

Introduction

Clinical teachers in the U.S. generally advocate continuous learning for legal professionals, and claim to teach law students practices supporting that project.¹ As *teaching* professionals, however, do we practice and model the continuous learning we promote for the legal profession? How closely does our “espoused theory” match our “theory-in-use”?² Many of us strive to continue our individual learning, through reading, observation, reflection and scholarship. Teaching, however, is a social function, at a minimum involving two people, in the social context of supervision, seminars, clinics, law schools – and ultimately the legal profession and surrounding communities.³ We advocate change in the design and content of legal education; we push law schools to become learning organizations that can absorb and develop the critiques most recently laid out in [Carnegie, Best Practices].⁴ Yet we have paid scant attention to nearly three decades of research aimed at understanding what enables organizations – groups of people – to learn collectively, to do a better job at their joint endeavors. In our clinical teaching enterprises, we may also have neglected our own development as learning organizations – distinct from our development as learning individuals.

In *Educating Lawyers: Preparation for the Profession of Law* (hereafter “Carnegie,” “the Carnegie Report” or “Educating Lawyers”), the authors call loftily for law school faculty to attend to their own learning, to develop “a more balanced and

¹ [Need some citations here from clinical teaching literature]

² Chris Argyris and Donald A. Schön, *Organizational Learning II* (1996)(explaining their concept of the distinction between the theory-in-action someone professes to use and the one underlying their actual behavior. See pp. - *infra*.)

³ [Demystifying Organizational Learning at 79 (and maybe earlier as well)]

⁴ [citations, e.g. Newman and other critiques calling for change]

integrated legal education that can address more of the needs of the legal profession than the current model,” and to deploy insights gained recently in “the learning sciences.”⁵

This project will require a more coherent group effort – perhaps even a reconceptualization of legal education as a collective endeavor – than the Carnegie authors appear to recognize. They acknowledge the likelihood of “resistance to change” among comfortable law school faculties [202] but leave others to explore the means for dealing with resistance and undertaking that profound collective change.⁶

This paper suggests that, as clinical teachers, we can take up that baton. We have preached the tenets of “reflective practice” and aspired to teach “reflective practitioners” at least since Donald Schön’s keynote speech at a workshop during the AALS General Meeting in 1992.⁷ We (clinical teachers) have cited Schön in paper after paper, and touted the benefits of reflection to our students, as we assign them journals, observations, critiques and other activities aimed at inspiring them to review and think about their new

⁵ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) [San Francisco: Jossey-Bass] (hereafter “Carnegie” or “*Educating Lawyers*”) at 201-202.

⁶ The Best Practices project takes a more pragmatic (and prescriptive) approach to the content and process of a revitalized legal education, using insights from the social and cognitive sciences. Roy Stuckey and others, *Best Practices for Legal Education: a Vision and a Road Map*, (2007) (hereafter “Best Practices”); the Carnegie report refers often and approvingly to the project (developing virtually simultaneously). But while Best Practices offers assistance in the “what” and “how” to deliver in improved professional education, it does not really address the “how” for the change process that could enable that teaching to flourish and evolve in our current institutions.

⁷ Schön’s book, *Educating the Reflective Practitioner*, served as the base from which he adapted his remarks, an edited version of which appeared as *Educating the Reflective Legal Practitioner*, 2 *Clin. L. Rev.* 231 (1995). See Donald A. Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (1987, 1990). In *Productive Reflection at Work*, Docherty et al. note that reflection is such an attractive concept it has been abused by superficial applications; “Reflection is a complex, multifaceted and messy process that is tamed and domesticated at the risk of destroying what it can offer.” (at 23-24)

experiences in practice.⁸ Yet our own practice risks becoming more reflexive than reflective.⁹

Donald Schön’s speech to law teachers still seems fresh, nearly twenty years after he delivered it, especially in light of Carnegie’s and other descriptions of legal education. Schön himself noted the parallel application of his theories about professional learning to the profession of teaching: "teaching is a profession itself, and so one focus of our research needs to be the observation and analysis of those who practice teaching."¹⁰ He offered a critique of the teaching practice in U.S. legal education, at the same time as he offered observations on the process of learning to be a (legal) professional. Every one of the theoretical and practical constructs described in this paper has this double-life – it serves equally to describe potential for developing our teaching practice and for helping our students develop lawyering practices.

Schön went further, however. His work on reflective professional practice dovetailed with his concurrent work in collaboration with Chris Argyris, resulting in a number of books that inspired numerous others investigating organizational (collective) learning.¹¹ Schön’s own work concerned the development, across different professions, of experiential learning and methods for teaching tacit knowledge. Together, he and

⁸ [citations such as Richard Newman, “Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education,” 6 Clin. L. Rev. 401, ns. 1-5; + citations about journaling and other writing and reflection]

⁹ Obviously, I use the term “reflexive” here to mean action taken automatically, as if physically by reflex -- something like the opposite of “reflective.” The literature, however, contains many uses of “reflexive” and “reflexivity” as if they were synonymous with “reflective.”

¹⁰ 2 Clin. L. Rev. at 247.

¹¹ See, e.g., Donald A. Schön & Chris Argyris, *Theory in Practice: Increasing Professional Effectiveness* (1974, 1992); Donald A. Schön & Chris Argyris, *Organizational Learning* (1978) and *Organizational Learning II* (1996).

Argyris developed theories about how people engaged in collective enterprises can learn to work more effectively by uncovering the tacit or hidden reasoning behind their behavior. The difficult task of identifying unspoken “know-how” connects both lines of work. Applying their theories to our own teaching -- and investigating the research by their successors on institutional change and collective learning -- can enable us to bring our “walk closer to our talk,” so as to develop clinics, if not law schools, flexible enough to respond to changes in the legal profession, legal institutions, law students, and knowledge about how humans learn. It can equip us to implement action-research in our teaching practices.¹²

This paper introduces this body of work for further exploration, summarizing a network of concepts for supporting informed action. Fully fleshed-out, these concepts represent the life-work of scholars devoted to research leading to results in the world – that has, in Chris Argyris’s words “implementable validity.”¹³ Although Schön died in 1997, Argyris has continued his own prolific writing, along with his work teaching and

¹² The terms “action research,” as well as “action learning” and “action science,” originate in the work of Kurt Lewin, a mid-twentieth-century social psychologist focused on resolving workplace conflict, whose research insights have influenced several generations of social scientists since. See Bernard Burnes, *Kurt Lewin and the Planned Approach to Change* (2006), in Joan V. Gallos, (ed.), *Organization Development* [San Francisco: Jossey-Bass] pp133-157; Chris Argyris, *Knowledge for Action* (1993) at [3-6?]. Argyris briefly was a colleague of Lewin’s shortly before Lewin’s untimely death in 1947[? Check Smith and date]. Joseph A. Raelin notes that since Lewin’s work, a “number of epistemological technologies have evolved in the past fifty years bearing the term *action* as part of their label. . . the common basis for most of these technologies is that knowledge is to be produced in service of action.” “*Action Learning and Action Science: Are They Different?*” in *Organization Development* (Joan V. Gallos ed. (2006)[San Francisco: Jossey-Bass] Raelin goes on to distinguish the behavioral approach of “Action Learning” developed primarily as a European technology, from the “Action Science” he ascribes to Argyris in the U.S. He says Argyris’s work reaches another level at least related (in his view) to Gregory Bateson’s “Level III” learning – a metalevel. Raelin at 219. European and Australian scholars built off the work of Reg Revans, who pursued Lewin’s ideas in industrial workplaces. His successors have brought his model back into more diverse organizations as “action learning” for adaptive organizations. See, e.g., David Bourd, Peter Cressey & Peter Docherty (Eds.) (2006), *Productive Reflection at Work* [Oxon, England:Routledge]. [See other Revans tributes]

