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The Politics of Clinical Knowledge

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ESSAY

THE POLITICS OF CLINICAL KNOWLEDGE

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I. INTRODUCTION

Let me begin this essay by honoring the *New York Law School Law Review* for generously providing a forum for clinical scholarship. By welcoming clinical scholars to the public theater, the *Review* joins an increasing number of journals committed to amplifying voices traditionally unheard in the legal academy.[1] This is not the appropriate moment to debate whether the silence of alternative voices is attributable to exclusion[2] or suppression.[3] That serious debate, frequently joined by critical scholars,[4] far exceeds the scope of this essay.

Narrowly tailored, this essay is confined to the alternative voice of clinical scholarship here sounded by nine respected teachers of clinical education.[5] At the outset, it is important to acknowledge that the task of

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1. For recent compilations of clinical scholarship, see *Symposium on Clinical Legal Education*, 36 CATH. U.L. REV. 337 (1987); *Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345 (1980); *Symposium*, 19 N.M.L. Rev. 1 (1989); *Symposium: Clinical Education*, 34 UCLA L. REV. 577 (1987).

2. On exclusion, see Bell & Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Rush, *Understanding Diversity*, 42 U. FLA. L. REV. 1 (1990).

3. On suppression, see Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984); Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 U. FLA. L. REV. 25 (1990).

4. *See, e.g.*, Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L.J. 1 (1988).

5. *See* Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87 (1990); Binder, Bergman & Price, *The Nature of the Counseling Process*, 35 N.Y.L. SCH. L. REV. 29 (1990); Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131 (1990); McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239 (1990); Peters & Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-*

integrating the diverse works of this group into a unified body carries certain attendant weaknesses. As with any truncated review, there is a tendency to engage in reductive interpretation. Similarly, in this abridged setting, there is an inclination to favor somewhat crude categorization. Moreover, there is a compelled deference to sources cited in the original texts.

Notwithstanding these imperfections, it is possible to organize the six works at hand around a central unifying theme. The theme is politics. By politics, I do not mean the institutional policies and practices governing the hiring, promotion, and retention of clinical faculty. Rather, I employ the term politics in the context of knowledge. The theme I wish to explore concerns the politics of clinical knowledge.

Like any system of knowledge, clinical knowledge is comprised of multiple categories of analysis. These categories may stand in tense opposition or in mutual support.[6] In each event, they shape our understanding and vision of the world. Together, they define a way of seeing.

In this essay, I endeavor to describe a vision—a way of seeing—dominant in clinical education. The vision, I argue, is molded by three categories of analysis: client identity, lawyer technique, and *right* results. The categories are inexact, their application preliminary. Nonetheless, I hope that the exploration, albeit unresolved, serves to advance the clinical project.

II. CLINICAL KNOWLEDGE

Clinical knowledge is expressed in the teaching of lawyering. Historically, our chosen means of expression has relied heavily on oral traditions of story telling. Indeed, much of our teaching is bound up in stories of lawyering. The stories told in clinical practice construct the reality of the lawyer/client world. They give meaning to client identity, fashion lawyer technique, and rationalize the results of litigation and transactions.

In this way, the telling of lawyer stories is political. Partisan metaphors, the stories reflect and reproduce a distinct way of seeing the

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Briggs Type Indicator, and Learning Legal Interviewing, 35 N.Y.L. SCH. L. REV. 169 (1990); Weinstein, *Teaching Mediation in Law Schools: Training Lawyers to be Wise*, 35 N.Y.L. SCH. L. REV. 199 (1990).

6. *See, e.g.*, Gifford, *The Synthesis of Legal Counseling and Negotiation Models: Preserving Client-Centered Advocacy in the Negotiation Context*, 34 UCLA L. REV. 811 (1987); Hyman, *Trial Advocacy and Methods of Negotiation: Can Good Trial Advocates Be Wise Negotiators?*, 34 UCLA L. REV. 863 (1987); G. Strong, The Lawyer's Left Hand: Non-Analytical Thought in the Practice of Law (1990) (unpublished manuscript).

world. That world is lawyer defined, its values and truths imagined rather than discovered.[7] Imposing lawyer defined values and truths on a world where meaning is constructed, not found, privileges lawyer voice and story telling. Because this interpretive privilege is usually exclusive, the alternative voices and stories spoken by clients are often silenced.

Dismantling interpretive privilege requires interpretive contest. The conceptual foundation for that contest is partially in place.[8] Many are now building on this foundation to propose alternative interpretive paradigms more sensitive to the muted articulation of client voice and story.[9] Theirs is a collective work commonly rooted in the ground of daily lawyering. As recent clinical studies of gender and race demonstrate, the thickness[10] of the lawyering process demands contextual grounding.[11]

III. CLIENT IDENTITY

Client identity is a basic category of clinical knowledge. Frequently, the meaning of client identity is cabined by enfeeblement. Enfeeblement

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7. On the social construction of meaning, see P. BERGER & T. LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE (1966).

8. *See, e.g.,* Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88); Handler, *Dependent People, the State, and the Modern/Postmodern Search for the Dialogic Community*, 35 UCLA L. REV. 999 (1988); Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1990); Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289 (1989); Sarat, *". . . The Law Is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMANITIES 343 (1990); Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990); White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Ellmann, *Lawyering for Justice in a Flawed Democracy* (Book Review), 90 COLUM. L. REV. 116 (1990).

9. *See, e.g.,* Alfieri, *Speaking Out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS (1991) (forthcoming); White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88); C. Cunningham, A New Way of Practicing Law: The Lawyer as Translator (1990) (unpublished manuscript).

10. *See* C. GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in THE INTERPRETATION OF CULTURES: SELECTED ESSAYS 3-30 (1973).

