age and changing social expectations, the psychological development approach emphasizes inner growth. This inner growth is marked by developmental stages, using "a biological metaphor, in which it is appropriate

⁹⁵ See Descriptions of Life-Cycle Phases, Appendix I.

⁹⁶ Daniel J. Levinson, *Toward a Conception of the Adult Life Course*, in THEMES OF WORK AND LOVE, *supra* note 90, at 265, 270.

⁹⁷ The application of the Life Phase framework is somewhat complicated by the phenomenon of "career dissynchronization: individuals progress at different speeds within their multiple careers." Some students may be well-advanced into their family-life and careers, having entered law school married and with children, while others may be well into their careers before taking on other commitments.

⁹⁸ See Cross' table, *infra* Appendix I.

⁹⁹ Some theorists have assumed a degree of universality of life phases. Sociocultural influences may be common to individuals within groups, but increasingly research is redefining and narrowing these groups so that the individual applicability of any assumption must be examined. For example, acknowledged influences of gender and ethnicity may lead to contradictions in previously held assumptions about sociocultural experiences. Giele, *supra* note 90, at 161. The terminology used by theorists is inconsistent. Some appear to use the term "life stage" to describe what Cross calls a life phase. See, for example, Giele, *id.* at 154, looking at the plateaus and transitions experienced by adults as they move from young adulthood into old age, focused on career and relationship changes.

¹⁰⁰ Developmental stages are the differentiated levels of developmental maturity described by theorists who study development in psychological terms. In this paper we use "psychological" and "developmental stage" interchangeably. Note also that the term "ego development" is sometimes used to describe psychological stages of development.

to speak of continuous growth from simple to higher or more complex forms of life and from immaturity to maturity."¹⁰¹ Developmental stage theory is not necessarily based upon age,¹⁰² and there is skepticism as to whether these developmental stages follow a specific sequence or pattern.¹⁰³

The "Milestones of Ego Development" Table in Appendix II is an example of a psychological/developmental stage model. As opposed to an age-based model, the psychological model is based upon stages of psychological maturity. An individual in the Conformist stage would exhibit different characteristics and have different needs from an individual in the Conscientious stage.

The developmental model one selects may have significant consequences in designing a curriculum.¹⁰⁴ Choosing between the Sociocultural/Life Phases and Psychological/Developmental Stages theories results in very different approaches to educating law students.

Whereas an educator might legitimately wish to help or encourage an individual to achieve a more advanced stage of ego development, the same case cannot be made for an educational goal of phasic development. The more likely role for an educator in phasic development is to assist with transitions and to help individuals adapt to the phase of the life cycle that is appropriate for their age

¹⁰¹ CROSS, *supra* note 20, at 168.

¹⁰² Giele, *supra* note 90, at 157.

¹⁰³ *Id.* Giele's explanation demonstrates the relationship of the psychological and sociological models:

It is logical to expect that there would be crossovers in modern adulthood. Many developmental tasks in adulthood are not age-specific but age-independent. Modern society is so highly differentiated that no coherent synchronized set of role transitions occurs for all people at a given age. Individuals encounter different experiences and negotiate the development process in highly individual ways.

.....
The result for the individual adult may be that there is no clear age-connected "season" when certain things are learned. Psychologically, it makes sense to argue that location in the social structure may affect which of the many domains of personal behavior (interpersonal, moral, achievement- or survival-related) are most satisfactorily fulfilled in early adulthood and which will therefore have to be elaborated afterward to maintain equilibrium later on. If this is the case, it follows that the time of life for elaborating one or another of these aspects of life will not be the same for everyone.

Id. at 158 (citations omitted).

"Many warn against viewing stage theory and development as a purely linear process." Marcie Boucouvalas with Judy-Arin Krupp, *Adult Development and Learning*, in HANDBOOK OF ADULT AND CONTINUING EDUCATION 183, 189 (Sharan B. Merriam & Phyllis M. Cunningham eds., 1990) (concerns about the general applicability of the developmental stage theories include the research focus on small samples of middle class, white and married individuals, earlier focus on males, and failure to address the influence of cultural norms).

¹⁰⁴ Cross' CAL model allows us to apply all theories concurrently, but requires individual application of the model's factors to each student.

and social role.¹⁰⁵

Cross' model asks us to consider and incorporate both approaches in designing appropriate curriculum.¹⁰⁶

2. *Situational Characteristics*

Situational Characteristics focus on external, rather than personal influences upon the individual's level of adulthood. Cross' model sets forth two *Situational Characteristics* which are generally assumed to differentiate adults from other learners: "Part-Time Learning versus Full-Time Learning" and "Voluntary Learning versus Compulsory Learning." Most adult learning is assumed to be part-time and voluntary.

B. *Application of the Cross Model to Law Students*

Not only do people mature at different rates, but an individual's maturity in the various domains - physical, emotional and cognitive - may be uneven. Additionally, maturity is not necessarily constant. Life stresses and traumas may result in regressed behaviors during periods of time or in specific situations.¹⁰⁷ For some students, law school may be such a period, or specific events during law school may be such situations (e.g., exams, evaluations and grading, and beginning an externship) that raise concerns of self-esteem and competency.

In this section, we set out the characteristics of what we consider to be an adult learner within the context of our program. We then compare those characteristics to those of law students, using the Cross model. We conclude that not all law students are in a position to respond as true adult learners. While each student may demonstrate some of the characteristics of an adult learner, an application of the Cross model demonstrates that law students have numerous personal and situational barriers to achieving the sense of adulthood andragogy requires. Thus we find it necessary to use a hybrid approach in our teaching rather than a pure andragogical model.

1. *Our Ideal Adult Learner*

Based upon our study of developmental models and our experience in our externship program, our ideal adult learner attitudes and

¹⁰⁵ Cross, *supra* note 20, at 169.

¹⁰⁶ Adult education is faced with a much more difficult assessment of learning needs and styles than is child education because of the vast differences between adult learners. "For as individual adults function in society, age, and accumulate experience, they become more and more differentiated from one another. A group of 44-year-olds will be less like each other than a group of 20-year-olds." DARKENWALD & MERRIAM, *supra* note 9, at 75.

¹⁰⁷ Giele, *supra* note 90, at 159.

behaviors would include willingness and ability to:

- 1) think reflectively about learning goals and needs;
- 2) actively work with the professor and supervising attorney to achieve goals;
- 3) move beyond the “comfort” zone in order to achieve learning needs;
- 4) take responsibility for situations rather than feel victimized;
- 5) see the experience as an opportunity to grow and professionally develop, rather than merely another “hoop” to jump through;
- 6) ask for assistance when needed, but be appropriately independent;
- 7) engage in the examination of value-based issues about the legal profession and the role of law and lawyers in society; and
- 8) examine personal ethical/moral foundations and listen to differences with the potential for change and growth.

In applying the two components of the Cross model, *Personal Characteristics* and *Situational Characteristics*, we understand that law students will need to be at a particular level of adult development in order to satisfy our notion of the ideal adult learner.

2. *Personal Characteristics*

(a) *The Sociocultural/Life Phases*

In applying the Sociocultural/Life Phases dimension to law students we make three observations. First, in some cases the characteristics of law students do not match the expectations for their chronological age, according to the Description of Life Cycle Phases included as Appendix I. Second, even in the cases where students' characteristics do match the expectations for their age, those characteristics may not be conducive to the kind of participation we are seeking. Third, some students, in spite of age, demonstrate high levels of maturity and are able to participate fully in our program.

In examining law students from a sociocultural perspective, we must consider how they are acculturated by the environment in which they have been spending the majority of their time - i.e., the educational setting.¹⁰⁸ Frequently, college represents a time of life in which the individual has little responsibility other than to herself. Given the relative disconnection of the undergraduate experience from the “real world,” it is doubtful whether students receive consistent and clear messages regarding their roles as emerging adults.

¹⁰⁸ “Educational, religious, and other institutions transmit the cultural meanings of age and prepare their members for age-linked changes in social status and role.” *Id.* at 271. To the degree that our students' experiences have been primarily in educational institutions, we must look at the cultural meanings of age within that context.

The transition into law school, for many students, appears to be little more than a change of academic settings.¹⁰⁹ The law school experience, with large required classes, the authoritarian figure at the head of the class, the pressure of examinations and grades, and competition with peers, appears to be a continuation of the undergraduate experience. The first year experience provides few clues for students about required role changes and scant information about the cultural expectancies for adult behavior.¹¹⁰ While law school faculty and administrators may sometimes comment on the lack of responsibility and self-direction in some of their students, little is done to model or even explicitly teach desired behaviors.¹¹¹ Thus, from a sociocultural

¹⁰⁹ In this respect, some law students are much more like undergraduate students than they are like professionals. According to Darkenwald and Merriam, childhood education is intended to be preparatory

to prepare young people to function as adults. For the most part, society, through the educational system, decides what knowledge, skills, and attitudes a child must acquire to be equipped for participation in the adult world. Even institutions of higher education are basically preparatory. That is, students are "prepared" to become economically, socially, and psychologically independent.

DARKENWALD & MERRIAM, *supra* note 9, at 77. The authors contrast such education with adult education which "assumes that students are already functioning as adults in society. Thus, its mission is not preparatory so much as it is one of assistance - helping adults to realize their potential, make good decisions, and, in general, better carry out the duties and responsibilities inherent in the adult role." *Id.* at 77.

The law school mission would seem to be more preparatory than it is assisting, although we believe the externship experience to be the transition between these functions. This is illustrated in the following student journal excerpt:

I want to comment on the psychological benefits of doing an internship. Although there are several such benefits, I feel that the single greatest benefit is that it forces the student to "grow up." For someone like myself, who pretty much went straight from undergrad to law school, it's easy to see yourself as a kid. It's not that I haven't had to act like an adult before, it's just that the consequences usually weren't too great. For example, if I made a big mistake on a law school exam I would be the only one to suffer. But if I make a big mistake out here in the real world, many people will suffer. And the consequences could be severe. This scares me a little bit. Overall, though, I like the responsibility because it helps me to see myself as a true adult. Seeing myself as an adult and not as a kid will not only make me feel better about myself, it will probably also improve the quality of my work.