¹³ *Reasons and Rationality* at 12-13. Argyris complains that scholars and researchers privilege description at the expense of implementation; they study what is, rather than what works.

consulting, in one of the most influential careers in organizational education and change management.¹⁴ Many have built upon these theories in other fields, notably in organizational behavior and in the education of teachers.¹⁵

One branch of that inheritance features theories and strategies for producing “learning systems” (Schön’s term) or “learning organizations” (the talismanic title adopted by hopeful leaders in the last decade) or “productive reflection” (a term proposed to succeed the overused “learning organization.”).¹⁶ Besides Argyris’s own work, Peter Senge’s work, *The Fifth Discipline*, stands out among these for its influence and his follow-up collaborations that reflect on-going experience implementing his theories.¹⁷ The appeal of these ideas – and perhaps the zeal with which they have been promoted in business fields – has led to a proliferation of interpretations, in what one group of authors calls “multiple parochial disciplines.”¹⁸ Recent work on integrating those ideas and

¹⁴ Argyris taught for more than 30 at Harvard as a professor of education and organizational behavior and before that for 20 years (1951-71) at Yale’s School of Organization Management; he is the author or editor of literally hundreds of books and articles including: *Teaching Smart People How to Learn* (2008, reprinted from 1991); *Reasons and Rationalizations: the Limits to Organizational Knowledge* (2004) See Mark K. Smith (2001), *Chris Argyris: Theories of Action, Double-Loop Learning and Organizational Learning*, at <http://www.infed.org/thinkers/argyris.htm> (visited 7/7/10) [List more - at least all the pieces cited infra. -- here].

¹⁵ E.g. Senge, [potentially huge footnote here; how much to include? Argyris has influenced every branch of org studies, teachers, medicine, engineering etc]

¹⁶ See Donald A. Schön, *Beyond the Stable State, Public and Private Learning in a Changing Society* (1973); [gazillion references to “learning organizations” eg *Harvard Bus. Rev.*]; David Boud, Peter Cressey & Peter Docherty, *Productive Reflection at Work*, (2006) [Abingdon, Oxon, England: Routledge] (hereafter “Productive Reflections”)

¹⁷ Peter M. Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* (1990, 2006); Peter M. Senge, Nelda M. Cambron-McCabe, Timothy Lucas & Art Kleiner, *Schools that Learn: A Fifth Discipline Fieldbook for Educators, Parents and Anyone Who Care About Education* (2000); Peter Senge, Art Kleiner, Charlotte Roberts & Rick Ross, *The Fifth Discipline Fieldbook: Strategies and Tools for Building a Learning Organization* (1994)

¹⁸ Raanan Lipshitz, Victor J. Friedman & Micha Popper, *Demystifying Organizational Learning* (2007) [Thousand Oaks CA: Sage] at 6 (hereafter “Demystifying”); David Boud, “Productive Reflection” at n. 9 [More here – potentially a very long footnote, capturing proliferation of theories as described in Austin &

assessing their empirical support, however, provides “actionable knowledge,” useful to clinical teachers and potentially to law faculties generally, as they respond to the recommendations of the Carnegie report.¹⁹

This paper first highlights familiar aspects of Schön’s reflective practice theories and outlines models Argyris developed more fully to implement organizational learning suited for recurring but “wicked” problems. The next section summarizes approaches taken by Senge and others who have tried integrating the various theories to provide models for organizational or group learning. The paper then relates these models to clinical faculties as organizations and proposes methods by which clinical teachers can develop a learning practice, with implications for helping larger law school systems adapt to the changing profession. The final section names just a small sample of reasons for increasing urgency in undertaking the change project.

Since the advent of CLEPR and modern clinical teaching in U.S. law schools, clinical teachers have used groups to enhance learning – at conferences, workshops, in teaching-rounds, and in the New York Law School clinical theory workshop and its progeny.²⁰ At their best, these efforts share the benefits of interactive teaching, giving participants access to more ways of thinking or framing teaching and practice issues, cross-fertilizing from the perspective of different experiences. Action-learning and action-science theorists may contribute to such traditions. However, these group activities further individual learning, rather than changing any organization, even a clinic.

Bartunek’s Chapter 4 in Gallos: Theories and Practices in Organization Development + Carnegie note re multiplicity of related disciplines]

¹⁹ See Educating Lawyers, supra at n.5; Demystifying supra at n.13. Argyris uses the term “actionable knowledge,” saying his lifelong goal is to produce and disseminate it. Knowledge for Action at [preface]

²⁰ [citation about NYLS offspring? And to Elliott Milstein and Sue Bryant’s Rounds article]

Individual teachers return to their schools, clinics, courts, and classes, and act on their learning individually. Except insofar as they exert individual influence, their home institutions are not affected.²¹ The project of becoming a learning group entails an on-going collective process, in which the group itself is the subject and the teacher.

Donald Schön’s Reflective Practice – Where are we Now?

Schön specifically critiqued the “science of law” approach behind the Langdellian method, for epitomizing the “epistemology of technical rationality.”²² This epistemology, Schön said, depends on three (false) dichotomies: means and ends; research and practice; thinking and doing.²³ Such polar constructs inhibit educators from appreciating and teaching “knowing-in-action,” the tacit knowledge that professionals of all types use to solve problems. Schön cited many precursors in the effort to characterize this “know-how” that operates largely unseen in the exercise of professional judgment.²⁴ In the thirty years since he first tried, cognitive scientists have made strides in parsing at least the *processes* that distinguish expert responses to professional problems from those of novices; these processes seem to apply generally, without regard to the particular

²¹ Arguably, the committees that set instrumental standards, such as the accreditation standards, do influence the path of legal education. But even an heroic group effort such as the Best Practices project – while it no doubt helps other individuals – cannot make other groups (besides the authors) into continuously learning organizations.

²² 2 Clin L Rev at 235-237.

²³ Researchers who study “wisdom” date discussions of these splits – essentially the theory-practice debate – at least as far back as Plato. See Robert J. Sternberg (Ed., 1990), *Wisdom: Its Nature, Origins and Development* [Cambridge, England: Cambridge University Press] (hereafter, “Wisdom”) (collecting and describing research on wisdom growing out of philosophical, approaches, those informed by folk concepts, and approaches based on psychodevelopmental concepts).

²⁴ Donald A. Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*, (1987) [San Francisco: Jossey-Bass] at 25. The Carnegie authors summarize the “three apprenticeships” that make up legal education as “knowledge, know-how and ethical judgment,” using “know-how” to signify what they also call the “apprenticeship of practice.” Carnegie at 81. Practice, they say, “requires not the distanced stance of the observer and critic but an engagement with situations.” Id. at 82.

profession.²⁵ And yet, in teaching legal professionals, very little has changed in order to incorporate these ideas into the curriculum.