11. *See, e.g.,* Cahn, *A Preliminary Feminist Critique of Legal Ethics*, 4 GEO. J. LEGAL ETHICS 601 (1990); Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach*, 38 J. LEGAL EDUC. 183 (1988); Eyster, *Integrating Non-Sexist/Racist Perspectives into Traditional Course and Clinical Settings*, 14 S. ILL. U.L.J. 471 (1990); Goldfarb, *The Theory-Practice Spiral: Insights from Feminism and Clinical Education*, 75 MINN. L. REV. (1991) (forthcoming); Scarnecchia, *Gender & Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J.L. REF. 319 (1990); A. Shalleck, Clinical Supervision in Context: From a Case to a Vision (1990) (unpublished manuscript).

is signified by the image of client helplessness. There is growing suspicion that this socially constructed image is false.[12] From this stance of suspicion, the client is not infirm but *enfeebled.* The enfeebled client suffers infirmities of helplessness imputed by lawyer misconstruction of the client world.

Misconstruction of client identity is buttressed by vague allusion to a *natural* client character. On this account, helplessness is considered an immutable feature of an inherent client nature. When this essentialist[13] allusion encounters contradictory evidence of client character, especially character independent and activist in nature, there is resort to an instrumentalist narrative. Intended to rescue the unstable construction of client identity, this narrative posits client helplessness as a *necessary,* rather than a *natural* construct. Support for this functional predicate is found in the logic of client infirmity as a practical condition of lawyering.

Both Don and Martha Peters and Janet Weinstein seek to remedy lawyer misconstruction of client identity by experimenting with alternative ways of seeing. In *Learning Legal Interviewing,*[14] the Peters trace misconstruction to the failure of interviewing theory[15] to satisfy the main objectives of rapport building and information gathering. They attribute that failure to the distortions of lawyer routinization and dominance.[16]

Locating their efforts in a general civil practice clinic devoted primarily to matrimonial litigation,[17] the Peters deploy psychological type theory, specifically the Myers-Briggs Type Indicator (MBTI), as a means of clarifying clinical vision.[18] The pedagogic goals of the MBTI are twofold: first, to encourage collaborative working skills; and second, to improve interviewing and negotiating skills. These goals were tested during a two-year period spanning three semesters.[19]

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12. *See, e.g.,* Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations,* 22 HARV. C.R.-C.L. L. REV. 323 (1987); Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method,* 11 WOMEN'S RTS. L. REP. 7 (1989).

13. For discussions of essentialism, see E. SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (1988); Cornell, *The Doubly-Prized World: Myth, Allegory and the Feminine,* 75 CORNELL L. REV. 644 (1990); Harris, *Race and Essentialism in Feminist Legal Theory,* 42 STAN. L. REV. 581 (1990); Williams, *Feminism's Search for the Feminine: Essentialism, Utopianism and Community,* 75 CORNELL L. REV. 700 (1990).

14. Peters & Peters, *supra* note 5.

15. The Peters cite, *inter alia,* the work of Gary Bellow, Bea Moulton, David Binder, and Susan Price in developing effective interviewing models. *Id.* at 169 n.1.

16. *Id.* at 169.

17. The Virgil Hawkins Civil Clinic at the University of Florida College of Law provided the setting for studying the interview process. *Id.* at 170.

18. The MBTI is disseminated to students on a voluntary basis early in the clinical semester. *Id.* at 174.

19. *Id.* at 175.

For the Peters, application of psychological type theory to clinical pedagogy is warranted by the crucial importance of perception and judgment in client-centered interviewing. Perception is denoted in terms of information acquisition. Judgment is defined in terms of decision making.[20]

In a brief summary of psychological type theory, the Peters explain that the MBTI establishes four bi-polar indexes measuring perception and judgment. The indexes register interpretive and decision-making preferences. These categorical preferences are gauged by four scales encompassing Sensing-Intuition, Thinking-Feeling, Extraversion-Introversion, and Judging-Perceiving. The scales indicate the direction and strength of preferences.[21]

To determine the salience of psychological preference types to the interviewing process, the Peters focus on the spheres of question formulation and listening responses. This focus guided a pilot analysis of twenty-three student-conducted client interviews regarding marriage dissolution proceedings. The transcribed results of those interviews supplied the data for preliminary speculations concerning behavioral tendencies linked to type-based preferences.[22]

Despite the concededly small size of this data base and the additional methodological limitations of the pilot study, the Peters contend that *potential* type-related behavioral tendencies are germane to question formulation and active listening. Accordingly, they identify particular type-related preferences (e.g., extraversion, sensing, feeling) and describe how such preferences may engender tendencies contributing to the reformulation of questions and responses. These tendencies, they argue, may be fostered in both the learning and experiential stages of the clinical process.[23]

Because of the behavioral tendencies common to the questioning and listening components of student-conducted client interviewing, the Peters propose integration of the MBTI typology into the clinical curriculum. They defend integration on the basis of efficacy and self-awareness. Moreover, they claim that the clinical process is *open* to reconstructive *dialogue* pertaining to type-related behavioral tendencies, implying the potential for behavior modification through clinical pedagogy.[24]

The theme of clinical reconstruction is enlarged by Janet Weinstein.

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20. *Id.* at 175-76.

21. *Id.* at 175-78.

22. *Id.* at 179-84.

23. *Id.* at 182-95.

24. *Id.* at 183-84, 195-98. Full extension of the Peters' behavioral model to the lawyering context is questionable. *See* Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487 (1980).