¹¹⁰ This is not to say that legal education, including the first year, does not have a substantial acculturating influence on students. See Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887 (1975); Jack Himmelstein, *Reassessing Law Schooling: Towards a Humanistic Education in Law*, in MONOGRAPH I, *supra* note 18, at 20, 22; Charles Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968); Rather, due to the lack of a curricular focus on professional responsibility and professionalism, the acculturation is not specifically about what it means to be an adult professional person.

¹¹¹ "[A] student of virtue develops an ethical disposition by performing virtuous acts. And since he may not yet be practically wise, he must model his actions after the experienced and people of practical wisdom." Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education*, 20 J. LEGAL PROF. 5, 12-13 (1995-96).

perspective, the adult socialization process may not be furthered within the institutional education setting.

In life phase terms we would expect most law students to fall into the "Moving into Adult World" phase, based on chronological age (ages twenty-three through twenty-eight) of the Life-Cycle Phases as described in Appendix I. In this phase we would expect students to experience the *Marker Events* such as marrying, establishing a home, becoming a parent, getting hired/ fired/ quitting job, and entering into community activities. In fact, at the time we begin to work with them, some law students have experienced few, if any, of these *Marker Events*. As a result, according to Life Phase Theory, students may not yet be dealing with the *Psychic Tasks* such as "Regard self as adult," "Fashion initial life structure," and "Find a mentor." Since the externship for many students is the first experience related to the career *Marker Event* of "Get hired/fired/quit job," it may serve as the initiation for these students into these *Psychic Tasks*.

In fact, students cover a wide range of attitudes and behaviors not necessarily related to their age, which place them in many different categories in the *Psychic Tasks* area. Some students have dealt with the *Psychic Tasks* "Face reality," and "Reassess personal priorities and values" (ages thirty-seven through forty-two); others have dealt with the tasks "set long-range goals," "search for personal values," and "strive for success" (ages twenty-nine through thirty-four). Some students are still dealing with the *Psychic Tasks* characteristic of the "Leaving Home" phase (ages eighteen through twenty-two) including "establish autonomy and independence from family," "define identity," and "establish new peer alliances."

Life phase theory, which employs chronological age to classify developmental expectations, may not have been created with professional school students in mind.¹¹² Perhaps the entire developmental process is delayed for these students.¹¹³ To the extent that attitudes

¹¹² The life phase model, based on the notion of a "typical" movement through life, is simply inapplicable to many students and necessitates a more conscious awareness on our part of the sociocultural influences on a particular student or group of students and what those influences might mean in our work with them. Additionally, law students often demonstrate career dissynchronization. We do not know to what extent, if at all, cultural pressures to marry, be self-sufficient and be settled into a career influence our students. It is not unusual to hear a student express distress in the third year of law school over being so "undecided" or "unsettled." Thus, the life phase time line might be an unconscious factor in the attitudes and behaviors of our students.

¹¹³ Many students are not quite "launched as an adult." See *infra* Appendix I. This could be explained by the extended life expectancies today over those 30 years ago, allowing more time to put off the responsibilities of adulthood. It might also be explained by the increasing number of individuals who attend graduate training programs before they can begin their careers, thus putting off the responsibilities they would otherwise be expected to have in their early and mid-twenties.

and behavior are determined by life phase, our expectations for our seminar component appear unrealistic as applied to some law students. This is even more unrealistic if life phase development is delayed because of extended years of schooling. Even where student characteristics do fit the relevant age phase, as defined in Appendix I, the characteristics described are not always conducive to the goals of our program.

Tensions sometimes arise because the characteristics that best match our internship goals and our ideal adult learner tend to include the characteristics of older age groups. Our ideal adult learner willingly thinks reflectively, takes responsibility, and examines value-based issues and personal and ethical moral foundations. These qualities are usually reflected in the later life phase cycles.¹¹⁴

While the *Psychic Tasks* that law students are involved with may not conform to their age group expectation, often the *Characteristic Stance* of law students does. A clear example of this is the "Doing what one should" stance. Students often have a difficult time seeing the complexities of the moral dilemmas we offer, instead resolving the dilemmas with simple answers about doing the right thing.¹¹⁵ We

Darkenwald and Merriam describe how cultural and historical influences create expectations for age-related behaviors within society. DARKENWALD & MERRIAM, *supra* note 9, at 88. The developmental tasks listed in life phase theories do not include attending school, *see infra* Appendix I, yet in today's society and for particular socioeconomic groups, graduate school is an expectation. Darkenwald and Merriam discuss Kimmel's "milestones in human development" theory which holds that milestones (social events such as graduation, marriage, or retirement) are generally age-related and "incur role shifts central to adult development." *Id.* at 91. If graduation is a significant precursor to adult development, then the fact that our students have not yet graduated would imply that they are moving toward a time of significant development, but have not yet reached it. Graduation from college, for students who expect to continue on in law school, does not carry the same significance in the developmental sense. It can be assumed that the adults referred to in adult education theory have reached and passed most, if not all, of the major milestones to which Kimmel referred.

¹¹⁴ See characteristics listed in the "Search for Stability" (ages 29-34) phase: "Reappraising relationships," "Reexamining life structure and present commitments," "Striving for success," "Searching for stability, security and control," "Searching for personal values" and "Setting long-range goals." Our adult learner might also be involved in the tasks of later phases including "Reassessing personal priorities and values" ("Becoming One's Own Person" - ages 37-42), "Increasing feelings of self-awareness and competence" and "Reexamining the fit between life structure and self" ("Settling Down" - ages 45-55).

The *Characteristic Stance* which would be taken by our ideal adult learner would include those from later life phases, including "What is this life all about now that I am doing what I am supposed to?" and "Desire to set long-range goals and meet them" ("Search for Stability" Phase - ages 29-34) and "More nurturing stance for men; more assertive stance for women" ("Becoming One's Own Person" Phase - ages 37-42).

¹¹⁵ An example from an intern's response to a moral dilemma hypothetical from our readings demonstrates this resistance.

The chapter on confidentiality was interesting. It is another one of those fine lines. To reveal or not to reveal. Protecting the interests of your client is central to

would be more likely to get the kind of response we seek from people in their midlife period, which is identified by striving for authenticity, generativity, and serious questioning regarding the meaning of work.¹¹⁶ These qualities are essential to the self-reflective and relationship characteristics of our ideal adult learner.

Thus, from the sociocultural/life phase perspective, our expectations of students appear to be overly ambitious. Application of life phase theory to law students explains some of the tensions we experience; the students are not in a place in their lives which would allow them to conform to our ideal. Given this dilemma, we explore Psychological Stage theory to determine if it provides additional explanations for our tensions in achieving our program goals.

(b) *Psychological/Developmental Stage Theories*

Developmental Stage theories provide another framework for exploring the application of andragogy to our students. Using the Milestones of Ego Development Table by Loevinger, located in Appendix

the role of an attorney. Violating that should definitely be for good cause. Making broad generalizations about whether or not it is proper to reveal confidential information is difficult. I think there is always a correct action (to reveal or not to). However, I think that it is very case specific. There are situations in which I would not hesitate to require disclosure. However, there are also situations where I think revealing the secret information would be wrong. But, such is the nature of lawyering. Taking an impossible situation with no one answer, and eventually coming up with one.

According to Gould,

[T]here is a tendency in the twenties still to believe that there is one right way to do things and that there are real adults in this world. During our twenties we tend to do what we think we should be doing and therefore judge ourselves by arbitrary internal standards. Awareness of the transformational process is constrained by these arbitrary standards which seem to inhere in the world "out there" and must be accepted, we think, as "reality." Therefore, most of our growth work is done "out there" as we respond to social and economic necessity."

Roger Gould, *Transformations during Early and Middle Adult Years*, in THEMES OF WORK AND LOVE, *supra* note 90, at 213, 229.

¹¹⁶ *Id.* at 234-37. For law students, the heavy emphasis placed on performance may create an "over-identification" with role which makes it extremely difficult to deal with questions of consciousness, even within that role. This, then, provides another explanation for resistance to the kind of self-reflection we hope for in our students. See also Himmelstein, *Comment*, in BECOMING A LAWYER, *supra* note 16, at 6. Students may fear that considering their personal feelings about their experiences may wipe out their professional identity. *Id.* at 40. Contrary to the critical theory approaches of Friere and Mezirow, as discussed by Quigley, *supra* note 66, at 47-48, the average age of law students does not correlate with "adults' capacity to learn through critical scrutiny of both their own and their culture's values, assumptions and beliefs." *Id.* at 47. Nor are they prepared for the educational experience to empower them "to think and act in opposition to the dominant culture." *Id.* at 47-48. Our older and more mature students, however, may be in a position to undertake such thinking, although many of the other factors, including their interests in and needs to learn "hands on" lawyering skills may still interfere with loftier goals.

II, we find again that students are in a variety of stages.

(1) *Impulse Control, Character Development*

Our ideal adult learner is at least at the Conscientious stage - self-evaluating, self-critical, and forming long-term goals. In contrast, some students are in early stages of ego development – Self-protective and Conformist. For example, students may externalize blame. We see this in our program as excuse-making for failing to abide by course requirements and a general failure to take responsibility for personal experience.¹¹⁷ Students may conform to external rules, rather than internalize or understand them. Students may fabricate journal entries to conform to their perceptions of our expectations, rather than engage in meaningful self-reflection.