Schön's reflective-practice project grew out of his observation that, "we exhibit [tacit knowledge] by the competent behavior we carry out but we are unable to describe what it is we do. Or if we do give descriptions, they are often wrong."²⁶ Arriving at the question whether we can "learn what [we] know," he answers that we have to learn through "a research process" so that we can "solve this problem of describability . . . in a way that allows other people also to learn."²⁷ Even in routine situations, this involves "put[ting] oneself on the felt-path of action in order to discern what one knows-in-action."²⁸

Besides learning to describe and convey tacit knowledge, Schön focuses on the more significant task of learning in situations that do not respond as expected to the deployment of tacit knowledge – to the "surprising situations" that likely dominate practice, and certainly dominate good teaching.²⁹ The dichotomies embodied in the

²⁵ See, e.g., Robert J. Sternberg & Talia Ben-Zeev, *Complex Cognition: the Psychology of Human Thought* (2001) [Oxford: Oxford University Press] at 292-303 (describing cognitive distinctions between novice and expert professional thought); Carnegie at 115-119.

²⁶ 2 Clin L Rev at 243. Schön cites an example from an MIT Ph.D. thesis showing experienced jugglers gave descriptions of their juggling at variance from their process revealed by video-tapes. "It turned out often that people would say they used one kind of motion when in fact they were using a very different one. They were not lying. They just did not know." Id. The expert's unawareness of her own process reappears in the discrepancy between "espoused theory" and "theory-in-use" that is the foundation for Schön's and Argyris's work on organizational learning. See section *infra*.

²⁷ Id. at 247. This leads to the paradox Schön says is best represented by Socrates' discussion with Meno about whether Meno understands virtue. It culminates in Meno's frustration at not being able to look for something he knows nothing about, so that "Even if you come right up against it, how will you know that what you have found is the thing you didn't know?" Id. at 249 (citing, Plato, *The Meno*, in Plato: *Protagoras and Meno* (W.K.C. Guthrie trans., Penguin Books 1956)).

²⁸ Id. at 244. Schön describes this research process as: observing the actual behavior, then reflecting on it and constructing a description of it, that then is tested against further behavior.

²⁹ Id.

“epistemology of technical rationality” fail to serve a professional who encounters “indeterminate zones of practice [characterized by] *uncertainty, uniqueness* and *conflict*.”³⁰ Schön as much as argues that virtually all law practice occurs in these zones. A *zone of uncertainty* involves elements from many realms, “a situation which doesn’t make sense,” the kind John Dewey called a “problematic situation” or Russell Ackoff called “a mess.”³¹ A *unique situation* is just that – unseen before or since, and falling outside known categories or analysis. *Conflict* raises indeterminacy where the professional cannot “adjust means to ends” in an exercise of technical rationality, because competing ends or vagueness make it difficult to tell what end to try and achieve.³² In all of these situations, the dichotomies blur and the practitioner must “carry out a certain kind of research or at least inquiry into the practice situation. . . .”³³

The resulting “conversation with the situation” is what Schön calls “reflection-in-action.” Reviewing Schön’s work on reflective practice, and some of his work with Chris Argyris, Richard Newman nicely summarizes the concept of reflecting-in-action or having a metaphorical conversation with the situation, pointing out that this “is not a

³⁰ Id. at 237 (Italics added). These dichotomies are echoed in the dis-integration or “decomposing” of the three apprenticeships of legal education identified by Carnegie.

³¹ Id. At 238. Schön delightfully points out that such a situation causes problems due “not [to] too little information, but too much.” The device for “getting rid of” excess information is “a theory, because given a theory you know what to pay attention to and what to ignore.” He illustrates the difference between a problem and a “mess,” with the example of building a road. It is not a problem that can be solved by technical rationality (engineering) until the builder has decided “what road to build” – addressing issues of topography, geography, economics, environment, ecology and finally politics. In other words, the builder must transform this “mess” into an engineering problem by resolving the issues entailed in locating the road. Id. Schön notes Dewey recognized this “construction of a ‘problem’ is an attainment” – the definition of the problem determines its resolution.

³² Id. at 239-241.

³³ Id. at 241.

time-out for meditation. Instead ‘the reflection. . .takes place in the midst of action, . . . and it need not employ the medium of words.’”³⁴ It consists of a series of experiments, in which the practitioner tries something and the situation “talks back,” generating new learning, in a process Schön compares with jazz improvisation.³⁵

Newman observes particularly that the “‘inquirer’s conversation-like transaction with the materials at hand’” may be all or part unconscious.³⁶ This key point distinguishes reflection-*in*-action from the reflection-*on*-action that occurs after the fact. In clinical teaching, we often lose this distinction in the short-hand version of “reflective practice” consisting of after-action-reviews.³⁷ For Schön, then, reflection-*in* and reflection-*on* are two different forms of inquiry or “research” conducted by the professional when she encounters a surprising situation or one in which her deployment of tacit knowledge or “knowing-in-action” does not lead to the expected outcome.

After summarizing Schön’s approach, Newman pursues his own critique of legal education and legal scholarship, for failing to match other professions in preparing for and supporting practice. He misses the opportunity, however, to apply Schön’s work to legal education in that process. He follows Schön and Argyris a few steps further along the path from reflective practice toward the “learning organization” or learning community, focusing on their critical point that “[w]hat professionals think they do and

³⁴ Id. (ellipses in Newman’s quotation of Schön).

³⁵ 2 Clin L. Rev. at 244; Educating the Reflective Practitioner, at 30.

³⁶ Id.

³⁷ [cite some articles that use “reflection” this way, including some on teacher activities and well as student activities]

what they actually do are often entirely different.”³⁸ This leads to Newman’s brief discussion of their central insight: the gap between “espoused theory” and “theory-in-use.”³⁹ He reports on that, however, without elaborating on its implications for teachers themselves.

Most of Argyris’s work with Schön, and subsequently on his own, deals with that gap: its consequences; its causes; and possibilities for its amelioration -- i.e. for achieving more congruence between espoused theories and the ones underlying actual behavior. The problem Schön identified for educating reflective practitioners – the need to conduct research so as to “learn what we know” – becomes exponentially more complex when we are working in groups. Schön and Argyris concluded that people’s tacit expertise at interacting with others makes it very hard for them to recognize and identify the reasoning that drives their behavior. The result is a gap between what they say (and think) is their reasoning and the actual reasoning that leads them to do what they do in groups. The wider the gap, the more confusion, multiplied by the number of group-members each with his or her own gap.

Based on decades of observing groups in their efforts to change, Argyris has applied, refined and extended the basic theories he and Schön developed. He collated much of this work in, *On Organizational Learning* (1992, 1999) [Oxford: Blackwell].

³⁸ Newman supra n. 17, at 409

³⁹ Id. Newman actually says they “differentiated between what they called ‘theories of action’ and ‘theories-in-use’” and he complains about the term “theory of action” being confusing, saying they should have called it “professed theory.” Id. In fact, however, Argyris and Schön used “theory of action” as a *general* term that covered two kinds: the espoused and the in-use. Mark K. Smith, *Chris Argyris: Theories of Action, Double-loop Learning and Organizational Learning* (2001), the encyclopedia of informal education, www.infed.org/thinkers/argyris.htm [visited 7-7-10]. They specifically *did* identify “espoused theory” as one of the two, and “theory-in-use” as the other.