In *Training Lawyers to be Wise*, Weinstein reports on her experience devising and supervising a clinical mediation program.[25] The espoused purpose of the program is the achievement of lawyer wisdom and client empowerment.[26] The notion of lawyer wisdom embodies an aspirational vision of the lawyer as a *wise* person.[27] The concept of client empowerment embraces the transference of lawyer power and the reconfiguration of the lawyer/client relation. To Weinstein, the wise lawyer is distinguished by her ability "to assist others in an empowering way."[28]

Recognizing that the cultivation of lawyering wisdom demands an alternative clinical paradigm, Weinstein eschews traditional rule-based adversarial techniques of conflict resolution in favor of a three-dimensional problem-solving orientation. That orientation endorses a *party-centered* approach to problem solving.[29]

Weinstein derives the vision of party-centered problem solving from alternative dispute resolution (ADR) models. The models stress the integration of creative and cooperative lawyering skills. In designing a skills training regimen, Weinstein declines to adopt a single ADR model. Instead, she puts forward a variety of models encouraging students to select frameworks appropriate to specific situations.[30]

To facilitate the suitable casting of ADR-based mediation schemes, Weinstein emphasizes intensive skills training. The training encompasses communication, listening, negotiation, empowerment, and self-awareness. While these skills are considered interdependent, listening is cited as the key to mediation training.[31]

From the embarking point of *true* listening, Weinstein marshalls a

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25. Weinstein, *supra* note 5, at 199.

26. *Id.* This overarching purpose represents the distillation of five constituent goals, including: (A) Creating a model which would draw forth the students' wisdom and creativity; (B) Changing the lawyer's philosophical map; (C) Increasing lawyering skills; (D) Achieving clinical goals of increased self-knowledge and understanding of the learning process; and (E) Remaining open and actively participating in the learning process. *Id.* at 201-04.

27. The wise person is denominated as "one who can listen to others and exercise professional judgment, knowledge, emotions, and concern in a nonpaternalistic way." *Id.* at 201.

28. *Id.* at 199.

29. *Id.* at 200. Weinstein cites Binder and Price's client-centered approach to interviewing and counseling in support of her proposed party-centered approach. *See* D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977).

30. Weinstein, *supra* note 5, at 204-05. By installing a pedagogical structure demanding the creative adaptation of ADR models and techniques, Weinstein engenders student-directed learning and decision making.

31. *Id.* at 203-04, 205-06.

holistic approach to problem solving. The approach draws on the literature of psychology and theater[32] to comprehend the dynamics of conflict.[33] Culling different forms of verbal and nonverbal communication from this literature, Weinstein contends, illuminates the nature of conflict and the variability of human behavior in mediation settings.[34]

For Weinstein, the convergence of communication skills, flexible technique, and interdisciplinary training gives rise to "new ways of communicating with others."[35] Animated by the disparate styles and talents of individual students, these new methods of interaction emphasize the *context* over the form of mediation. This emphasis centers clinical pedagogy on the "interplay between understanding and competence."[36]

The contextual fusion of understanding and competence enables Weinstein to formulate a clinical curriculum governed by self-directed learning. To ensure that the learning project is open and continuous, the curriculum highlights the multi-dimensionality of human interaction occurring on intellectual, emotional, spiritual, and physical levels. This density underscores the importance of investigating alternative interpretations of client/party identity revealed during interaction.[37]

Weinstein introduced her mediation program with listening, observation, and negotiation exercises. Gradually, these exercises evolved into role plays interweaving listening, empathy, experience, and reflection. Weinstein mentions the palpable increase in student self-awareness and the improvement in lawyering skills obtained through role playing. This overall enhancement suggests to her some correlation between the internalization of mediation training and the growth of lawyering ability.[38]

When students reached the stage of conducting actual mediations, Weinstein noted a marked improvement in the *quality* of student listening. Similar progress was observed regarding the students' ability to shift power to the parties participating in the mediation. Overcoming initial and sometimes persistent party and student resistance to the transference of power hinged on three factors.[39]

The first of these interrelated factors involved trust in the mediation

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32. This literature prompted a class devoted to "creative dramatics" where both students and teacher performed a "moving sculpture" signifying the stages of mediation. *Id.* at 206, 214.

33. In locating the dynamics of a dispute, Weinstein examines how people feel, react, and relate to each other. *Id.* at 216.

34. *Id.* at 206-07.

35. *Id.* at 207.

36. *Id.* at 208.

37. *Id.* at 207-08.

38. *Id.* at 209-10, 211-12, 218-26.

39. *Id.* at 221, 222-23.

process itself. Garnered from the experience of observing and practicing mediation, this proceduralist trust developed quickly. Curiously, trust in self and in the parties proceeded more slowly.[40]

A second factor implicated the students' ability to maintain conditions of party respect and safety during the mediation. According to Weinstein, respect and safety must be displayed in a manner sufficient to establish party perception of student neutrality, concern, and competence. Without this shared perception and an atmosphere of cooperation, the mediation process may deteriorate into chaos, acrimony, or worse, dominance.[41]

A third factor concerned the students' ability to exhibit openness and receptivity. Adopting this posture entailed the willingness to engage in self-disclosing and other-affirming behavior. Disclosure required honesty and at times confrontation. Affirmation enlisted listening and respect.[42]

The materialization of these empowerment practices and the resulting reconfiguration of client/party identity in the mediation context demonstrates the value of Weinstein's alternative clinical paradigm. Although experimental, the paradigm evinces the potential vitality of an empowerment-based pedagogy and training.[43] That critical vitality is frequently stifled by lawyer technique, particularly when technique pretends to be neutral.

IV. LAWYER TECHNIQUE

Lawyer technique encompasses a broad range of litigation and transactional skills. The interpretive privileging of lawyer technique is obscured by the claim of neutrality. This claim infects the varied elements of clinical skills (e.g., interviewing and counseling). Glossed by the patina of neutrality, lawyering appears as an amalgam of technical skills acquired through objective pedagogy and applied in the value-free representation of largely fungible clients. Those technical skills may be demonstrated in

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40. *Id.* at 223-25.

41. *Id.* at 224-25.

42. *Id.* at 225-26.

43. Building on the work of Carl Rogers, Weinstein grounds her person-centered approach on the premise that the "client *knows* what he or she needs." *Id.* at 227 (emphasis added) (citing C. ROGERS, ON BECOMING A PERSON (1961)). *See also* C. ROGERS, FREEDOM TO LEARN (1979).