Some students fall into the Conscientious-conformist stage. They differentiate goals and norms, and in our seminar program may demonstrate little interest in, or respect for, the class. Thus, they do the minimum required to pass the course, having made the decision that one graded unit does not weigh heavily enough among other priorities to warrant more effort. These students may be charming in their honesty regarding their choice, and clever in their ability to walk the line between acceptable and failing performance.

Students at the Conscientious stage may incorporate the values of the seminar course and overall program into their work, although they may not necessarily fully understand those values. These students may demonstrate over-concern for their grade/performance in this one unit course, to some degree reflective of their self-critical nature which tends to devalue their work.

(2) *Interpersonal Style*

Participation in the seminar and in the private meetings with the professor requires an openness and willingness to share one's own experiences and concerns with others, and vice versa. Some interpersonal styles are not conducive to that kind of participation. Only when we move to the Conscientious-conformist stage, do we begin to see the kind of interpersonal styles necessary for the application of adult learning theory.¹¹⁸ These styles include "Awareness of self in

¹¹⁷ Students who have had no substantial experience outside of their schooling, who have no family responsibilities and are still dependent on their own parents for support may not have reached the developmental stage in life at which their sense of responsibility changes to focus on their own actions rather than those of the authority figures around them.

¹¹⁸ The "Respect for autonomy" and acknowledgment of "Interdependence," found higher still on the scale, are ideal traits for the free exchange and shared learning we would like to see occur in our seminars.

relation to group, helping,” and “Intensive, responsible, mutual, concern for communications.” To the extent that some students have interpersonal styles lower on the scale (e.g., “Wary, manipulative, exploitative”), discussions in seminars may be awkward and superficial. Such students tend not to “bond” into a group that feels comfortable sharing experiences and that would support its members. Sometimes even one person operating at a low level of interpersonal style can stymie the functioning of the group. This may help to explain the wide variability of our experiences in our seminars.

(3) *Conscious Preoccupations*

Our ideal students are consciously thinking about higher level concepts, such as role conception, self-fulfillment, and self in social context.¹¹⁹ Some of our students engage in this kind of thinking. However, other students are at lower levels, more concerned with appearance, social acceptability, etc., resulting in superficial interactions.

(4) *Cognitive Style*

In this category, our ideal adult student is at the Autonomous stage – tolerating ambiguity, looking at the broad scope of issues, and discussing matters of increased conceptual complexity. Again, some students are at this level, but most are in the range from the Conformist stage to the Conscientious stage; their journals do not penetrate the richer social justice issues of the practice of law, nor the complexities of law practice and office dynamics.¹²⁰

¹¹⁹ Beginning at the Conscientious-conformist stage, the Conscious Preoccupations become conducive to the kind of self-reflection we expect of our students. These concerns include: “Adjustment,” “Differentiated feelings, motives for behavior, self-respect, achievements, traits, expression,” “Development, differentiation of inner life from outer.”

This is certainly the kind of student Quigley refers to as “likely to respond rather than retreat from the challenges of reassessing their vision of social justice and social responsibilities as lawyers.” Quigley, *supra* note 66, at 56. In referring to clinical students as “adult law students,” Quigley assumes a developmental stage ready to take on the challenges of critical thinking about the individual’s responsibility to society. He relies on adult education research which holds that “adults are known to be highly motivated learners who are more ready to engage in critical thinking than even college-age learners.” *Id.* at 55-56. He does not discuss how he draws the line between college-age and law-school age, a line we find difficult to draw for students who come directly from undergraduate school to law school.

¹²⁰ This may be partially explained by Carl Jung’s description of personal growth from adolescence to adulthood which provides another psychological perspective on development. As do the other developmental stage theorists, Jung sees this development as moving from the simple to the complex, from the narrow to the broad. Jung describes a resistance to change, seen as an attempt to cling to the narrow state of consciousness which marks childhood. C.G. JUNG, *MODERN MAN IN SEARCH OF A SOUL* 101-04 (W.S. Dell & Cary F. Baynes trans., 1933). See also Frank Haronian, *The Repression of the Sublime, in*

In general, the description of the Conscientious stage appears to be the best match for a developmental level conducive to the kind of adult learning we are seeking for our students. In terms of *Impulse Control* and *Character Development*, a person at this stage demonstrates "self-evaluated standards, self-criticism, guilt for consequences, long-term goals and ideals." The self-directedness that marks an adult learner requires such qualities. The adult learner's ability to engage in a nonhierarchical and productive relationship with a facilitator would be conducive to the *Interpersonal Style* described for this stage - "Intensive, responsible, mutual, concern for communication." Self-reflective qualities of the adult learner include the *Conscious Preoccupations* characteristics of this stage - "Differentiated feelings, motives for behavior, self-respect, achievements, traits, expression." Finally, the *Cognitive Style* of the adult learner, because of the lifetime of experience she brings to the educational setting, would be expected to be at least at the Conscientious stage, demonstrating "Conceptual complexity, idea of patterning"¹²¹ traits necessary for meaningful consideration of the issues we present.

Psychological development theory indicates that law students are reacting to the requirements of our program from a wide range of developmental levels.¹²² Knowing this may make our task more difficult, for we must understand that our students have different needs and are at different stages of readiness to participate with us. Yet, ego development theory, with its assumption of hierarchical order, does invite us to challenge students to move beyond their current status. The way to move to a higher consciousness is to create tension by presenting information that challenges old ways of thinking.¹²³ Per-

BECOMING A LAWYER, *supra* note 16, at 68, 68-69. Haronian discusses the need to satisfy lower needs before a person can begin to examine higher needs, and also comments on the tendency to avoid personal growth due to fear of the unknown. Citing Andras Angyal, he remarks on the anxiety that is necessarily related to personal growth, as it is identified with the "prospect of dissolution of one's current mode of being," a death-like experience. *Id.*

¹²¹ Although the "Conscientious" stage appears to encompass our notion of an adult learner, the truly "ideal" adult learner might not be reached without moving "up" the developmental scale to the "Individualistic" stage which would add as Conscious Preoccupations "Development, social problems, differentiation of inner life from outer," and the Cognitive Style characteristic of "Distinction of process and outcome."

¹²² We realize, as discussed in the following section, that adult learners are not a homogeneous group. Differences in learners include personal backgrounds and learning styles, both of which cover many factors. Jackson & MacIsaac, *supra* note 49, at 20-22. Some of the factors that must be considered include socioeconomic status, cultural background, the subject being taught, age, self-esteem, self-image, the locus of control, and goals. THEODORE E. ANDREWS, W. ROBERT HOUSTON & BRENDA L. BRYANT, *ADULT LEARNERS* 55-57 (1981).

¹²³ JUNG, *supra* note 120 at 101-104. Some humanistic theories are defined as including an unconditional acceptance of the client/student, wherever that client/student happens to be in terms of learning needs and values. We attempt to push or pull our students into

haps the tension we notice in our program is actually a sign of success.

3. *Situational Characteristics*

Most adult education theorists view adult learners as voluntary and part-time. This is not the case with the majority of law students,¹²⁴ again supporting the thesis that a pure application of adult learning theory to legal education may not be appropriate.

a. Part-Time Learning Versus Full-Time Learning

The part-time nature of most adult education reflects the fact that adults often are engaged in full-time occupations or at a stage of life, such as retirement, that makes part-time education desirable. Full-time law school attendance has different ramifications.¹²⁵ Students may have no other obligations than their school work; many students are not married and some continue to be supported, at least in part, by their families or by student loans. They continue in the dependent role they were accustomed to throughout their schooling. This lack of external commitments means that all attention is focused on what occurs in the law school, a generally structured environment that encourages passivity and non-engagement with the "real world," as well as a stifling of self-awareness.¹²⁶ Students who work while attending school, especially those who work in law offices, and those with other commitments, such as families, have some relief from the full-time atmosphere.

(b) Voluntary Learning Versus Compulsory Learning

The voluntary nature of adult education is consistent with the inner need to learn, derived from self-reflection and motivation toward personal development as described by Knowles. While no one is forced to attend law school, in our experience, law students - immersed in a curriculum of required courses - sometimes forget they

higher levels of development, in part by deciding what kinds of experiences and subject matter we will use to stimulate and challenge them. This is particularly true in our seminar component, where we require readings on various topics of moral concern, topics that the students might not otherwise choose to study.

¹²⁴ We recognize that many law schools have part-time programs serving a large number of students.

¹²⁵ "[T]here is a common understanding that the major 'full-time' responsibility of children and adolescents is 'going to school,' whereas for adults commitment to job and family is the primary full-time responsibility, and participation in adult education is a secondary (part-time) commitment." Cross, *supra* note 20, at 241.

¹²⁶ See, e.g., Watson, *supra* note 110, at 98 ("Because they will have had little experience in being the person they want to be, they are highly vulnerable to any pressures which make them think that they might be wrong. In short, they will be fairly willing to surrender their self-images or at least to obscure them if they are too heavily pressed.").

are engaged in a voluntary endeavor. Their failure to remember their "choice" in the matter can lead to a victim stance in their relationship to their education. It can also cause students to see law school as just one more "hoop" of their educational career through which they must jump, rather than as the first step into their chosen profession.

Most students experience the field component of our Program as a voluntary situation, an elective they are choosing. However, students are required to enroll in the seminar, and therefore may view it apathetically as the price they pay for the opportunity to intern.¹²⁷ The internal motivator is absent; students do not tend to be self-directed in regard to the seminar. When we ask students to facilitate, to initiate topics for discussion, or to find new materials of interest to the class, some students rise to the occasion while others do not.

C. *Beyond the Cross Model*

Application of the Cross Model explains why some law students have difficulty conforming to the demands of adult learning theory and why the use of a single approach is not appropriate for this heterogeneous population. The model does not completely explain why it is difficult for us to apply a pure andragogical model. Other explanations for students' inability to conform to our notion of a true adult learner are discussed below. As in the CAL model, these additional considerations are categorized as personal or situational.