His intervention scheme can be seen as a step after reflection-*on*, a kind of meta-reflection – applicable to or by legal educators at any institutional level.⁴⁰

“But You *Don’t* Go!” – The Recurring Problem of “Curricular Change” in Law Schools as an Oxymoron⁴¹

The Carnegie Report commented on the durability of the deficiencies it identified, noting that Karl Llewellyn described them in *The Bramble Bush* in 1930, when he warned first year students that law school aimed to “lop off [their] common sense, to knock [their] ethics into temporary anesthesia” along with their “sense of justice,” in pursuit of precise thinking, cold analysis, and the ability to “work within the body of materials that is given. . . .” [Carnegie at 78, quoting Llewellyn 1996 at 116] Llewellyn went on to tell beginning lawyers that such “a mere legal machine” is not safe, nor “even a good lawyer,” because it “lacks insight and judgment. It lacks the power to draw into hunching that body of intangibles that lie in social experience.” *Id.* These half-lawyers (*sapiens*, he says without the *homo*) would be missing Schön’s “knowing in action,” the tacit knowledge that defines professional practice. But Llewellyn suggested only that the “machine” would regain its humanity – on its own at some unspecified point.

The Carnegie authors identify “blend[ing] the analytical and practical habits of mind that professional practice demands [as] . . . the most complex and interesting pedagogical challenge in the preparation of legal practitioners.” [at 97] The chapter entitled “Bridges to Practice” [pp. 87-125] offers a menu of ideas and resources that

⁴⁰ [Note comparing Gregory Bateson’s Levels of Learning framework – Paul Tosey paper, Eric Bredo paper – and citing Argyris and Schön acknowledging Bateson’s influence. Tosey calls it “metalearning,” at p.4]

⁴¹ Gilbert & Sullivan, “H.M.S. Pinafore” (to the constabulary force that has marched around, singing of its intentions to “go” and confront. . . .)

Lyman – Draft 9-14-10 Practicing What We Teach (NYLS Clinical Theory Anniversary)

could be used to ground educational design in learning theory.⁴² None of these, however, provides a framework for the overall project of meeting the “most complex and interesting challenge.” The Carnegie authors attribute the intractability of these problems in part to the failure to produce a “worthy pedagogical theory of legal practice on which skills training might be founded.” Notwithstanding efforts in fifteen years of the *Clinical Law Review*, they say, Llewellyn and Jerome Frank “still await their Langdell.” [at 94]⁴³

Perhaps, however, the missing theory explains not legal practice but the processes that facilitate or obstruct learning and change in human institutions such as law schools (or even law school clinics). Opening the door to change-theorists in many fields outside the legal academy could lay groundwork for reframing the problem – an approach Donald Schön promoted in the last phase of his work, dealing with intractable public policy questions.⁴⁴ A detailed account of such theories must await a much longer format, but this paper introduces a sampling.

Chris Argyris: Confronting the Depth of Defensive Reasoning, and Addressing “Wicked” Problems Through Double Loop Learning

⁴² They see hope in the Best Practices project, and use their chapter to supplement its reliance on “the learning sciences,” supporting what they see as its call for “context-based education.” Carnegie at 95 (citing Stuckey and others at 109). Surprisingly, the Carnegie authors follow a widespread practice in legal education scholarship, by seldom straying beyond the literature published in law-related books and journals. Gary Blasi is one of the few exceptions who delved deeply enough into fields of cognitive science and learning theory to expand our fields of reference. See “What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory.” 45 *Journal of Legal Education* 313-397 1 (vol. 3, 1995) Many authors, even those heralding insights gained from a particular theorist outside of the legal profession, fall back on citations to the secondary and even third level versions of supporting work, found in our familiar publications. [citations to articles? Newman, Louise Howells on Perry, some of the more recent learning theory pieces – check the articles on disability representation] While it is daunting even to set foot in these other fields, we risk losing context and meaning in the translation – a kind of peephole effect on our “vision.”

⁴³ See also [McCrate, Harry Edwards, other critics of status quo]

⁴⁴ See Donald A. Schön & Martin Rein, (1994) *Frame Reflection: Toward the Resolution of Intractable Policy Controversies* [New York: Basic Books]

Effectiveness in groups (and of groups) depends on a capacity to change behavior so as to improve outcomes or consequences.⁴⁵ Argyris identifies himself as a researcher and practitioner trying to alter behavior by “understand[ing] the meanings people create when they deal with each other.”⁴⁶ He describes his work this way:

The experientially oriented theorists have tended [toward an approach] . . . that might be called the individual and social construction of reality. Donald Schön and I have attempted to build on this approach in several ways. We have suggested there are important differences between the meanings created when people espouse their views and when they act them out. Moreover, individuals are often unaware of these differences. They can best be discovered by observing people in action and inferring meanings embedded in their actions. Finally, we have suggested that the source of meaning is in the theories of action people use (not those they profess to hold), and that the learning systems of society reinforce these theories. Hence, behavior change that is more than a “gimmick” requires changes in the theories that people use in the learning systems of the organization. . . .

[Recent research results] suggest that equally, if not more, fundamental to the theories of action that people use are their reasoning processes. Reasoning processes are those activities by which we create premises which are assumed, or are proven, to be valid and from which we draw conclusions about how to act. Popper (1969) has suggested that it is these reasoning processes that are at the core of how individuals construct reality.⁴⁷

These are the premises underlying the models Argyris and Schön developed to describe theories that govern learning – which they called Model I and Model II --

⁴⁵ [Need broad definition of organization: people interacting toward a common end etc etc see OD intro]

⁴⁶ On Organizational Learning, at 67. Argyris says, “[c]ognitive psychologists, and sociologists, many ethnomethodologists, and existentialists have been primary contributors to this line of inquiry,” which he contrasts with behavior modification favored by learning theorists. Id.(citations omitted).

⁴⁷ On Organizational Learning at 67 (citing K.R.Popper (1969) *Conjectures and Refutations: the Growth of Scientific Knowledge* 3rd edn rev., [London: Routledge & Kegan Paul] In other words, one cannot just examine the behavioral manifestations to figure out the theory-in-use. One must put the behavioral manifestations on the table and ask what reasoning got the person to that point.

and the deep defensive reasoning people employ to justify adhering to the status quo.⁴⁸

Argyris defines learning as happening either when a group achieves what it intended, or “when a mismatch between intentions and outcomes is identified and corrected.”⁴⁹ For the mismatch situation, he identifies two significant variations in this learning process. “Single-loop” learning takes place when an error (mismatch) “is detected and corrected without questioning or altering the underlying values of the system (be it individual, group, inter-group, organizational or interorganizational).” Error-correction takes the form of action. “Double-loop” learning, on the other hand, takes place when the learner responds to the error by “first examining and altering the governing variables and then the actions”⁵⁰ [Argyris and many of his explicators use a simple diagram to illustrate this; I would like to reproduce it here. In it, “Governing variables” lead to

⁴⁸ Argyris & Schön, together and separately, worked and re-worked their theories over the course of their careers, and published many works that encompassed the basic ideas, packaged to attend to different details or address different audiences. In addition, each and together, they are the subjects of literally hundreds (maybe thousands) of other summary, distillations and synopses that can illuminate (though sometimes obfuscate) my own outline here. [cite some and/or add bibliography to article]

⁴⁹ Argyris observes that

Organizations do not perform the actions that produce the learning. It is individuals acting as agents of organizations who produce the behavior that leads to learning. Organizations can create conditions that may significantly influence what individuals frame as the problem, design as a solution, and produce as action to solve a problem. Individuals, on the other hand, may also bring biases and constraints to the learning situation that are relatively independent of the organization’s requirements.