Weinstein's overall approach must be measured against recent criticisms of the ADR movement. *See, e.g.,* Delgado, Dunn, Brown, Lee & Hubbert, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359; Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN'S L.J. 57 (1984); Silbey & Sarat, *Dispute Processing in Law and Legal Scholarship: From Institutional Critique to the Reconstruction of the Juridical Subject*, 66 DEN. U.L. REV. 437 (1989).

role, reproduced in simulation, and verified in action.

The claim of neutral technique is safeguarded by oblique analogy to the scientific method.[44] Fairly extended, the analogue gives rise to the mystification of clinical practice as science.[45] The image of the clinician as lawyer-scientist is intuitively appealing. Consistent with the scientific method, the clinician invents a battery of simulated and experiential exercises. Gathering material data from these tests, she reasons inductively seeking to infer broad principles of lawyering. Isolating the natural state of the client world, she applies these principles and discovers that they necessarily yield the *right* result.

The notion of a generalizable technique susceptible to universal application overlooks diverse configurations of client class, gender, and race. Because these configurations represent alternative constructions of client identity and world, their omission silences whole communities of voice and story. Silencing permits the category of client enfeeblement to survive intact. Further, it allows lawyer/client hierarchy to reproduce itself unchecked.

The work of David Binder, Paul Bergman, and Susan Price demonstrates the silencing consequences of interpretive omission. In the past, the clinical project has gained substantial force from the energy and insight of these scholars.[46] For example, Binder and Price's *Legal Interviewing and Counseling*,[47] though not unscathed by criticism,[48] is considered an essential text by many and enjoys wide acceptance throughout the clinical community.[49] In light of that formidable reputation, the publication of *Lawyers as Counselors: A Client-Centered Approach*,[50] after thirteen years of cogitation, is a moment of some gravity.

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44. To understand the meretricious force of this neutrality claim, it is instructive to look to the history of science. *See generally* C. GILLISPIE, THE EDGE OF OBJECTIVITY: AN ESSAY IN THE HISTORY OF SCIENTIFIC IDEAS (1960); T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970); S. MASON, A HISTORY OF THE SCIENCES (1962).

45. For discussions of epistemological mystification and scientific rationality, compare Williams, *Critical Legal Studies: The Death of Transcendence and the Rise of the New Langdells*, 62 N.Y.U. L. REV. 429 (1987) (Critical Legal Studies) with Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 905 (1980) (Law and Economics).

46. *See, e.g.*, D. BINDER & P. BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF (1984); D. BINDER & S. PRICE, *supra* note 29.

47. D. BINDER & S. PRICE, *supra* note 29.

48. *See, e.g.*, Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987).

49. In 1989 and 1990, the West Publishing Co. estimated adoption of Binder and Price's *Legal Interviewing and Counseling* by over 100 law schools and colleges in the United States (telephone interview with Owen Shaffer, Associate Manager Law School Department, West Publishing Co. (Nov. 8, 1990)). *See* D. BINDER & S. PRICE, *supra* note 29.

50. Binder, Bergman & Price, *supra* note 5, at 29.

Unfortunately, *Lawyers as Counselors* is marred by a deep-seated reluctance to address the interpretive privileging of client identity and to redress the claim of neutral technique. Although this reluctance is embroidered by client-centered rhetoric and the denunciation of mechanical technique, it is clearly pronounced. Divulged in stories of lawyering, it embodies an interpretive stance dominant in clinical practice. That stance cannot be saved by the enlightened rhetoric of empathy, diversity, and partnership.[51]

With respect to client identity, Binder, Bergman, and Price present a purified world uncontaminated by class, gender, and race, and moreover, undisturbed by the hierarchical configurations which accompany them. This is not to suggest that there is no mention of these categories in their stories of lawyering. Whatever mention is made, however, is tangential to the lawyering process.

The insignificance of class, gender, and race hierarchies is revealed in story. Mr. Rodale, for example, is counseled regarding the termination of *Ms.* Rex. *Ms.* Biggs is counseled on partnership banking options. Snider is negotiating a shopping center lease with a *female* landlord. A client is negotiating to purchase knives from a *Chinese* manufacturer. *Ms.* Gilliger is planning to dismiss an employee. *Mrs.* Benizi is contemplating a marital settlement offer. *Gomez* is negotiating a commercial lease.[52]

In each story, class, gender, and race appear but do not enter into Binder, Bergman, and Price's analysis of lawyering. Barred from meaningful analysis, their appearance is rendered perfunctory, a nod to liberal convention. Without more, we are left to infer that these categories are irrelevant to the lawyering process. If not irrelevant, then we may speculate alternatively that they are immaterial to the "typical" lawyer/client relation.[53]

This alternative inference finds support in Binder, Bergman, and Price's telling of "typical" lawyer/client stories. Kimmel, for instance, is weighing a wrongful termination settlement offer. Martino is negotiating a lease with SafeBet Markets. Gower is negotiating a contract extension with the Smeltics. Lynn is suing to terminate a corporate lease and recover rent arrears. Bilt is negotiating to buy land for a housing tract. Bob is negotiating a deal with Metal Beams. Jim is managing business personnel. Jan and Doug are seeking to appoint guardians for their children.[54]

Once again, in these stories of lawyering, class, gender, and race have

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51. *Id.*

52. *Id.* at 30-31, 33, 50, 54-57, 76-78, 84.

53. *Id.* at 64.

54. *Id.* at 34-35, 35-38, 43-44, 49, 58-59, 60-61, 63, 65, 67, 73-75, 80-86.

no place. They play no part in the client's "life situation."[55] Similarly, they in no way inform the client's "values and preferences."[56] For Binder, Bergman, and Price, these categories are inapposite even when client decision making may be distorted by their misconstruction.