1. *Personal Considerations*

(a) *Students' Need to Learn Basic Lawyering Skills*

Abraham Maslow provides a perspective of developmental stage

¹²⁷ Only once in the history of this program has a non-extern asked for permission to enroll in the seminar component. Cross acknowledges that some adult learning is compelled or coerced and, thus, as to that situational characteristic, there is no difference between adult and child learners.

One of the kingpins of andragogy, the problem-centered orientation of adult learners, would enter the CAL framework largely through the situational variable of voluntary learning. In fact, one of the hypotheses that might be suggested is that learner orientation is problem centered *to the extent* that it is voluntary. As the learning situation moves toward coercion or compulsion, the power to determine what is studied moves from learner to teacher, and learner orientation moves from solving the learner's problem to satisfying the teacher's requirements.

Cross, *supra* note 20, at 242-43.

Our experiences in our seminars mirror this hypothesis. As faculty we have decided that the seminar must cover certain ethical and professional responsibility issues that the students might not choose as the focus of their problem solving activity. Similarly, our focus on personal/professional growth and the requirements of the journal and seminar attendance itself are not seen by most students as relevant to their chosen focus of acquiring "real world" experience.

theory focused on needs.¹²⁸ Applying his “hierarchy of needs,” it is clear that law students have their own needs regardless of the goals of our program. Our students are about to enter a new profession. Often, they are uncertain about their ability to succeed at being lawyers and want to learn the basic survival skills that will allow them to feel competent.¹²⁹ Matters that appear to be extraneous to that challenge do not have much priority. Thus, discussions of ethical issues that are perceived as irrelevant to current experience, and moral dilemmas that the students do not see themselves facing, are perceived to be distractions from learning the basic lawyering skills that will allow them to succeed (i.e., survive) at their internships.¹³⁰ “Before he can direct any effort toward the ideals that he hopes to express in a life in law, the student must become convinced of his ability to survive.”¹³¹

The fear of looking foolish is also a part of this need to survive and succeed. Making mistakes is usually acquainted with a sense of failure.¹³² Looking stupid is a sign of failure in the eyes of students. This fear may constrict student behavior to “playing it safe.” We have seen students select their externship placements and decide what kind of challenges to take on in their externships based, at least in part, on their need to feel safe.¹³³

¹²⁸ ABRAHAM MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* (1974). Cross would include Maslow in the Psychological/Developmental Stage perspective, but, as Maslow’s approach provides a slightly different way of looking at stages, we believe it is important to briefly discuss its application here.

¹²⁹ See Brookfield, *supra* note 30, at 201, 204. Brookfield describes the felt-needs rationale of the humanistic paradigm, and critiques it as having the possibility of being “overly consumeristic,” stressing giving the students what they want, rather than what they might need. See also comments by Gary Friedman describing his first experience teaching Professional Responsibility:

I found the students much less willing to explore those issues [interrelationship between personal and professional issues] than I had anticipated. At the beginning of the course, I asked the students what they wanted from it. They articulated three main concerns. First, they wanted to know what they needed to do to pass the professional responsibility bar exam. Second, they wanted to know what they needed to know to stay clear of trouble practicing law. Third, they were concerned with their grades. Early in the course I assigned a law review article to read that examined the moral and ethical base of lawyering in an adversary system. The students’ reaction was that the article was irrelevant to their concerns, ethereal, and devoid of practical meaning for them.

Gary Friedman, *Comment*, in MONOGRAPH I, *supra* note 18, at 69, 72.

¹³⁰ See Gary Neustadter, *Some Beginnings in a Humanistic Approach to Legal Education*, in MONOGRAPH III, *supra* note 16, at 33, 43. Of course, a student who is entering the legal profession as an intern is also engaging in self-actualizing behavior, which is particularly noticeable as the students begin to develop a sense of self-confidence in their work. However, the immediate concern for interns is survival/success in the placement.

¹³¹ James R. Elkins, *The Paradox of a Life in Law*, 40 U. PITT. L. REV. 129, 141 (1979).

¹³² See SCOTT TUROW, *ONE L* 55-56 (1977).

¹³³ Class participation may be similarly constricted by the students’ desire not to look

(b) *The Role of Work in Development*

Roger Gould's writings, focusing on the role of work in adult development, must be considered in applying theories of psychological development.

When we begin our work life in the twenties or earlier, we start with assumptions about work that originate in childhood and reflect our parents' values as well as our own reparative fantasies. These ideas have not been tested and are contaminated by an idealizing process in which we hope that the work not only will be pleasurable but also will aid us in overcoming feelings of inadequacy, smallness, and uncertainty. When we attach ourselves to particular work, we are likely to stay with it because, if we are successful, it confirms our status as adults. In return for this gift of adulthood, we tend to accept the explicit and implicit value system of the particular organization or career, becoming narrower in relation to our full potential while becoming deeper in relation to a specific real-life competency. The work becomes us, not just our activity of choice. We tend to bluff and pretend to more competencies than we actually have in the early twenties and to fill in our arrogated confidences with the experience of competency by the end of the twenties.

Work during the twenties serves so many developmental functions that it makes most of us willing to work long and hard without questioning seriously the fundamental value of what we are doing and why we are doing it as long as we are constantly feeling better about ourselves.¹³⁴

Given the important role of work in adult development,¹³⁵ it is not surprising that students resist our efforts to have them examine the values of the profession, the operation of the justice system, and their own values in relationship to their work.¹³⁶

(c) *Students' Desire for Clarity and Certainty*

The profession draws to it persons who want [the law] to . . . be clear, predictable and just and show the clear road to proper ethical choices. The disappointing fact is that the law is in many respects unclear and unpredictable and is sometimes the engine of injustice.

foolish. Disclosing too much in the way of personal feelings about their experiences may be perceived as foolish by their classmates, given the accustomed milieu of the law school classroom.

¹³⁴ Gould, *supra* note 115, at 228. See also ABRAHAM MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* 34-39 (Penguin Books 1980)(1974)(discussing the "Jonah Complex" described as the fear of reaching our highest potential and the resistance to seeking the "truth" because of the responsibility that knowledge carries).

¹³⁵ See *THEMES OF WORK AND LOVE*, *supra* note 90.

¹³⁶ Law students, who have invested a great deal of time, effort and money to acquire entrance into the profession, may be resistant to our attempts to demystify and make common the experiences they seek to hold special.

Further, law is a helping profession in which practitioners are faced with subtle and difficult conflicts of interest between themselves, their clients and society, frequently involving distressing human circumstances. The ethical choices facing the legal practitioner are a challenge to anyone's maturity. The reality of the law, then, is unsatisfactory, and students and practitioners will be motivated to avoid seeing it.¹³⁷

It is interesting to consider that, whether by empirical research or by folklore, the general consensus is that those who come to law school are looking for certainty. Given what we know about early adulthood, the early to mid-twenties, this is not a surprising conclusion; this is the time when certainty is probably most important.¹³⁸ It is no wonder students prefer an information-giving lecture over the difficult Socratic process which leaves students with more questions than it does answers. Likewise, the moral dilemmas we pose in our internship seminars, derived from our readings and class discussions involving students' field experiences, are complex, cause discomfort, and are resisted by the students.¹³⁹

(d) *Students' External Locus of Evaluation*

In childhood, individuals learn to evaluate themselves through the eyes of their parents and teachers. "[The child] learns to have a basic distrust for his own experiencing as a guide to his behavior."¹⁴⁰ This external locus may still be evident in that many students look to their supervising attorneys' evaluation as the ultimate measure of

¹³⁷ Edwin Greenebaum, *Attorneys' Problems In Making Ethical Decisions*, 52 IND. L.J. 627, 629-30 (1977).

¹³⁸ The Characteristic Stance of the Moving into Adult World Phase (ages 23-28) is "Doing what one should."

¹³⁹ Andrew Watson provides a slightly different perspective on the psychological characteristics of law students. Watson, *supra* note 110, at 101, describes law students as self-selecting into the profession because of a greater than average need to control their environments. Law students also tend to have "an increased concern over the expression and nonexpression of aggressiveness" which manifests itself in either vigorously aggressive expression or its opposite, passivity and reluctance to express oneself. Both behaviors may reflect psychological defenses, the first a form of denial (denying risk in social criticism) and the second a form of reaction formation (the outward expression is opposite of the internal impulse). "To the degree which these behavior patterns are defensive, they cannot be deliberately regulated by a person and thus may be a serious professional detriment. The two characteristics of need for order and concern over aggressiveness appear to be more frequent in those involved in the law than among other professionals." *Id.* at 103. By the time we meet the students in their third year, the law school experience has reinforced defense mechanisms and attitudes which may make it difficult for them to trust us as professors, trust their fellow students, and engage in provocative and meaningful self-reflection.

¹⁴⁰ CARL ROGERS & BARRY STEVENS, *PERSON TO PERSON 9* (Pocket Books 1976)(1967).

their success. This reliance on measuring up to the values of others, with the accompanying loss of connection with their own sense of values, builds upon students' resistance to explore personal values in a seminar class or in their private journals. The unwillingness to engage in this kind of reflection may inhibit the internalization of important values of ethics and professional responsibility.¹⁴¹

Dissatisfaction in law school also has been related to this external locus of evaluation, as students feel pressured to meet "some abstract standard of performance."¹⁴² Some level of dissatisfaction may be unavoidable because law schools serve "a youthful clientele, especially one that is self-selected for preoccupation with authority and authority relationships."¹⁴³ Issues with authority actually appear to be ambivalent, particularly in regards to our seminar. While students sometimes resent a teacher's exercise of authority, a few may also resent a teacher's attempts to empower them. For instance, when we "democratize" classes,¹⁴⁴ leaving decisions about content up to the students, and taking less of a leadership role in classes, one or two students may feel cheated, as if they are not receiving their money's worth from us.¹⁴⁵ Even if they do not react negatively, students may

¹⁴¹ Watson, *supra* note 110, at 157.