On Organizational Learning at 67-68.

⁵⁰ On Organizational Learning. at 68. The “loop” metaphor comes from electrical engineering; both Argyris and Schön frequently use the example of a thermostat to illustrate single- and double-loop learning:

The thermostat is programmed to detect states of “too cold” or “too hot,” and to correct the situation by turning the heat [in DC it would be the air conditioning!] on or off. If the thermostat asked itself such questions as why it was set at 68 degrees, or why it was programmed as it was, then it would be a double-loop learner.

Id. at 68; *see also*, 2 Clin. L. Rev. at []

“Actions” which lead to “Consequences,” leading either to “match” or to “mismatch.” In single-loop, the arrow runs from mismatch back to “Actions,” whereas in double-loop the arrow runs from mismatch all the way back to “Governing variables.”]

Argyris contends that people and institutions overwhelmingly use, and researchers overwhelmingly study, single-loop changes. He acknowledges that “one of the features of organizations as a social technology is to decompose double-loop issues into single-loop issues because they are then more easily programmable and manageable.”⁵¹ Indeed, single-loop processes are appropriate for everyday problems in “get[ting] the job done,” and can usefully co-exist with double-loop processes in an organization. But, he says, deep, complex, or *recurring* issues call for double-loop process to have any hope of developing effective, implementable solutions.⁵²

This description readily applies to organizations that create and distribute legal education, as well as those manufacturing and selling widgets.⁵³ Anyone serving on a law faculty longer than three years can recall at least one effort to

⁵¹ On Organizational Learning. at 69.

⁵² Id. Argyris points out that the underlying action theories -- Models I and II -- are not opposites of each other but can support different kinds of learning to solve different kinds of problems. R & R at 10. *See* section [] below.

⁵³ Argyris moved back and forth, over his career, between academia and consulting. He was the quintessential “scholar-practitioner,” combining consulting with research in many kinds of organizations. Although he often worked with and wrote for businesses, particularly consulting firms that worked with businesses, he applied his theories to government and non-profit organizations as well. *See* Reasons and Rationalizations (addressing social science scholars as a kind of collective enterprise). Many others have used his and related theories in settings from corporate offices to NGOs and community organizing. *See, e.g.,* Didier Bloch & Nora Borges, “Organisational learning in NGOs: an example of an intervention based on the work of Chris Argyris,” *Development in Practice*, vol. 12, nos. 3 & 4 August 2002 [? Mark K Smith on threads to Freire and Illyich ? he really says they were just contemporaries with related theories, in his Schön article]

study and “reform” the legal writing program [other e.g.s of perennials? the first year curriculum? The exam-giving or evaluation system? The faculty hiring process? Pro bono development? Your Pet Peeve Here]. The rhetoric differs from new-product development at Ford/Apple/Merck, but the error-correction mind-set is the same. Furthermore, a parallel process takes place when Clinic students are learning about professional practice. Making visible the distinction between action-correction learning and assumption-examination learning could avoid some frustrating supervision encounters; clinical teachers may be striving to inspire students to challenge their underlying assumptions, while students focus on “not making a mistake.” At the institutional level, the Carnegie report can be seen as a double-loop challenge.⁵⁴

Model I and Model II describe types of theories-in-use in organizations (and individuals) that either inhibit or facilitate double-loop learning.⁵⁵ [It’s actually easier to represent these models with tables]⁵⁶

Model I characteristics are:

Governing Variables

⁵⁴ [Need some sources here – Sternberg? Docherty? Senge? – for universality of these patterns in human institutions *and* acknowledgment of some differences that, in my opinion, make our more diffused institutions harder to deal with. This is important, as I can hear the hooves pounding and the cavalry bearing down on the notion of applying all this org dev “business” stuff to our exalted academic kingdoms]

⁵⁵ Argyris emphasizes the importance of the *reasoning or theory* underlying the action, not just the gap between what people say and what they do. “Social scientists have focused for many years on the inconsistencies between espoused values and actual behavior. What has hardly been discussed are the values, or the theory-in-use, that explain the inconsistencies, i.e., that show how the inconsistent is consistent.” On Organizational Learning at 71

⁵⁶ My rendition of these charts amalgamates several of Argyris’s own versions, which do not vary greatly from each other, but the most accessible characterizations are not all together. See Chris Argyris Reasons and Rationalizations (2004) at 8-9; On Organizational Learning at 180; Chris Argyris, R. Putnam & L. McLain Smith (1985), Action Science Concepts, Methods, and Skills for Research and Intervention [San Francisco: Jossey-Bass], cited in Laine Anderson (1997), Argyris and Schon’s Theory on Congruence and Learning [on line]. Available at <http://www.scu.edu.au/schools/gcm/ar/arp/argyris.html> (visited 7-14-10)

- Be in unilateral control over others
- Win, don't lose
- Suppress negative feelings
- Be rational

Action Strategies designed to minimize inquiry and testing:

- Advocate one's position
- evaluate one's own and others' actions
- Make attributions about one's own and others' intentions (e.g. reduce incongruity by blaming others)
- Unilaterally protect self and others (withhold information, hold private meetings, create rules to censor information)

Consequences include

- Misunderstandings,
- self-sealing processes
- escalating errors
- Reduced production of valid information
- Little public testing of ideas

All the Model I governing values aim to “avoid embarrassment or threat, feeling vulnerable or incompetent.”⁵⁷ This is a “profoundly defensive” mindset that prompts people “to keep private the premises, inferences, and conclusions that shape their behavior and to avoid testing them in a truly independent, objective fashion.”⁵⁸ Without testing, the attributions involved in defensive reasoning lead to a closed loop where even “the simple act of encouraging more open inquiry is often attacked,” because less open colleagues feel at risk of being wrong. Argyris observes that “well-educated professionals are especially susceptible to this” defensive “master program,” because they have relatively little experience of failure and dealing effectively with its consequences. In

⁵⁷ On Organizational Learning at 131

⁵⁸ On Organizational Learning at 131

addition, the brightest and most successful have internalized high ideals for performance, with a corresponding fear of falling short.⁵⁹

Argyris uses the term “skilled incompetence” to describe how people who most value competence, repeatedly address the same problems and fail to solve them. He attributes the difficulty of achieving basic change to the fact that scholars and practitioners lack the skills to question and transcend the norms and rules of their current domains, so as to describe and create “universes” based on a different set of values. They lack the skills, he says, because “most human beings are acculturated early in life, long before they become scholars or [leaders] to use a defensive reasoning mind-set when dealing with the challenge of handling difficult or ‘wicked’ problems and changing the status quo. Moreover, they create organizational and community defensive routines to support their continued use of defensive reasoning.” [R & R at 6] This leads to the “puzzle” of skillful incompetence, in which early and long experience pursuing Model I values renders one’s skilled actions “automatic and usually tacit. . . taken for granted.”⁶⁰

He says people

. . . learn their theories-in-use early in life and therefore the actions they produce are highly skilled. Little conscious attention is paid to producing skilled actions. Indeed, conscious attention would inhibit producing them effectively. This leads to unawareness of what we are doing when we act skillfully. The unawareness due to skill and the unawareness caused by our unilaterally controlling theories-in-use produce a deeper unawareness, namely, we become unaware of the programs in our heads that keep us unaware.⁶¹

⁵⁹ On Organizational Learning at 132

⁶⁰ R & R at 11

⁶¹ On Organizational Learning at 57

As a result, people become skilled at covering up the threatening notion that they are covering up.