A case in point is their example of the defendant client in a burglary prosecution who declines to call his sister to testify as an alibi witness because, he asserts, testifying will cause her *"undue stress."*[57] His lawyer, in contrast, "believe[s] the sister will make an excellent witness."[58] Having erected this conflict, Binder, Bergman, and Price offer several equally unsatisfactory approaches to resolution.

The first approach relies on "ends-means" reasoning. This method of reasoning is flawed by indeterminacy. As Binder, Bergman, and Price point out, the client's decision to call the sister may be construed as a matter of both ends and means depending on stated objectives.[59]

The second approach hinges on "prior waiver." This approach rests on informed client judgment regarding the nature and extent of lawyer consultation desired prior to decision making. Binder, Bergman, and Price comment that the validity of a "waiver" agreement requires not only informed judgment, but also initial and ongoing opportunities to reassess that judgment. They caution that the judgment of "inexperienced" and "unsophisticated" clients may undermine the validity of a "waiver" agreement.[60]

To avoid the nettlesome calculations of "ends-means" and "prior waiver" approaches, Binder, Bergman, and Price posit a third approach. This approach is tied to a "substantial impact standard." Under the standard, the lawyer "should give a client an opportunity to make a decision whenever [the] lawyer, using 'such skill, prudence, and diligence as other members of the profession commonly possess and exercise,' knows or should know that a pending decision is likely to have a *substantial legal or nonlegal impact on a client."*[61]

Applied to the instant burglary prosecution context, the substantial impact standard may authorize lawyer override of the defendant client's decision to proceed at trial without the benefit of his sister's alibi testimony. Likewise, application of the "ends-means" and "prior waiver" tests may produce the same result. This commonality of result is traceable to the interpretive paradigm employed by Binder, Bergman, and Price.

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55. *Id.* at 36 n.24.

56. *Id.* at 37 n.26.

57. *Id.* at 40-41 (emphasis added).

58. *Id.* at 41.

59. *Id.*

60. *Id.*

61. *Id.* at 41-42 (citations omitted) (emphasis added).

Theirs is a paradigm of lawyer power where client decision making is continually subject to review and override.

This is the paradoxical import of Binder, Bergman, and Price's analysis. Paradoxical because their overarching purpose is to constrain the traditionally broad ambit of sanctioned lawyer intervention in decision making precisely in order to safeguard client autonomy. That purpose is ill-served by omitting serious consideration of the class, gender, and race components of client/party identity and decision making.

Exploring these components, notably the category of gender, in the context of the above burglary prosecution may enable the defendant client *himself* to withdraw objection to his sister's testimony.[62] But that decision may be reached only if the lawyer introduces the interpretive category of gender into the counseling dialogue.[63] Gender is especially germane because it is the client's sister, not brother, who allegedly would suffer "undue stress." This relevance is underscored by the degrading historical equation of gender and weakness in public spheres of discourse.

To be sure, gender misconstruction may not fully explain the client's objection to his sister's testimony. Additional factors may be responsible, such as the sister's possibly undisclosed history of mental disability or psychological distress. Yet, gender may provide a partial explanation. To the extent that an interpretive category may expose the underpinnings and facilitate the salutary revision of client decision making, it is deserving of inclusion in counseling dialogue.

Truncated by omission, Binder, Bergman, and Price's theory of lawyer/client dialogue is pressed to rely on the shibboleths of "professional skills and crafts."[64] Sometimes, they admit, these skills must be supplemented by "professional experience, awareness of human behavior, and familiarity with the context in which a problem arises."[65] But, it seems, in no event should this battery of skills be augmented by the interpretive categories of class, gender, and race.[66]

Lacking these fundamental categories of analysis, how are lawyers to understand the "individual makeup of each client?" How are we to learn "who she 'really' is?" How are we to establish a "counseling dialogue?" How are we to "help clients resolve problems?" How are we to assign "maximum value" to client decision making? Finally, how is a client to

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62. *See* Margulies, *"Who Are You to Tell Me That?": Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 N.C.L. REV. 213 (1990).

63. *See* Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886 (1989).

64. Binder, Bergman & Price, *supra* note 5, at 44, 45.

65. *Id.* at 48.

66. *Id.*

"hear" what we have to say and "see" what we have to show?[67]

Binder, Bergman, and Price's peculiar answer is to call for the "appearance of neutrality."[68] Professing neutrality in a situation of interpretive privilege rings false. The manipulation[69] and marginalization[70] which attend interpretive privilege run counter to lawyer adoption of a "neutral stance."[71] Clients who perceive the falsity of this stance, however, appear to Binder, Bergman, and Price as "overly deferential to authority figures."[72] This appearance masks client recognition of lawyer power. In this sense, deference manifests a client survival strategy.

Binder, Bergman, and Price seem oblivious to the possibility that clients may be actively constructing a facade to fit the image of helplessness privileged by dominant interpretive paradigms. Instead of self-suspicion, they decry this group of clients as inclined "by *nature* [to] defer to experts and authority figures."[73] This whitewashing of client identity and lawyer technique invites skepticism. If key interpretive categories can find no place in the lawyering contexts depicted by Binder, Bergman, and Price, then the reality underlying that depiction must be questioned.

As Binder, Bergman, and Price show, that reality is informed by lawyer situated interpretation. From this interpretive vantage point, the lawyer subject reproduces a reality where *his* class, *his* gender, *his* race, and *his* world are baseline constructions. Deviations from this privileged baseline are not considered to be legitimate alternative constructions of a rich multi-layered reality. Nor are they regarded as strategies adopted to maneuver inside and outside an oppressive reality. On the contrary, they are judged to be symbolic of an "overly deferential" attitude toward authority figures, an attitude preventing meaningful client participation in the lawyering process.

Approving this privileged interpretive framework, David Barnhizer praises clinicians for contributing to the reformulation of American legal education.[74] In *The University Ideal*, he links this contribution to the

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67. *Id.* at 51 (citation omitted), 51 n.54, 48, 49, 54, 57.

68. *Id.* at 64.