¹⁴² Carrington & Conley, *supra* note 110, at 894.

¹⁴³ *Id.*

In their search for a new sense of continuity and sameness, adolescents have to reflight many of the battles of earlier years, even though to do so they must artificially appoint perfectly well-meaning people to play the roles of adversaries; and they are ever ready to install lasting idols and ideals as guardians of a final identity.

Id. at 895. The authors speculate that it is possible that not all law students have emerged from this adolescent stage.

¹⁴⁴ See Quigley, *supra* note 66, at 48 ("[A]dult learning theory focuses on democratic teaching and experiential learning.") .

¹⁴⁵ Perhaps this is an implicit or unconscious acknowledgment on the part of these students that they and their peers do not have the experience they need to make the class a meaningful experience on their own. Educator K. H. Lawson poses some concerns about a total "democratization" of classes:

The assumption . . . has to be made that the members of a group are sufficiently articulate and possess an adequate vocabulary and conceptual framework to enable them to conduct a meaningful discussion. If these conditions are met then the validity of the student centered approach can perhaps be recognized, but it seems to require a group of "educated" people in order to make it work. Does this mean that it implies an educational process which can only be built on a more conventional base, and is thereby restricted to educated adults who have already acquired a range of skills, concepts and information?

. . . .
If the assumption about some minimal level of education on the part of students is not made, it could be argued that any adult can talk about something at some level, however unsophisticated that level might be. On the other hand it is difficult to see how the level could ever be raised unless inputs in the form of ideas and information are fed in by a teacher, or unless skills are taught, and this immediately turns the situation into something other than a student centered one.

fail to accept the responsibility that comes with our relinquishment of authority. It is difficult for some students to recast role definitions in order to participate in a non-hierarchical learning relationship with their instructors. Prior experiences with authoritarian figures may hinder a student's ability to relate in a new way to instructors, attorneys or judges.

(e) Students' Personality and Learning Styles

Personality styles also may affect students' abilities to comport to our ideal adult learner. Very extraverted people may tend less toward reflection, which is often a solitary experience. Very introverted people may have difficulty engaging in an active learning dialogue with an instructor or participating in class discussion. Studies of the personality styles of students indicate that individuals attracted to law school tend to be fact-oriented and emphasize analysis, logic and decisiveness. Students most likely to drop out of law school tend to be people-oriented and bothered by indifference.¹⁴⁶

Likewise, learning styles will impact upon a student's ability to engage in the activities we require in our internship program. Through the lens of the Kolb Learning Style Inventory,¹⁴⁷ we can gain some understanding of how students maintain a perceived level of comfort with their choice of externship placement, and work with the students to strategize a well-rounded learning experience. Learning types, which describe an interaction of personal history and personality, lead to different approaches to self-direction, group participation, degree

The democratic ideal requires knowledge and an ability to decide between a range of possibilities. When this ideal is applied to situations which involve learning we face the paradox that by definition what has not yet been learned is not yet known and the potential learner can only at best dimly perceive what he wants to know more about. He is not therefore fully in position to judge and decide what he shall do and he is inevitably placed in the position of having to learn from somebody and that 'somebody' is a teacher whether he be called such or not.

K.H. LAWSON, *PHILOSOPHICAL CONCEPTS AND VALUES IN ADULT EDUCATION* 22, 24 (1975).

¹⁴⁶ James B. Taylor, *Law School Stress and the "Deformation Professionnelle,"* 27 J. LEGAL EDUC. 251, 264 (1975).

¹⁴⁷ The Kolb Learning Style Inventory is based upon David Kolb's model of experiential learning which breaks the learning cycle into four phases: Performance of a task (concrete experience); reflection on the performance; formulation of theories about performing; and planning for the performance of the next task. People tend to show strengths and weaknesses in the distinct four phases. For example, students who are comfortable with "diving into a task" with little preparation tend to be strong in the concrete experience phase, but may lack skill in the reflective stage or the planning stage. Similarly, students who do well with abstract thinking (we find these to be students who gravitate toward judicial internships), may be weak in the concrete experience phase, causing them to stick to performing skills with which they feel comfortable. See DAVID A. KOLB, *LEARNING STYLE INVENTORY, TECHNICAL MANUAL* (1976).

of instructor direction, etc.¹⁴⁸ Socioeconomic background, gender,¹⁴⁹ and cultural influences also play a role in the individual learning styles of our students.¹⁵⁰

(f) *Students' Lack of Prior Experience as a Foundation for Learning*

Maslow believed that self-actualization was only available in adulthood.¹⁵¹ He felt that young people had not had enough time to achieve a clear sense of identity or autonomy, nor time to experience a significant, enduring, post-romantic love-relationship.

Nor have they worked out their *own* system of values; nor have they had experience enough (responsibility for others, tragedy, failure, achievement, success) to shed perfectionistic illusions and become realistic; nor have they generally made their peace with death; nor have they learned to be patient; nor have they learned enough about evil in themselves and others to be compassionate; nor have they had time to become post-ambivalent about parents and elders, power and authority."¹⁵²

The accumulation of experience to which Maslow refers is the same kind of experience relied upon in adult education theory.

In studying adult learners, Knowles and other theorists were looking at people who had been away from formal educational settings for some time, living and working and acquiring experience that they would then bring to the learning setting. "[A]dults have *more* experiences, adults have different *kinds* of experiences, and adult experiences are *organized differently*."¹⁵³ Although Knowles' later work includes articles about the application of andragogy to graduate and professional programs,¹⁵⁴ upon closer examination, the fit is not so clear. While we are fortunate to have a relatively large number of students who have returned to law school in order to enter a "second career," the majority of law students come directly from undergradu-

¹⁴⁸ Rosemary S. Caffarella & Bruce G. Barnett, *Characteristics of Adult Learners and Foundations of Experiential Learning*, 62 *NEW DIRECTIONS FOR ADULT AND CONTINUING EDUC.* 29, 31 (1994).

¹⁴⁹ Daniel N. McIntosh, Alan Reifman, Julie Keywell & Phoebe C. Ellsworth, *Stress and Health in First-Year Law Students: Women Fare Worse*, 24 *J. APPLIED SOC. PSYCHOL.* 1474 (1994). The authors found that a number of stressors including sexism, guilt over ignoring family responsibilities, demands made by family, and awareness of feelings of incompetence, made the law school experience more difficult for women. While the study did not examine third year law students, many of the same stressors might be expected to continue or reemerge in an internship setting.

¹⁵⁰ Caffarella & Barnett, *supra* note 148, at 34.

¹⁵¹ DARKENWALD & MERRIAM, *supra* note 9.

¹⁵² *Id.*

¹⁵³ Caffarella & Barnett, *supra* note 148, at 30.

¹⁵⁴ MALCOLM KNOWLES, *ANDRAGOGY IN ACTION* (1985).

ate school, which they attended directly from high school. The wealth of life experience anticipated by the andragogical model is just not there. Thus, in attempting to discuss the moral and ethical dilemmas that arise, particularly where a professional has conflicting duties, many students have no life experiences they can apply in resolving the dilemmas, and similarly, are unable to relate to the issues. Sooner or later, their legal experience will bring those dilemmas to them, but we have no control over when that will happen, and it frequently may not occur during the fourteen weeks of their internship experience.

On the other hand, prior experience can impede personal and professional growth where it has caused a person to adhere rigidly to old values and attitudes. Thus, even older students who may be at a different life phase from the younger students may not be operating in the adult psychological stages assumed by adult education theory.

1. *Situational Considerations*

(a) *Law School*

Law school, as an institution and an experience, is a barrier to achieving our goals.¹⁵⁵ Contrary to attending to the personal and professional maturation process, law school teaching methodology, which focuses on intimidation and passive learning, may be inimical to that goal.¹⁵⁶ Students are required to maintain an external focus and to ignore the emotional aspects of the law and the law school environment.

Personal values and a sense of integrity can take second place to analytic skill, competition, and winning After a year or two of legal education, many aspiring law students may start to forget or to put aside their personal identification with justice, fairness, and responsibility to one's fellow man.¹⁵⁷

For many students, the process can be demoralizing, extremely stress-producing, and damaging to self-esteem; it has been described

¹⁵⁵ Much has been written about how the model of legal education used in this country indoctrinates students in such a way that values, feelings, self-reflection and self-direction are made to seem unimportant. See, e.g., Watson, *supra* note 109; and the work of the Project for the Study and Application of Humanistic Education in the Law, *supra* note 18. Moral neutrality and role-differentiated behavior, as modeled by professors and attorneys, are seen as the behaviors to master. The conflicting images presented to students about their roles as attorneys (e.g., public image versus professional self-concept, hired gun, seeker of justice, etc.) makes it difficult for them to shape their identities in anything other than a reactive way.

¹⁵⁶ “[S]tudents are not really treated as adults. They are made to feel that they are beginning their education all over again, and the classes put very little emphasis upon individual work and thinking. The students get caught up in examinations, grades, and class ranking.” Himmelstein, *supra* note 110, at 32 n.90.

¹⁵⁷ *Id.* at 7.

as raising high levels of self-doubt, alienation,¹⁵⁸ anxiety, and depression.¹⁵⁹ A law school culture, which stresses competition and distrust, makes it difficult to enter into trusting, cooperative relationships with classmates, instructors, and others.¹⁶⁰ The law school methodology also creates an expectation that all "important" teaching will be conducted in the same manner.¹⁶¹ This leaves students unprepared for, and often resistant to, new approaches such as problem-solving, simulation, group discussion, etc. "After spending several semesters as relatively passive learners, shifting into a self-directed, active mode of learning is a difficult transition for many."¹⁶²

¹⁵⁸ Alienated students become disengaged, indifferent to law reform, and may not value associating with fellow law students. Carrington & Conley, *supra* note 110, at 890-91.