The action-theory or mindset that could lead to developing inquiry and testing skills in contrast to defensive routines is Model II, based on a different set of values, even when the action strategies may look similar. Model II theories-in-use form the basis for what Argyris calls “productive reasoning.”

Model II characteristics are:

Governing Variables

- Use valid information
- Operate with informed choice
- Develop internal commitment to the choice and constant monitoring of its implementation (and testing of the validity of information)

Action Strategies

- Share or jointly control task
 - Use participatory process for design of situations/environment and for implementing action
- (Note: action strategies in Model II also may include advocating a position, as well as making evaluations and attributions, but in service of Model II values emphasizing inquiry and testing.)⁶²

Consequences could include

- Minimally defensive relationships
- High freedom of choice
- Norms that promote trust, open airing of difficult issues⁶³

⁶² R & R at 10.

⁶³ Newman briefly refers to Model I and Model II, but misidentifies them as “personalities.” Newman at 409. He goes on to attribute to Condlin an application of these concepts to lawyering strategies, particularly used in clinics. Id. at 410. This seems odd, at least for litigation clinics, where lawyers operate in an explicitly and designedly Model I system, to wit, the adversary court system [more or less on this after checking Condlin] Newman, in fact, does not address the parallel application of these concepts to teaching itself. In his prescriptions, he calls for “correlat[ing] Schön’s work with other, already existing research in the social sciences,” and then identifies “at least one other researcher” who has studied “effectiveness at work.” 6 Clin.L.Rev. at 421 (citing Mihaly Csikszentmihalyi, Flow (1990); Mihaly Csikszentmihalyi, Beyond Boredom and Anxiety (1975) and several different essays in Optimal Experience: Psychological Studies of Flow in Consciousness (Mihaly Csikszentmihalyi & Isabella Selega Csikszentmihalyi, eds. 1988) This comment betrays the limits of Newman’s foray into what two authors call the “dizzying array of perspectives” and others call “multiple parochial disciplines” on this and closely related topics. “John R. Austin & Jean M. Bartunek, “Theories and Practices of Organizational Development,” in Gallos at 95; Demystifying supra at n.13.

Argyris has conducted years of research, administering a complex instrument that presents an organizational problem and asks people to respond to it, first with diagnosis, then by “advising” one of the participants, offering their own ideas for giving feedback about the initial advice.⁶⁴ Overwhelmingly, respondents behave in ways that reflect theories-in-use consistent with Model I, even though most espouse action-theories with Model II characteristics.⁶⁵ Consistent with his observations about the unawareness of our unawareness, the respondents “made inferences that were at high levels of abstraction, whose validity was problematic. They acted as if their inferences were not abstract but concrete, and that the validity of their views was obvious.”⁶⁶

⁶⁴ On Organizational Learning at 71-83 (describing “the case of X and Y” scenario and reporting results from its administration to over 600 respondents, including people in Europe, South America, Africa, the Near East and India, with over 3,000 respondents using similar case scenarios). The basic scenario posits Y as a superior speaking with X in order to “help X change his attitudes and behavior so that he could improve his performance.” Id. at 71. Respondents read seven brief statements made by X (including, e.g. “You seem to have a chip on your shoulder;” “Let’s discuss your feelings about your performance;” and delivering other feedback). Id. Thereafter respondents write down: 1) their reaction or diagnosis of the way X helped Y; 2) the advice, if any, they would give Y to improve his performance when helping individuals like X. Finally they are asked to imagine meeting Y (the supervisor) in the hallway and being asked “What did you think of the way I handled X?” Respondents write 3) their imagined responses as their side of a conversation on the right-hand side of a page, while on the left-hand side they write whatever thoughts or feelings at each point they would not communicate to Y. Argyris reports nearly all respondents view X’s comments as “largely counter-productive to helping X” and yet, they *use* almost the identical behaviors themselves in their imagined feedback to Y.

⁶⁵ Id.; Laine Anderson *supra*.

⁶⁶ On Organizational Learning at 82. Interestingly, Argyris’s research suggests some new perspectives on methods for giving feedback that play a central role in clinical teaching. He uses the term “easing in” to refer to obfuscation of threatening or difficult information that interferes with learning:

. . . when individuals have to say something negative to others (your performance is poor) they often ease in, in order not to upset the other. Two of the most frequent easing-in actions that we observe are non-directive questioning and face-saving approaches. In order for these to work, the individuals must cover up that they are acting as they are in order not to upset the other. In order for the cover-up to work, the cover-up must be covered-up. . . [with the result that] the recipients are wary of what is happening. They sense that there may be a cover-up. Since they hold the same theory-in-use, they too cover up their private doubts. The result is counter-productive consequences for genuine problem-solving. All of the above occurs with the use of skillful behavior.

On Organizational Learning at 58.

Argyris has developed processes for intervening in groups to improve their ability to operate with a Model II theory-in use. His consulting work using those interventions has given him ample opportunity to observe and track the difficulty in learning and applying these skills. His later writing focuses on explaining and proposing ways to overcome these difficulties.⁶⁷

Argyris says single- and double-loop learning differ more in their complexity than even he originally thought. He identifies four “gaps” in the change model he and Schön had accepted as their starting point, gaps he has been trying to address with his intervention to foster double-loop learning. The gaps track four premises that he finds untrue in whole or part:⁶⁸

- An assumption that people had the skills to correct inconsistencies they experienced, or at least to learn such skills, whereas this proved true only when people “could alter their actions without examining their governing variables (e.g. listen more, or ask specific questions).” Otherwise, their fears of exposure outweigh their desire for change;⁶⁹

⁶⁷ Some commentators suggest he is over-ambitious in asking people to use a Model II theory-of-action. Tosey equates Model II use with Gregory Bateson’s “third order learning” – described as “rarely attainable even in Bateson’s own eyes.” Argyris acknowledged a debt to Bateson [cite??] Yet while his later work increasingly focuses on the depth of “defensive reasoning” he never backs away from his effort to design implementation techniques that *work* to help people make changes.