69. On client autonomy and lawyer manipulation, see Ellmann, *supra* note 48; Ellmann, *Manipulation by Client and Context: A Response to Professor Morris*, 34 UCLA L. REV. 1003 (1987).

70. On client marginalization, see White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990).

71. Binder, Bergman & Price, *supra* note 5, at 75.

72. *Id.* at 68 n.103.

73. *Id.* at 64 (emphasis added). In support of this overbroad proposition, Binder, Bergman, and Price cite David Riesman's forty-year-old sociological study. It is their sole citation. *See* D. RIESMAN, THE LONELY CROWD — A STUDY OF THE CHANGING AMERICAN CHARACTER (1950).

74. Barnhizer, *supra* note 5, at 88.

curricular introduction of social justice, legal skills, and professional responsibility.[75] For Barnhizer, these subjects spurred a curricular *revolution* creating an alternative legal reality.[76]

Barnhizer attributes the recasting of legal reality to the work of an historically assembled group of public interest advocates cum clinicians.[77] While conceding that these first-wave clinicians were guided by inchoate and fragmented visions of social justice, he identifies common bonds chiefly involving the development of practical skills, professional values, conceptions of justice, and new forms of knowledge in the service of the disadvantaged.[78] Barnhizer perceives this multifaceted development as a challenge to the "extreme formalization and professed neutrality of traditional legal education."[79]

Ascribing the motive of social engineering to this clinical cadre, Barnhizer portrays a "crudely coherent critical mass" inspired by an elementary "liberal vision of a just society."[80] Discounting these deficiencies, Barnhizer turns to what he considers to be a more crucial question: "whether the clinical movement undermines or advances the ideal of the university."[81]

By way of answer, Barnhizer admonishes us to search the American university ideal, specifically the university law school. He errantly begins this search by positing a dichotomy separating the academic university from professional instruction.[82] This dichotomy rests on the claim that these two educational forums maintain "distinctly different, often incompatible, orientations."[83]

Barnhizer's asserted incompatibility between university and law school teachings leads him to accuse clinical faculty of "latent anti-intellectualism."[84] This charge stems from his dim appraisal of clinical theory and practice. Beyond a "few exceptions," Barnhizer contends clinicians have "done little" to probe the content or implications of their

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75. Barnhizer observes: "Clinical faculty built new programs and courses, forced politics and other disciplines into the law schools, and experimented with new subject matters, learning environments, teaching methodologies, and educational goals." *Id.*

76. *Id.*

77. *Id.* at 89.

78. *Id.*

79. *Id.*

80. *Id.* at 90.

81. *Id.* at 91.

82. Barnhizer adopts the peculiar usage "unfused dichotomy" to describe this separation. *Id.* at 92.

83. *Id.*

84. *Id.* at 94.

own cardinal themes.[85]

Because of this intellectual deficit, Barnhizer denounces clinicians for advancing "nothing more than an inchoate claim to participation" in university governance.[86] At the same time, he embraces clinical theory and practice as "urgently needed" by and consonant with the university ideal. Thus, he exhorts clinicians to infuse their work with appropriate "intellectual spirit."[87]

To prod the clinical spirit, Barnhizer puts forward a brief history of the university, pointedly noting its partisan interests and functional rhetoric. He mistakes the rhetoric of "dispassionate inquiry," however, as an unembellished description of the "research and knowledge acquisition functions" of the university.[88] Compounding this error, he obliges clinicians to "honor" the "truth" unearthed by "dispassionate inquiry."[89]

The folly of this obligation is part of the fantasm of neutral technique. Barnhizer's endorsement of neutral methodology is confounded by his rebuff of Langdellian "neutral scientific rationalism" and by his lament that the clinical "preoccupation" with technique diminishes and sometimes precludes the pursuit of "practical justice and knowledge."[90] This "fixation," he remarks, undermines the achievement of "practical conceptions of social justice."[91]

For Barnhizer, the pursuit of "practical justice and knowledge" constitutes the primary mission of the clinical project. That mission incorporates "intermediate or macro-levels" of practical knowledge and the "general truths" of social justice.[92] Fulfillment of the mission of *doing justice*, Barnhizer concludes, requires political vision and principled inquiry.[93]

Notwithstanding Barnhizer's protests, there is no shortage of political vision in clinical education. There are, in fact, the dominant visions of client infirmity, neutral technique, and *right* results. Moreover, there is the reigning politics of interpretive privilege exercised to enfeeble clients and cloak value-laden technique. Barnhizer's failure to confront these determinants of clinical practice condemns his effort to relocate the clinical project.

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85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.* at 97.
89. *Id.*
90. *Id.* at 99, 121.
91. *Id.* at 121, 122.
92. *Id.* at 103, 104.
93. *Id.* at 105, 107, 111, 128.

V. *RIGHT* RESULTS

In clinical practice, *right* results flow automatically from the application of lawyer technique. *Right* results do not refer to the actual results of litigation or transactions. Rightness instead refers to the self-executing operation of lawyer technique.

The autonomous quality of lawyer technique fosters the pretense of clinical neutrality and veils the practice of client enfeeblement. Exposure of the enfeebling consequences of technique depends on the critical reassessment of *right* results.[94] The starting point of this reassessment is the original position of the client. By original position, I do not mean a catalogue of material conditions, but rather the meaning of client identity constructed by the lawyer at the commencement of the lawyer/client relation.

Dominant clinical paradigms often equate client identity with adjoining material circumstances. Yet, there is no clear correlation between the character of client identity and the nature of material surroundings. The empirical documentation of client circumstances is profoundly different from the normative construction of client identity. Vulnerable to the demeaning constructions of the lawyer subject, it is not surprising that client identity is construed in terms of character traits (e.g., dependence, passivity, and helplessness) frequently associated with settings inhabited by the historically subordinated: women, people of color, and the impoverished.[95]

The end point of the reassessment of *right* results is the final position of the client at the close of the lawyering process. This reassessment ventures to discern changes in the capacity for individual or collective advocacy independent of lawyer intervention. Enfeebled by lawyer technique, client identity may divulge an incapacity for self-directed advocacy. Client incapacity, however, represents a survival strategy invented to withstand the lawyering process.