¹⁵⁹ The Socratic method "has been attacked as infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values." Himmelstein, *supra* note 110, at 21-22. See also Lani Guinier, Michelle Fine, Jane Balin, Ann Bartow & Deborah Lee Stachel, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Marilyn Heins, Shirley Nickols Fahey & Roger C. Henderson, *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511, 514 (1983).

1. Certain procedures of legal education produce an uncommonly high degree of stress in students.
2. The high degree of stress leads the students to adopt typical and shared kinds of attitudes, behaviors, values, and traits, as ways of reducing anxiety.
3. These attitudes, behaviors, values, and traits are personally or socially undesirable, and may be inimical to the practice of law.
4. Such pernicious attitudes, behaviors, and values are in part adopted because they are transmitted by faculty precept or example.

Taylor, *supra* note 146, at 253.

In the words of one clinical student: "If law school to this point has done nothing else for me, the thing it did do was pretty much crush any confidence I had going into it." Margaret Martin Barry, *Clinical Supervision: Walking that Fine Line*, 2 CLIN. L. REV. 137, 137 (1995).

¹⁶⁰ "[P]erhaps the most impressive aspect of the law school milieu is the unpleasant quality of the interpersonal relations among students. The prevalence of peer group enmity, friction, hostility, distaste, contempt and the lack of group cohesiveness and morale are all too familiar." Himmelstein, *supra* note 155, at 23 n.51. This observation is particularly troubling in that "[y]oung adulthood, according to Erikson, is a time for developing the capacity for intimacy." DARKENWALD & MERRIAM *supra* note 9, at 94.

¹⁶¹ Students may actually enter law school with a bias toward formal approaches to learning, such as lectures. These approaches are most popular with people who previously have experienced success with them, i.e., college graduates. Cross, *supra* note 20, at 208. On the other hand, an informal application of the Kolb Learning Style Inventory to our interns over several years yielded a high percentage of students with primary strength in the concrete application stage of the learning cycle, indicating a preference for "hands on" learning experiences. Further, we have seen students who have been labeled as mediocre because of classroom performance truly shine when they have the opportunity to do this kind of "hands on" learning. Cross states that "potential learners preferring on-the-job training are most often interested in occupational or technical subject matter." *Id.* at 209. From the perspective of the students, that may be just their interest.

¹⁶² William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 487 (1995). We recognize the significant progress some law schools have made to alleviate these conditions.

The qualities of the law school environment do not encourage adult behavior conducive to the kind of self-reflection and examination of moral issues we would anticipate in an adult education setting. When students reach their third year and enroll in the externship program, their law school experiences affect their attitudes toward the seminar class and the academic requirements of the program. Anything that takes time and attention away from the work experience in the placement may be resented or receive little priority.

(b) *Society*

Society in general is not supportive of self-examination and personal growth education. There are too few jobs for lawyers and too little emphasis on what has been labeled disparagingly as "soft learning." The weak job market for lawyers creates pressure and stress for students who will be competing for jobs.¹⁶³ These may lead to increased competition and distrust, impacting students' ability to work collaboratively. It might create financial pressure to work outside of school to such a degree that little time is left for contemplating issues of more far-reaching concern, such as ethics and morals. The anxiety raised over getting a job similarly might be a distraction to self-reflection. Further, the near desperation to acquire any job removes all but the most practical economic values from the concept of what it means to be a lawyer. "Through the placement office lens, focused narrowly on jobs, vocation appears disembodied from the social and historical content that gives it meaning . . ."¹⁶⁴ Discussions about personal meaning in the professional role can not have much pertinence to our students in such a context.

Our society does not place value on what it might characterize as "soft" learning.¹⁶⁵ Very few of our students have ever been required

¹⁶³ Elkins, *supra* note 131, at 139, describes the economic pressures on law students which cause them to focus on work and see law school as merely a "stop along the way." This pressure is probably greater today given the anemic job market for new lawyers. The externship, while not a paid job, is seen as a significant step toward obtaining employment; success in that environment becomes the only focus.

¹⁶⁴ The term "placement" assumes and reinforces a static world view, a view of the world as "given," as a fixed reality within which one finds a "place." It under emphasizes the extent to which the world should be seen as an evolving environment that the individual acts upon, changes, and is responsible for. "Placement" rivets attention on jobs to be obtained, as opposed to social needs to be met. It accents ambition and downplays obligation. It suggests a passive posture by the student who wants to be "placed." Fundamentally, it implies a future to which one is going, alone, rather than a future that we are creating, together.

Douglas Phelps, *Law Placement and Social Justice*, 53 N.Y.U. L. REV. 663, 664 (1978).

¹⁶⁵ JUNG, *supra* note 120, at 101-04 (society rewards external achievement and usefulness). See also BECOMING A LAWYER, *supra* note 16, at 2:

There are strong economic, cultural and psychological forces at work within the pro-

to keep a reflective journal. Issues of morals, ethics, and values are infrequently seen as significant subjects for inclusion in required curricula.¹⁶⁶ The public image of lawyers as hired guns further reinforces the "hard" identity expectation.

IV. OUR HYBRID PARADIGM: WHY WE DO IT AND WHY IT WORKS

We believe that a blend of adult learning theory with more traditional, teacher-directed methods meets our program's humanistic objectives - thus, the creation of our hybrid paradigm. If theories relating to adult education are viewed as separate from, or better than, more directive pedagogical methods, we ignore our understanding of the useful applications of each. Seeing theories of adult education as co-existing with more traditional teaching models offers us the flexibility we need.¹⁶⁷ Below is a description of why we have chosen our hybrid paradigm and why we believe it works.

A. *Why We Do What We Do*

While we may recognize and understand the resistance we receive from students in attempting to deal with issues perceived by them as irrelevant, we believe that we have a duty as educators to take leadership and control in this area.¹⁶⁸ We join with many who have

fession and the larger society that influence both the experience of the practicing attorney and the direction of legal education, making it all the more difficult to bring meaningful change to law schools. These forces are supported by, and reinforce, an atomistic and manipulative view of our relation to the world. The focus on the parts to the exclusion of the whole results in peoples' lives becoming cut off from their own senses of humanity, aspirations and values, and from their responsibilities towards self and others.

¹⁶⁶ See Robert N. Bellah, *The New Religious Consciousness and the Secular University*, in *BECOMING A LAWYER*, *supra* note 16, at 181, 182-83 (education traditions of great societies are very different from the approach taken today).

¹⁶⁷ Many educators agree there is no one particular teaching approach that will be effective for all students at all times; flexibility is the key. See, e.g., Quigley, *supra* note 66, at 71 (flexibility in teaching methodology is essential because of students' different learning styles). Similarly, if we approach our students by considering the life phases they are in or transitioning through, we will see our role (helping the adjustment) as different from the role we would take using a developmental stage approach (challenging the student to reach the next level). Thus, both the enormous differences among our students and the wide range of theories upon which to formulate teaching methodologies dictate flexibility.

¹⁶⁸ Lawson holds that adult education does not require complete choice on the part of the learner.

The potential adult student presumably has some trust in the educational judgments of the professional. On what is that trust founded? If the educator tries to duck the responsibility for making decisions or judgements on the part of his students, is he doing them an injustice or a favour? Is it a responsibility that ought to be avoided as some seem to imply? If it is, then all meaning is removed from the concepts of 'educator' and 'professional' alike.

voiced the opinion that law schools have the duty to instill values of moral responsibility in their students.¹⁶⁹ “It is the teacher’s function,

LAWSON, *supra* note 145, at 20.

We are thus reinforcing the view that a commitment to education logically entails a commitment to values, and educators cannot be regarded as technicians concerned only with teaching methods and learning theory. They are more than trainers or instructors in that they are concerned with the validity of ends as well as means and to engage in education is also to engage in debate about values. There can be no neutrality in the context of education because the adoption of any stance on an educational issue is an expression of values. The adult educator who tries to see himself as a neutral provider of resources for learning in areas chosen by adult learners themselves, is making a declaration in favour of the right of adults to choose for themselves and that is a clear expression of values.

Id. at 80.

Lawson distinguishes between “autonomy and freedom of choice as a consequence of having been educated” and “freedom to choose while engaged in a process of education.” *Id.* at 80. When students do not have knowledge required to make such choices, they cannot choose with “skill and intelligence.” *Id.* at 80-81.

So when we say that adults should choose for themselves what they wish to learn we are saying that they do not need any further *education* because they possess sufficient knowledge of the possibilities for choice and action, and their learned repertoire is an adequate basis on which to develop. . . . Unless I am to be confined to what I already know, an ‘educator’ in some guise or another, has to place new possibilities before me. To seek education is to ask for horizons to be extended, for new doors to be opened and for new problems to be defined.

Id. at 82.

[W]hat an adult learner in effect is doing when engaging in adult education, is temporarily giving up his freedom to choose in favour of being guided, criticized and tested according to the standards of a discipline of some kind beyond himself. He does so in order that his ability to choose when outside the educational situation may be widened and enriched.

Id. at 83.

But where the education of adults can differ from the education of children is in the testing of the limits of our values in relation to our conceptions of man and society. What we call adult education may therefore be much more than initiation into new fields of activity. It is also critical evaluation of those activities and an exploration of new ways of looking at things and a feeling forward to new values. . . . There is also an expectation that there shall be an ongoing questioning of the validity of the conventional and the traditional. . . . To engage in education is to engage in rational intentional activities and this presupposes that questions are asked about the intentions and the activities themselves, and what we mean when we talk of developing as a person, includes the development of the ability to do just these things. A ‘person’ is someone who can ask questions as well as try to answer them.