⁶⁸ He attributes the original change model to Lewin, further developed by Schein and Bennis, that posits three stages: “unfreezing, introducing new values and behavior, and then refreezing;” the model is based on an assumption that “unfreezing is produced by showing that actions lead to unintended consequences,” and that people dislike such disjuncture and try to learn so as to avoid it in the future. On Learning at 69 (citing Edgar H. Schein & Warren Bennis (1965), *Personal and Organizational Change Through Group Methods*, [New York: John Wiley]

⁶⁹ “On Learning” at 70

- A lack of appreciation for “the pervasiveness with which individuals are unaware that they do not have the skills that they may value;”
- The belief among those practicing experiential learning that unawareness results from suppression, particularly of feelings, so that getting in better touch with those feeling would enhance competence. Argyris argues people’s deeper reasoning distorts their need to express or sense their feelings;
- The assumption that one can learn people’s values by asking them, whereas Argyris says apparent discrepancies between espoused values and actions are “designed,” and not seen as discrepancies by the actors, who “must have some sort of map, schemata, micro-theory that they use to inform their design,” which explains to them “how the inconsistency is consistent.”⁷⁰

Argyris acknowledges it is “a tall order” to ask people to change their theory-in-use, because one “is asking them to question the foundation of their sense of competence and self-confidence related to producing effective action . . . [and] to design and implement organizations that do not encourage competitive infighting, unilateral control and commitment to . . . organizational defensive routines.”⁷¹ Nevertheless, he says, it is “doable,” when one 1) does not ask people to swear off Model I reasoning, but instead to use it for only routine issues, 2) provides them the freedom to choose between Models I and II as appropriate, and 3) creates organizational structures that encourage double-loop learning.⁷²

⁷⁰ On Organizational Learning at 71.

⁷¹ R & R at 10-11

⁷² R & R at 11. Argyris acknowledges that the third element really calls for “a change in the cultural context involved.” *Id.* This is doubtless the “tallest” part of the order for law schools, with decentralized

Among Argyris's many books and articles are numerous concrete descriptions of interventions conducted with specific groups and organizations, including partial transcripts of meetings and discussions that demonstrate both the persistence of defensive routines and the progress people can make in learning the skills of productive reasoning.⁷³ These detailed accounts address the depth and breadth of Argyris's research and many nuances to his theories that are beyond the scope of this paper. They also suggest that developing productive reasoning and sustainable double-loop learning takes time and practice, and generally skilled facilitation.

Perhaps the most succinct account of such an undertaking appeared in the Harvard Business Review in 1991, and recently was re-published in their "classics" series, as a tiny book entitled "Teaching Smart People How to Learn" (2008) [Boston, MA: Harvard Business Press].⁷⁴ There he recounts the example of his work with a consulting firm staffed by talented, driven achievers, but suffering from a morale problem. The

control, an emphasis on individual autonomy, and few instance of teamwork compared with businesses and many NGOs.

⁷³ See, e.g., Teaching Smart People How to Learn; On Organizational Learning (multiple examples in different chapters); R & R (especially chapt 6, "Interventions that Facilitate Double-Loop Learning" pp 129-172 giving four illustrations of interventions with individuals, and chapt 7 "Organizational Interventions that Facilitate Double-Loop Learning" pp.173- 211, describing four different organizational cases). In concluding one of these chapters, Argyris makes an interesting critique of Jerome Bruner's distinction between logico-scientific and narrative modes of thought, for failing to account for implementation. He says that

. . . Bruner conceives of these two modes as different modes of cognitive functioning, as two modes of thought, each providing distinctive ways of ordering experience, of constructing reality. I believe that this distinction makes sense when we limit the purpose of inquiry to be about understanding and explaining in the service of understanding and explaining, but is weak when our purpose is to understand and explain in the service of taking action, especially of the double-loop learning variety. Producing effective action requires many of the features of the logico-scientific and narrative modes combined.

This deep interdependence surfaces when we strive for implementable validity. . .

R & R at 211. He pointed out that "it took intervention that respected the logico-scientific methods of sound argument, tight analysis, reason and proof the help [the participants] to see that their narrative methods of good stories, inspiring accounts and intentions used defensive reasoning." *Id.* at 210.

⁷⁴ The same article appears as one chapter in On Organizational Learning, pp. 127-148.

consultants were bogged down in a big project, blaming their uncooperative and resistant clients for the fact it had stalled out. They also resented a new performance evaluation program, which caused particular agitation after one staff member was let go; they suggested the leadership was sending mixed messages about level of support it was prepared to provide. The CEO brought in Argyris, who conducted an extended intervention, some of the transcripts from which he quotes in the article.

Argyris calls for beginning such a learning program with senior level members of the organization. [OOL at 135-36] Then, the “key to any educational program” for teaching people productive reasoning in the workplace is to “connect the program to real . . . problems” on their agenda – a principle familiar to any clinical teacher. The consultants were motivated to change. “Despite the strength of defensive reasoning, people genuinely strive to produce what they intend. They value acting competently. Their self-esteem is intimately tied up with behaving consistently and performing effectively.”⁷⁵ Organizations can rely on these “universal human tendencies” to motivate people to learn “to recognize the reasoning they use when they design and implement their actions . . . to identify the inconsistencies between their espoused and actual theories of action . . . face up to the fact that they unconsciously design and implement actions that they do not intend,” and to recognize how they create and promote defensive routines that “contribute to an organization’s problems.”⁷⁶

He provides a chart comparing defensive with productive reasoning:⁷⁷

⁷⁵ On Organizational Learning at 135.

⁷⁶ On Organizational Learning at 135.

⁷⁷ On Organizational Learning at 135.

<i>Defensive</i>	<i>Productive</i>
<p>Characteristics:</p> <ul style="list-style-type: none"> - soft data - tacit, private inferences -conclusions not publicly testable <p>Supported by:</p> <ul style="list-style-type: none"> - tacit theory of dealing with threat - set of tacitly interrelated concepts - set of tacit rules for using concepts to make inferences, reach private conclusions, and private criteria to judge the validity of the test 	<ul style="list-style-type: none"> - hard data - explicit inferences - premises explicit, conclusions publicly testable <p>-(explicit or tacit) theory of strategy formulation</p> <ul style="list-style-type: none"> - set of directly interrelated concepts - set of rules for using concepts to make permissible inferences, reach testable conclusions, and criteria to judge the validity of the test

In light of that starting point, Argyris’s central technology for the project revolves around having “participants produce a kind of rudimentary case study” similar to the final part of his research scenario (summarized at n. 59 *supra*. about the X and Y case). Each person writes up a real problem they are trying to solve, or have tried unsuccessfully to solve in the past – in our case it could be a teaching or supervision problem, a curricular or clinic administrative problem. After writing a brief concrete description of the situation, the participants create an imagined meeting, conversation or discussion with the relevant people, writing the script for the scene on the right hand side of the page. On the left side each records “any thoughts or feelings [he or she] would be likely to have during the [scripted scene] but that [he or she] wouldn’t express for fear they would derail the discussion.” [OOL at 136] Argyris allows about an hour for the process but says the cases then become “the focal point[s] of an extended analysis.” [OOL at 136] He calls

this the “right side – left side” case study. Instead of having the meeting or conversation, the author discloses and discusses the case study with the relevant participants, in an open (and facilitated) discussion.