When the strategic inception of client incapacity goes unrecognized in the threshold assessment of identity, the concluding assessment of *right* results is confined to the measurement of visible changes in material circumstances. This measurement affords only a partial assessment. Nevertheless, it is the conventional yardstick used to gauge the efficacy of clinical practice.[96]

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94. For discussions of critical reassessment, see Alfieri, *supra* note 8; Cunningham, *Legal Storytelling: A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459 (1989); White, *supra* note 70.

95. A recent survey compiled by Professor Carolyn Kubitschek indicates that clinical practice is mainly concentrated in civil and criminal law fields of indigent representation. *See* C. Kubitschek, Clinicians' Substantive Specialties (Dec. 1988) (unpublished survey).

96. Plainly, I am excluding consideration of student learning in applying this yardstick.

The incomplete nature of this prevailing assessment is masked by the illusion of client incapacity. Tolerating this deceit rationalizes the practice of client enfeeblement. Dominant clinical paradigms are built on this self-serving deception. Because of such reliance, the review and reconfiguration of client identity is neglected as an element of clinical practice. Hence, client incapacity endures as a lawyer-manufactured constant. That incapacity is unmitigated by the remedial effects of litigation and transactions. The unseen feature of these applauded outcomes betrays the demeaning consequences of lawyering. At times, these consequences may outweigh the advantages derived from lawyer-won material benefits.

At bottom, there is nothing *natural* or *necessary* about client incapacity. Nor is there anything *neutral* about the enfeebling consequences of lawyer technique. Nor is there anything *right* about particular results. But, these specters pervade clinical practice. Their phantom presence haunts even the most careful scholarship privileging dominant interpretations and excluding alternative constructs.

Insulated by interpretive privilege, clinical scholars have been slow to rally a defensible account of the enfeebling consequences of clinical practice. In *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead,*[97] for example, Marjorie McDiarmid offers a comprehensive treatment of the in-house live-client clinical paradigm without broaching the subject of enfeeblement and its cohort neutral technique. While that oversight compromises her theoretical defense of the clinical project in opposition to ancient Langdellian orthodoxy, it does not diminish the importance of her achievement.

McDiarmid begins by revisiting the long-standing debate launched by Jerome Frank's injunction, *Why Not a Clinical Lawyer-School?*[98] Staking her alliance with Frank against Langdell, she proposes to "chart the progress" of clinical education.[99] The means of marking such progress is a carefully conceived and wide ranging study commenced in 1987.[100]

Because of its sweep and detail, the significance of the study is great. Concentrating on the current status of live-client in-house clinics, the study reviews pedagogical methods, learning activities, faculty size and support, student/faculty ratios, and student demand. Moreover, the study reports on the status, qualifications, and workload of clinicians compared

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97. McDiarmid, *supra* note 5, at 239.

98. *See* Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 907-08 (1933).

99. McDiarmid, *supra* note 5, at 240.

100. Relevant data was gathered by the Data Collection Sub-Committee of the Association of American Law Schools' Section on Clinical Legal Education, Committee on the Future of the In-House Clinic. *Id.* at 240-43.

to nonclinical faculty. This comparative assessment is undertaken against the backdrop of section 405(e) of the American Bar Association Standards for the Approval of Law Schools.[101] Further, the study considers the availability, costs, and resources of the live-client in-house clinic.[102]

Committed to the representation of *real* clients, McDiarmid's clinical paradigm furnishes a diverse instructional program combining both classroom teaching and simulation exercises to instill lawyering and analytical skills, as well as professional and community responsibility. Annual enrollment on average numbers 24.2 students, each devoting approximately one hour more per week per credit than nonclinical students. These numbers produce a faculty/student ratio of 1:8.41, a constant figure over a ten-year span.[103]

The stability of McDiarmid's paradigm belies the precarious institutional standing of clinicians. Battered by inadequate resources and insufficient faculty support, many clinicians are consigned to the status of a second order caste, despite meeting comparable hiring and promotion criteria. Attendant to this relegation is a more burdensome teaching load. The effect of Standard 405(e) in curing these disparities seems at best ambiguous.[104]

In an effort to bolster the live-client in-house clinical paradigm against continuing assaults on status and cost accounting,[105] McDiarmid advances a three-pronged defense. The defense binds together claims of pedagogical effectiveness, epistemological integrity, and content appropriateness to accent the value of *role identification.*[106]

While not incontrovertible, these claims do not ignite serious quarrel. Many clinicians abide by them because of their demonstrated pedagogical and epistemological substance. The unreserved trumpeting of role identification, however, is troubling. Without limitation, role identification is antithetical to the promotion of pedagogical and epistemological integrity in clinical practice.

Clinical integrity turns on the ability and willingness to challenge prevailing pedagogical and epistemological regimes. By mounting such challenges, clinicians discover the privileged underpinnings of established

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101. *See* ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Standard 405(e) (1988).

102. McDiarmid, *supra* note 5, at 280-92.

103. *Id.* at 250-56.

104. *Id.* at 274-80.

105. Although clinical curricular expenditures as a percentage of overall law school budgets declined from 1977-1978 to 1987-1988, the disparity between clinical and nonclinical curricular costs holds true to a diminished extent. The relative cost disparity is attributable to low student-faculty ratios. *Id.* at 254-56, 281-86.