Id. at 92-93.

¹⁶⁹ Graham, *supra* note 111, at 27. See also Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187, 1194 (1992) (“Moral questions and hard choices are the heart of the law school clinic and the work of clinicians.”); Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139, 146 (1995) (professional responsibility should be integrated throughout the curriculum; the “challenge for legal education is to create classroom atmospheres that encourage candid and self-critical exploration of competing values.”); Quigley, *supra* note 66, at 39, 41 (issues of justice, and critical analysis of one’s role must be core component of legal instruction).

This is reflected, for example, in our inclusion of the issue of pro bono work as part of

within the individualized teaching relationship, to structure each student's learning experience and to participate in it at critical junctures to open up to the student implications of the experiences that might not otherwise occur to him."¹⁷⁰ This includes confronting and challenging students.¹⁷¹ We must help students find the more deeply embedded meaning in their experiences and help them "understand what they value and how these values influence and frame the learning experience."¹⁷²

Also, discussing the need to incorporate professional values in classroom teaching, what has become known as the *The MacCrate Report*, published in 1992, confirms ". . . the value of striving to promote justice, fairness and morality; [and] the ideals to which a lawyer should be committed as a member of a profession that bears 'special responsibility for the quality of justice.'"¹⁷³ Most recently, a report of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar recommends law schools "elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills."¹⁷⁴

To accomplish this, we impose on the students in two ways: we impose content regarding professional responsibilities, ethics, and

our course content. We hope that students will begin to ponder the role of the profession in society, the personal obligations entailed in becoming a professional, the lack of resources to ensure that each person with a legal problem will have a fair opportunity to present her case and who should carry the burden caused by insufficient resources. In other words, in addition to stimulating thought about the students' roles vis a vis their clients, we want them to consider their larger responsibility to society. See Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561, 563 (1994) (law professors owe a duty to the public). See also Quigley, *supra* note 66, at 38 (complete clinical education should include lessons of social justice).

¹⁷⁰ Quigley, *supra* note 162, at 476. (citing Barnhizer, *supra* note 1, at 75).

¹⁷¹ See, e.g., Cross, *supra* note 20, at 240 (role of educator on CAL continuum is challenger).

¹⁷² Caffarella & Barnett, *supra* note 148, at 37.

¹⁷³ AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 136 (1992).

¹⁷⁴ AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, PROFESSIONALISM COMMITTEE, TEACHING AND LEARNING PROFESSIONALISM (1966).

Suggestions for implementing a more pervasive system of teaching professionalism include requiring that ethical and professionalism issues be covered in every skills course, including extern programs; encouraging the importance of moral judgment in the classroom; discussing the potential conflict between ethics and personal morals, and exploring ways to resolve such conflict. *Id.* at 21-22.

some personal awareness,¹⁷⁵ and we impose a process that is intended to be self-reflective and to some extent self-disclosing. We believe that the combination of the two helps push students in the direction of a more thoughtful and conscious response to the ambiguities and dilemmas of practice,¹⁷⁶ as well as toward a better understanding of their own personal values and how they may be incorporated into their lives as lawyers. An important factor in achieving this goal is our modeling, in our relationships with students, humanistic values of respect and caring.

Fourteen weeks may be an unreasonably limited time period to expect to see great changes in the personal development of our students. Yet, by our course of action we hope we are "planting seeds" that will eventually sprout as internalized questions and thoughts. "[B]y teaching the student how to reflect critically upon his experiences, as well as the experiences of others, he will learn to internalize reflectively the moral norms embodied in those actions, and will eventually develop his own sense of moral judgment."¹⁷⁷

B. *Why What We Do Works*

We believe our program is successful based upon two observations. First, students and faculty are content with the process and the substance of the program. Second, students and faculty perceive that significant learning is taking place. Student journals, comments to us, discussions in class, and evaluations of the program, as well as faculty dialogues about the program, all indicate both contentment and growth.

The program works because we apply our hybrid paradigm, balancing needs and providing flexibility to work with students contextually and situationally. Our need to cover particular content is balanced by our field component, which allows students to select externship placements matching their own learning needs. In this way, we at least partially resolve the tension between allowing students to self-direct their learning, and our need to control other areas of their education.¹⁷⁸ By their third year, students yearn for respect, self-deci-

¹⁷⁵ For example, we include as part of our course materials the Kiersey Bates Temperament Sorter in an attempt to have students begin to think about the ways in which their perceptions of situations and interactions with others may be influenced by their personal preferences. See generally DAVID KIERSEY & MARILYN BATES, PLEASE UNDERSTAND ME (1978).

¹⁷⁶ "[T]o the extent that a clinical education fails to attend to the critical and reflective aspects of lawyering practice, it similarly fails to provide a fertile ground for the growth of ethical reasoning skills." Graham, *supra* note 111, at 40.

¹⁷⁷ *Id.* at 21.

¹⁷⁸ "The polarity between my need for control and my wish to have students take re-

sion making, and lawyering experience. In return for giving them certain decision making and experiential opportunities, we teach them what we believe they should learn and what we wish to teach, not necessarily what they want to learn or what they feel a need to learn. Our job is to determine the proper mix of student choice and professor control.¹⁷⁹

For the varied reasons discussed above, some law students thrive on a more directive approach and some thrive on greater independence. Analysis of law students' needs is, above all, contextual. Their receptivity to various forms of learning is dependent upon their life experiences, culture, personality, and other numerous factors. As a result, we must acknowledge theories as co-existing and be able to implement the principles of one over another at any given moment. Without the umbrella of a hybrid approach governing our goals and processes, we would lose many students who could not conform to a specified framework.

V. CONCLUSION

Despite its seeming success, our supposition that our blended approach works remains empirically untested. In order to accurately assess whether students are really becoming more self-directed, self-reflective, responsible, and gaining a humanistic perspective on law, we would need to undertake a formal study of our graduates. In spite of our relative contentment with our hybrid paradigm, several questions, doubts, and even some misgivings remain.

For example, assuming that not all law students are consistently able to function as the mature adults envisioned by adult education, can we, and should we, be "pushing" them in that direction? This question takes us back to the multiple models of adult development and the issue of whether we, as facilitators, play a role in enhancing their growth. Depending upon which model we use, the answer will be different. For example, if we employ a "life phases" model, the answer seems to be that students will grow according to the external events in their lives and, thus, encouragement from us may have little effect.¹⁸⁰ On the other hand, if we use the "developmental stages" model, our pushing seems appropriate.

Whether we have the skills and training to do this kind of facilitation is also an open question. None of us have professional training in

sponsibility for their own learning has been a source of considerable tension for me." Leonard Riskin, *Comment*, in *BECOMING A LAWYER*, *supra* note 16, at 171.

¹⁷⁹ Quigley, *supra* note 162, at 485.

¹⁸⁰ See Daniel J. Givelber, Brook Baker, John McDevitt & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995).

the area of human development or clinical psychology. While we have many cumulative years of teaching and lawyering experience, we may not have the sensitivity to know just how far to push.

Our lack of training raises the question of whether we might be treading on dangerous ground by attempting to force students beyond their capacities.¹⁸¹ Could this kind of work actually damage students? This question is particularly important given the relatively short amount of time we have to work with our students. Might we be opening up personal issues that will need more than 14-15 weeks of exploration, leaving students to fend for themselves once the semester is completed?¹⁸² More benignly, might we all just end up being frustrated by the effort and having wasted time that could have been more profitably spent on preparing students for the immediate challenge they face? Do we know where to draw lines? Are we practicing psychology without a license? Can we recognize danger signals from students who might be relying upon us to protect them? How far should we go in providing feedback a student may not want to hear? How sensitive are we to the societal and other pressures bearing upon students which cause them to be so obsessed by the need for approval and security that they can see in the study of law little more than a test of their prospects for achieving them?¹⁸³

Are we intruding inappropriately into the private lives of our students? “[E]ven if it enhanced the student’s learning to make connections between the issues in his lawyering and the issues in his personal life, does the clinician have any right to comment on the latter?”¹⁸⁴

¹⁸¹ “[S]tages [of development] do not necessarily relate to age and . . . one may have difficulty understanding or functioning at a stage that one has not yet achieved.” Boucouvalas & Krupp, *supra* note 103, at 186.

¹⁸² Caffarella & Barnett, *supra* note 148, at 38 (“Care must be taken that learners are given the time and support they need to work through what this new learning is all about - what new or altered meanings they have brought to their past experiences.”).

A related issue is whether we are forcing students to deal with a reality of lawyering with which we, as professors, have chosen not to deal. Jack Himmelstein, in commenting upon a statement by George Brown that “[t]he more of reality a person has available to him, the more effective he becomes in work, in play, and in love,” stated:

When I turn to my students, I am filled with doubts about what Brown says. There are materials to master, skills of analysis to learn; there are judges who decide on narrow grounds, employers and clients who pay for tunnel vision, adversaries ready to take advantage of any departure from a narrow norm. Is that what we mean by the “real world,” a world in which we collude in the denial of a reality that includes so much more? Who am I to invite students to ask these questions when they must go out into the “real world?”

Jack Himmelstein, *Comment*, in *BECOMING A LAWYER*, *supra* note 16, at 38, 39.

¹⁸³ Marcia Eisenberg, *Comment*, in *BECOMING A LAWYER*, *supra* note 16, at 93.