Such a discussion, undertaken with Model II values and productive reasoning as the explicit ground rules, “legitimizes talking about issues that people have never been able to address before.” [OOL at 137] The specific session Argyris describes in “Teaching Smart People How to Learn” results in the participants all learning about their contributions to problems they previously had blamed on others, helping them to work more effectively, with more accurate interpretations of their collective situation. This, says Argyris, truly is “learning how to learn.” [OOL at 138]

Treating clinical programs as the relevant organization (rather than trying to address such a program at the law school level) would allow for following Argyris’s advice to begin with the leadership. One could imagine a clinic faculty of five-to-ten members, perhaps weighted toward the senior end of the spectrum, but with some junior members. The clinic’s director feels some ambivalence about the position, having taken it on after frustration with a predecessor’s advocacy on behalf of the clinic in the larger law school. The hard-working junior faculty seem a bit timid, unwilling to stick out their necks, with one exception who is charismatic but a loose cannon (very popular with all the students except the two who complained about lack of supervision). One of the senior members essentially is AWOL, appearing only for class and often “in court” for extended periods, though the clinic is fully subscribed with students rumored to be looking for an easy grade. Another senior member has been tapped

for every law school and university committee known to (wo)man as well as most ABA committees and is writing a book. Two others have been warring since an appointments fiasco five years ago.⁷⁸ Having imagined this scene, it is hard to visualize optimum teaching, let alone a group that can maintain its creative edge, and adapt its programs to the changing legal profession as well as the changing teaching profession. Nevertheless, even in situations with almost this many elephants trampling about the room, Argyris's comments about motivation and competence may be enough to motivate this group.

Following Up on Argyris: Demystifying the "Multifaceted Model," Peter Senge's Fifth Discipline and Other Successors

One pair of authors argues Argyris's approach to improving organizational learning skills, along with adaptations by Senge, particularly suits NGOs and non-business-driven organizations.⁷⁹ Without the profit motive, such organizations revolve around mission and values; they work to produce something valued independently of money. Bloch and Borges argue that Argyris's theory develops a central tenet that people and their organizations function more effectively when the values driving their behavior move closer to the values they claim to be pursuing – when they become more skilled at *uncovering* the values on which they actually operate. At the same time, these two authors recognize the extra sensitivity in NGOs to suggesting the discrepancy, where values play the key role in justifying the job, and the sense of mission or other cultural factors may reduce

⁷⁸ Any resemblance to actual clinic faculties *really* is due to the fact that if you abstract these issues just a little bit and leave out demographic characteristics, there are a great many familiar situations.

⁷⁹ Didier Bloch & Nora Borges, "Organisational Learning in NGOs: An Example of an Intervention Based on the Work of Chris Argyris" 12 *Development in Practice* 3&4, August 2002.

the tolerance for spending time developing interpersonal process skills. Bloch and Borges then describe in some detail the first year of their work with a Brazilian women's health cooperative.

Another concrete example of such an intervention is provided by a group of Argyris and Schon's intellectual offspring in *Demystifying Organisational Learning*. Lipshitz, Friedman and Popper elaborate in detail on their "multifaceted model" proposed to demystify organizational learning.⁸⁰ They critique Senge for adding to "mystification" of organizational learning, as verging on a spiritual quest.⁸¹ While the hyperbolic language in initial descriptions of the "disciplines" do convey an ethereal quality, the practical exercises in the "Fifth Discipline Fieldbook" are concrete and useful.⁸² They provide ways to help people learn the skills of inquiry and dialogue, which have specific meanings in these contexts. Most of the *Demystifying* examples refer to business organizations or the Israeli military, but their most complete account at the book's conclusion describes extensive work with teachers in a special education program for youths with behavior problems. Again, the authors include exemplar transcripts that particularly help make the work visible.

⁸⁰ The facets are: the structural facet (the interpersonal mechanisms *where* learning happens in the organization); the cultural facet (support for productive learning with norms of inquiry, issue focus, integrity, transparency and accountability); the psychological facet (safety, willingness to act on and internalize learning norms); leadership and policy facet (channels of influence); the contextual facet (what pressures or supports are exerted in the outside environment) – all depending finally on knowledge dissemination in the organization.

⁸¹ Demystification at 13.

⁸² The five disciplines are personal mastery, mental models, shared vision, team functioning and systems thinking. My own objection is that they are not expressed in parallel word-forms! [More details on these later.]

*******USE FOLLOWING IN “WHY WE NEED IT NOW” *******

In a book that pre-dated his work on reflective practice, Donald A. Schön anticipated the basic ideas behind the quest for “learning organizations.”⁸³ Today, *Beyond the Stable State* looks like a “prequel,” explaining the need for continually evolving systems in light of accelerating technological change. He proposed an increasing need for adaptable organizations, flexible enough to respond continually to their changing environments:

We must learn to understand, guide, influence and manage these transformations. We must make the capacity for undertaking them integral to ourselves and our institutions.

We must, in other words, become adept at learning. We must become able not only to transform our institutions, in response to changing situations and requirements; we must invent and develop institutions which are “learning systems”, that is to say, systems capable of bringing about their own continuing transformation.

The task which the loss of the stable state makes imperative, for the person, for our institutions, for our society as a whole, is to learn about learning.⁸⁴

Law Schools, and clinical programs within law schools, claim insulation from this accelerating change at their peril.⁸⁵ The Carnegie report and the CLEA Best Practices

⁸³ Donald A. Schön, *Beyond the Stable State: Public and Private Learning in a Changing Society*, (1973) [Harmondsworth: Penguin]

⁸⁴ *Id.* At 28-29 (quoted in Mark K. Smith, “Donald Schon: Learning, Reflection and Change,” (2001) (<http://www.infed.org/thinkers/et-schon.htm> [visited 7/7/10])

⁸⁵ Theorists and researchers in the social sciences increasingly have recognized the interconnected nature of these constructs, to the point where it no longer generates debate. *See, e.g.*, Gareth Morgan, *Images of Organization* (2006) (exploring the uses of an “organism” metaphor for understanding organizations as continually interacting with and affected by their environments); Peter Senge, *The Fifth Discipline* (2006)(identifying “systems thinking” as one of the disciplines crucial for adaptive flexibility).

treatise represent the most recent and exhaustive “performance reviews” of law schools in relation to the profession.⁸⁶ Both works document shortcomings that have long pedigrees, but new salience, in light of rapid changes in the profession. When law firms were small and the pace of practice leisurely, academic law programs could afford to leave professional “identity formation” and development of ethical judgment to practice-based tutelage in such human-scale institutions. The exploding size of practice environments – most obviously global law firms but also corporate divisions and government agencies – make such personal guidance a fantasy (*see* Carnegie at 161, citing studies of the changing profession).

In *Demystifying Organizational Learning* (“Demystifying”), the authors collate various theories on the subject, and deal explicitly with what they call the “anthropomorphic metaphor” by which groups are assumed to “learn” just as individuals do (at 7-10). Argyris and Schon, they said, asked directly: “What is an organization that it may learn?” (at 9, quoting *Organizational Learning* (1978)) Argyris and Schon recognized that individuals act as agents of learning, who “reflect on behalf of the organization.” (id.) The *Demystifying* authors complain that this omits an explanation of the transition from individual to group, but the project explicitly focuses on the process as a continual state, and the transitions too may evolve continually.

Learning can be social – in a group

⁸⁶ Carnegie, *supra*. n. 12; Roy Stuckey and others, *Best Practices for Legal Education: a Vision and a Road Map*, (2007).

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Can occur at the periphery and move toward the center – decentralized discovery,
prompted by ad hoc leadership – can innovate by changing the system (not just by
solving a specific problem) (linked to theories of Ivan Illich and Paolo Freire)

In reflective practice

Idea of a repertoire of metaphor gets picked up as schema in more recent work on the
different cognitive processes used by experts and novices (irrespective of subject/field of
the expertise)