106. *Id.* at 286-92.

practices. That discovery affords a means of revising conventional roles, techniques, and results. The attempt to revise the clinical project is exemplified here by Steven Hartwell's *Moral Development, Ethical Conduct, and Clinical Education.*[107] In this work, Hartwell draws directly from the clinical setting to frame an investigation into the teaching and practice of ethics.[108] Beginning with an explication of Lawrence Kohlberg's five-stage theory of moral development, he struggles to understand and rectify the ethically problematic behavior demonstrated initially by an individual student and subsequently by a group of twenty-four students.[109] These *wrong* results provide the starting point for Hartwell's revisionist project.

To his credit, Hartwell does not engage in the speculative exercise of casually engrafting Kohlberg's categories of analysis onto a clinical backdrop. Rather, he proceeds gingerly, conceding the tentative nature of his hypotheses. These provisional hypotheses follow from his observation that students engaging in moral reasoning are acutely vulnerable to the persuasion of authority figures.[110] Commenting on this vulnerability, Hartwell remarks: "when confronted by such perceived authority represented by their clinic supervisor, [students] shift responsibility for the consequences of their actions to the authority."[111]

Distressed by student dependence on and deference to the ethical commands of perceived authority figures in the clinical context, Hartwell resolves to experiment with alternative pedagogical methods to spur moral development. That resolution is fundamental to the refashioning of dominant clinical practices. In its absence, students maintain an

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107. Hartwell, *supra* note 5.

108. *Id.* at 131-33.

109. The challenged group behavior occurred during an interviewing and counseling exercise regarding a party to a small claims court rent dispute. To test individual stages of student moral development, Hartwell "told each student to advise the client to lie under oath that she had paid the rent." Twenty-three students acquiesced, though not without widespread misgivings. *Id.* at 142.

Hartwell modeled the above exercise on Stanley Milgram's experiments testing obedience to authority. *See* S. MILGRAM, OBEDIENCE TO AUTHORITY (1974). Adoption of Milgram's methodology raises disquieting issues of deception and psychological harm warranting elaboration. *See* H. KELMAN & V. HAMILTON, CRIMES OF OBEDIENCE: TOWARD A SOCIAL PSYCHOLOGY OF AUTHORITY AND RESPONSIBILITY 148-66 (1989); Dworkin, *Must Subjects Be Objects?,* in ETHICAL ISSUES IN SOCIAL SCIENCE RESEARCH 246-54 (T. Beauchamp, R. Faden, R. Wallace, L. Walters eds. 1982) [hereinafter ETHICAL ISSUES]; Elms, *Keeping Deception Honest: Justifying Conditions for Social Scientific Research Stratagems,* in ETHICAL ISSUES, *supra,* at 232-45; Macklin, *The Problem of Adequate Disclosure in Social Science Research,* in ETHICAL ISSUES, *supra,* at 193-214.

110. *Compare* Neumann, *A Preliminary Inquiry into the Art of Critique,* 40 HASTINGS L.J. 725 (1989).

111. Hartwell, *supra* note 5, at 144.

overweening trust in clinical authority[112] and thus fail to develop the capacity for autonomous moral reasoning. As Hartwell points out, "[t]o act ethically, students had to be able to defy an immediate figure of authority in order to follow abstract rules."[113]

To encourage student autonomy and faculty self-criticism[114] in clinical and professional responsibility settings, Hartwell mapped a curriculum utilizing Robert J. Condlin's learning mode.[115] Implementing this model involved the recording and transcription of interviews, journal commentary, and assertiveness training. The integration of these activities facilitated the translation of clinical skills into moral action.[116]

Having secured this translation, Hartwell returns to theoretical rumination on the *wrong* results of his clinical "Milgram" exercise. After reviewing the composite strands of the exercise, he decides to reexamine student interpretation of moral problems and execution of moral conduct. The setting for this reexamination of moral advice and reasoning are courses in Interviewing and Counseling, and Professional Responsibility.[117]

Although Hartwell infuses both courses with Kolbergian theory, Interviewing and Counseling is the more reliant. Differential reliance is associated with the importance of matching and mismatching lawyer/client moral stages of development in counseling. Hartwell contends that effective counseling demands the close matching of lawyer/client moral reasoning.[118]

In seeking to match lawyer/client moral criteria and guidelines, Hartwell arguably stumbles back into interpretive privilege. Because he does not pause to reconcile Kolbergian epistemology with alternative categories of class, gender, and race-based knowledge,[119] his misstep risks

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112. Hartwell observes: "As clinic instructors, we ask students to *trust* the legitimacy of the skills we teach." *Id.* at 146 (emphasis added).

113. *Id.* at 144.

114. Hartwell confesses: "Whatever my good intentions, I was teaching a model of domination and manipulation that was exactly counter to my intentions." *Id.* at 149.

115. *Id.* at 147-49. *See, e.g.*, Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade*, 33 J. LEGAL EDUC. 604 (1983); Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986); Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981).

116. Hartwell, *supra* note 5, at 149-50.

117. *Id.* at 151-54.

118. *Id.* at 154-61.

119. For a discussion of alternative categories of knowledge, see C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982); C. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFFALO L. REV. 11 (1985); *On In a Different Voice: An Interdisciplinary Forum*, 11 SIGNS: J. WOMEN CULTURE & SOC'Y 304

the reproduction of lawyer/client hierarchy and the intrusion of lawyer power. Hartwell's claim to ethical neutrality may come too late and fall too weak to save his alternative paradigm from the "twin evils of domination and manipulation" he so forcefully assails.[120]

VI. CONCLUSION

The works surveyed here represent a field of scholarship in diverse and fruitful evolution. While the gradual emergence of alternative clinical paradigms does not signal the overturning of dominant clinical practices, their enlarged presence furnishes vigorous ideological competition. At stake is the ongoing meaning of the clinical project.

It behooves us to join the interpretive contest over that meaning, whether the contest is centered on client identity, neutral technique, and *right* results or on additionally rich subjects of clinical pedagogy and scholarship. Hesitation to engage in full-fledged debate carried out in scholarship jeopardizes our collective right to define our place in the academy.

(1986).

120. *Id.* at 161.