¹⁸⁴ Kathleen A. Sullivan, *Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 *IND. L. REV.* 115, 132 (1993). Is it all right to comment on personal life connections in response to a student question? For instance, one student com-

Have they given us permission to intrude?¹⁸⁵ Are we abusing our position of authority to require students to engage with us in this endeavor?¹⁸⁶

Furthermore, we must ask whether it is appropriate to force our values upon our students when they have not asked for that kind of "help." If we were to treat our students as mature adults, according to the tenets of adult education, we should be responding to their needs, as perceived by them, rather than to our needs. What is the role of student choice in determining what is to be learned?¹⁸⁷ To what extent should we self-disclose?¹⁸⁸

mented about her inability to understand why she was so protective of her work in relationship to other externs at her placement. She did not want to share assignments nor give her work product to another student. When she stated, "I don't know why I am behaving like this," is it within bounds to ask, "Do you have siblings? Did you feel some need to guard what you had from your siblings?" (The extern responded "yes" to both questions and thought the implication deserved further thought).

¹⁸⁵ See, e.g., *id.* at 132 ("What do we do with students who don't want to be intimate?"). Interestingly, Watson believes there is also an invasion of privacy in Socratic teaching. Watson, *supra* note 110, at 121. See also Neustadter, *supra* note 130, at 45:

Student resistance which comes from a perspective or fear of invasion of privacy is very natural and instructive. It is an expression of concern for private autonomy, a warning against exploitation and coercion. It gives the teacher an (often shifting) foundation from which he or she can both respect the privacy of the individual and suggest the possible ways in which slightly more divulgence might deepen the learning. I think that it is very important to remain sensitive to individual concern for privacy and extremely difficult to know whether, when and how to push against privacy fences.

Neustadter, *supra* note 130, comments that issues regarding the human condition require students to face their existential choices. As with Friedman, *supra* note 128, his rationalization, and perhaps ours, for doing so may reflect his personal developmental stage rather than the needs of his students.

¹⁸⁶ See, e.g., Quigley, *supra* note 162, at 479 (authority and hierarchy obstruct efforts at true communication); Sullivan, *supra* note 184, at 132:

"[H]ow could I have been assured that the student didn't feel coerced into discussing his personal life with me? Clinicians expect their students to be self-reflective. The extent to which a student can reflect critically is often the basis for evaluation in clinical programs. How do clinicians guard against coercing trust and self-disclosure from their students?"

See also Howard Lesnick, *Comment, in BECOMING A LAWYER*, *supra* note 16, at 139 (discussing need for faculty to become clear about issues of coercion and when we are imposing requirements rather than allowing choice). Cf. Paul Brest, *On My Teaching, in MONOGRAPH III*, *supra* note 18 (coerciveness dispelled by full faculty participation).

¹⁸⁷ In considering the ethical issues regarding student choice, one author questions whether agreement by the student resolves the issue. See K.H. Lawson, *supra* note 145, at 23. Some adult education theorist believe that any imposition of learning goals is unethical. *Id.* at 80.

¹⁸⁸ Sullivan, *supra* note 184, at 117:

First, clinical teaching is, potentially at least, a more intimate form of teaching than traditional teaching, and disclosure plays an important role in making the clinical relationship more intimate. Second, though often problematic and complicated, clinical teaching's greater potential for intimacy is a positive thing. Intimacy creates dilemmas for clinical teachers and students, most of which center around

Even assuming we are dealing with mature adults, what do we do about those adults who choose not to reflect about their experience and not to engage themselves in considering unresolvable issues of morals and ethics because they have other more pressing concerns at present?

While it is easy for us to rationalize our goals, to what extent are they selfish, rather than student-centered?¹⁸⁹ We must ask whether our emphasis on self-reflection, ethics and morals, the role of law and lawyers in society, etc., is primarily a reflection of the "stage of life" we clinicians happen to occupy at the moment.¹⁹⁰

issues of power and control. Third, there are analogies between the issues of intimacy and distance in the clinical relationship and the themes of connection and separation which recur in feminist scholarship.

Sullivan defines "intimacy" as "characterized by four features: proximity, mutuality, trust and self-disclosure." *Id.* at 119. See also Brest, *supra* note 186, at 14:

I believe . . . that I may legitimately seek to engage students in the ways I have described without violating their autonomy or the implicit contract between us, even though every step involves discomfort - providing that I stay responsive. The best way for me to stay responsive and thus responsible is to participate myself and to be at least as open as I invite others to be.

See also Neustadter, *supra* note 130, at 45:

Student resistance which comes from a perspective or fear of invasion of privacy is very natural and instructive. It is an expression of concern for private autonomy, a warning against exploitation and coercion. It gives the teacher an (often shifting) foundation from which he or she can both respect the privacy of the individual and suggest the possible ways in which slightly more divulgence might deepen the learning. I think that it is very important to remain sensitive to individual concern for privacy and extremely difficult to know whether, when and how to push against privacy fences.

Neustadter, *supra* note 130, comments that raising in class difficult issues regarding the human condition requires students to face their existential choices. Again, as with Friedman, *supra* note 120, his rationalization for doing so may reflect his personal developmental stage rather than the needs of his students.

¹⁸⁹ Lawson suggests that the concept of "development" in adult education is value laden because it is "an inappropriate transference of a descriptive biologically based concept of development." It thus carries judgments "about what ought to be learned" as well as distinctions "between what counts as development and what does not." LAWSON, *supra* note 144, at 91.

¹⁹⁰ The midlife period is the time identified with striving for authenticity and generativity and serious questioning regarding the meaning of work. See, e.g., Gould, *supra* note 115, at 213, 230.

APPENDIX I

DESCRIPTIONS OF LIFE-CYCLE PHASES

<i>Phase and Age</i>	<i>Marker Events</i>	<i>Psychic Tasks</i>	<i>Characteristic Stance</i>
Leaving Home 18-22	Leave Home Establish new living arrangements Enter college Start first full-time job Select mate	Establish autonomy and independence from family Define identity Define sex role Establish new peer alliances	A balance between "being in" and "moving out" of the family
Moving into Adult World 23-28	Marry Establish home Become parent Get hired/fired/quit job Enter into community activities	Regard self as adult Develop capacity for intimacy Fashion initial life structure Build the dream Find a mentor	"Doing what one should" Living and building for the future Launched as an adult
Search for Stability 29-34	Establish children in school Progress in career or consider change Possible separation, divorce, remarriage Possible return to school	Reappraise relationships Reexamine life structure and present commitments Strive for success Search for stability, security, control Search for personal values Set long-range goals Accept growing children	"What is this life all about now that I am doing what I am supposed to?" Concern for order and stability and with "making it" Desire to set long-range goals and meet them
Becoming One's Own Person 37-42	Crucial promotion Break with mentor Responsibility for three-generation family; i.e., growing children and aging parents For women: empty nest; enter career and education	Face reality Confront morality; sense of aging Prune dependent ties to boss, spouse, mentor Reassess marriage Reassess personal priorities and values	Suspended animation More nurturing stance for men; more assertive stance for women "Have I done the right thing? Is there time to change?"
Settling Down 45-55	Cap career Become mentor Launch children; become grandparents New interests and hobbies Physical limitations; menopause Active participation in community events	Increase feelings of self-awareness and competence Reestablish family relationships Enjoy one's choices and life style Reexamine the fit between life structure and self	"It is perhaps late, but there are things I would like to do in the last half of my life" Best time of life
The Mellowing 57-64	Possible loss of mate Health problems Preparation for retirement	Accomplish goals in the time left to live Accept and adjust to aging process	Mellowing of feelings and relationships Spouse increasingly important Greater comfort with self

Life Review 65+	Retirement Physical decline Change in finances New living arrangements Death of friends/ spouse Major shift in daily routine	Search for integrity versus despair Acceptance of self Disengagement Rehearsal for death of spouse	Review of accomplishments Eagerness to share everyday human joys and sorrows Family is important Death is a new presence
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Source: Cross, *supra* note 20.

APPENDIX II

MILESTONES OF EGO DEVELOPMENT

<i>Stage</i>	<i>Impulse Control, Character Development</i>	<i>Interpersonal Style</i>	<i>Conscious Preoccupations</i>	<i>Cognitive Style</i>
Presocial		Autistic		
Symbiotic		Symbiotic	Self v. nonself	
Impulsive	Impulsive, fear of retaliation	Receiving, dependent, exploitative	Bodily feelings, especially sexual and aggressive	Stereotyping, conceptual confusion
Self-protective	Fear of being caught, externalizing blame, opportunistic	Wary, manipulative, exploitative	Self-protection, trouble, wishes, things, advantage, control	
Conformist	Conformity to external rules, shame, guilt for breaking rules	Belonging, superficial niceness	Appearance, social acceptability, banal feelings, behavior	Conceptual simplicity, stereotypes, clichés
Conscientious-conformist	Differentiation of norms, goals	Aware of self in relation to group, helping	Adjustment, problems, reasons, opportunities (vague)	Multiplicity
Conscientious	Self-evaluated standards, self-criticism, guilt for consequences, long-term goals and ideals	Intensive, responsible, mutual, concern for communication	Differentiated feelings, motives for behavior, self-respect, achievements, traits, expression	Conceptual complexity, idea of patterning
Individualistic	<i>Add:</i> Respect for individuality	<i>Add:</i> Dependence as an emotional problem	<i>Add:</i> Development, social problems, differentiation of inner life from outer	<i>Add:</i> Distinction of process and outcome
Autonomous	<i>Add:</i> Coping with conflicting inner needs, toleration	<i>Add:</i> Respect for autonomy, interdependence	Vividly conveyed feelings, integration of physiological and psychological, psychological causation of behavior, role conception, self-fulfillment, self in social context	Increased conceptual complexity, complex patterns, toleration for ambiguity, broad scope, objectivity
Integrated	<i>Add:</i> reconciling inner conflicts, renunciation of unattainable	<i>Add:</i> cherishing of individuality	<i>Add:</i> Identity	

Note: "Add" means in addition to the descriptor applying to the previous level.

Source: Cross, *supra* note 20.

