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## *Clinical Education: Its Value in a Law School Curriculum*

by Robert F. Roach



*The Peninsula Legal Aid Clinic: One of the most visible clinical programs at Marshall-Wythe.*

Nowadays, clinical programs are maturing into an accepted part of the law school curriculum. Of course, clinical programs were not always recognized for their educational value. Their role has developed slowly over many years.

In this article, I outline the goals and purposes of clinical legal education. In order to obtain a true appreciation of clinical programs, however, we must first look at the development of the traditional casebook method of legal education as well.

At its beginning, American legal education was mainly an apprenticeship system. Apprentice lawyers worked in law offices and learned by observing the preparation of the legal system on a daily basis. Because of the needs of an agricultural America, the offices where these apprentices learned were small and generalized. However, as American business grew, often times its specialized needs could not be met by the small general practice. Thus, larger firms developed and to fill them, law schools, with their specialized curricula, grew as well.

As they developed in the early and mid-nineteenth century, law schools generally taught their students through

the use of substantive text books and lectures. In the late nineteenth century, this method of teaching was changed by Christopher Columbus Langdell, a Harvard law teacher. He introduced the use of appellate cases (the Harvard or casebook method) as a legal teaching tool.

To fully appreciate the casebook method of legal teaching, something must be known of its founding father. During his own legal training, Langdell was almost constantly in the law library and for several years served as law librarian. While he practiced in New York for sixteen years, he was rarely known to try a case. Langdell spent most of his time in the New York Law Institute law library or inaccessibly secluded in his office. He worked mostly for other lawyers, preparing briefs and other legal documents for them. Because Langdell's legal experience was devoid of clients, judges, juries and other real life factors, his method of teaching was equally devoid of real life.

Accordingly, law became an abstract science. After the introduction of the Langdell method, the Harvard Law School claimed that it was an intellectual disadvantage for a law teacher to have practiced law for any length of time because they would lose the scientific intellect. Harvard bragged that its faculty consisted mostly of men who never had been at the bar or on the bench.

The Langdell method of teaching, however, was quite acceptable to large law firms and corporations. Unencumbered by clients and complex factual situations, students could concentrate on learning basic analytical skills, such as issue recognition, and writing and research skills. The large firms could take the time to teach any other skills needed for their practice.

Law school faculty and administration were generally happy with the system as well. Law teachers could concentrate on broad legal issues and avoid many of the difficult and mundane aspects of the practice of law. The system also pleased law school administration because the large student-to-faculty ratio permitted by the Langdell method was economically productive.

Finally, students were often pleased with this system because it held the potential for entering the affluent and influential world of large law firms and corporations.

As a complete legal education system, however, the

Langdell casebook method has significant shortcomings. Initially, it presents a somewhat unrealistic approach to legal decision making. The Langdell method is based on *ex post facto* appellate opinions. The opinions are judges' censored expositions of what induced them to arrive at a decision they have already made. Invariably, these opinions fail to include many of the important facts which may have prompted the trial judges or juries to reach their verdict. Moreover, appellate opinions cannot reflect many of the non-rational factors which make up the "atmosphere" of a case and which are often a primary influence to the trial judge or jury. Thus, the Langdell method cannot train students to predict, as practicing attorneys, the legal consequences of their clients' actions or desired actions with accuracy.

Additionally, while the Langdell method may be useful in training future associates for large law firms, it does not provide students with the basic skills needed for many legal occupations they may wish to enter. For example, the Langdell method cannot be adequately used to teach client counseling, legal drafting, developing facts and case strategy, negotiating and other skills.

In response to these criticisms, a number of changes in law school curricula were recommended. Included in these recommendations was a proposal for clinical education. Appeals for clinical education arose as early as the 1930's and a number of schools even developed student law clinics. However, the major impetus for change did not occur until the 1960's. During that time period many American institutions came under careful scrutiny. Major changes were demanded and made. The American law school did not escape this wave of change. Students began to recognize that other alternatives existed besides large law firms and sought the training necessary for these careers. Even the bastions of the legal establishment began to recognize the need for change. In a speech before the American Bar Association meeting in Dallas on August 10, 1969, Chief Justice Warren Burger stated:

"The shortcoming of today's law graduate lies not in a deficient knowledge of the law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made. It is a rare law graduate, for example, who knows how to ask questions—simple, single questions, one at a time, in order to develop facts in evidence either in interviewing a witness or examining him in a courtroom. And a lawyer who cannot do that cannot perform properly—in or out of court."

In response to these demands and criticisms, most schools began to develop clinical courses.

A review of the educational goals and purposes of clinical education shows how it makes up for many of the deficiencies of the Langdell method. The educational goals clinical programs may serve may be separated into five categories: improving judgment and analysis skills; developing technical lawyering skills; increasing knowledge of substantive law; increasing student awareness of professional ethics and responsibilities; and providing learning methodology.

As with the Langdell method, clinical programs seek to develop the student's capacity for legal analysis, judgment

and decision making. In clinical programs, however, skills in issue recognition and analysis and in strategy, tactics and decision making are challenged and improved in a fashion which is quite different from the classroom. Rather than eviscerated appellate opinions, students are presented with clients, complex factual situations and real life problems. Thus, the cases which they must analyze are more complete than casebook cases. Students must develop and exercise the type of judgment and analysis skills they will need in actual practice. Moreover, the students' ability in judgment and analysis may be improved when, in a clinical program, they are presented with the integrated nature of the law and they are forced to synthesize the subjects they have learned in more traditional classroom courses.

Clinical education also exposes the student to a wide variety of technical skills not covered in ordinary classroom courses. They include client interviewing, client counseling, fact investigating, negotiating, trial and appellate advocacy. Thus, clinical education can help prepare students for a wider variety of legal occupations.

Clinical programs may also allow the students to develop a more detailed understanding of substantive law. For example, students who work in a public defender's or prosecutor's office as part of a clinical program can expand their knowledge of criminal law. Also, clinical courses, in effect, may expand a law school's substantive law curriculum, by exposing students to areas of substantive law not otherwise offered in the classroom. Moreover, the interdisciplinary and issue oriented approach to substantive law often encountered in clinical courses may be very stimulating to the students.

Clinical programs also offer an excellent opportunity for learning legal ethics and professional responsibility. While law students are now required to take a course in professional responsibility, the real life situations which arise in clinical programs present problems in ethics and responsibility which cannot be duplicated equally in the classroom. Additionally, the students can actually observe the role of the legal profession in society.

Transcending, or perhaps synthesizing, the four categories listed above is a fifth goal. Generally, as we gain in years of experience we increase in our ability as attorneys. Clinical education is unique in legal education because it provides law teachers the opportunity to give the students a methodology for learning from experience.

Despite the positive objectives of clinical education, it has not been uniformly accepted. To the contrary, it has been the subject of a variety of criticisms. Initially, there are those members of the law school faculty who perceive clinical education as unworthy of a place in a graduate school, academic environment. Thus, it is not uncommon to hear such comments as "We're not trade schools; we're centers of learning" or "Our task is to teach students to think like lawyers."

This academic elitism is reflected in a second criticism. Clinical programs traditionally have not led to publishable scholarly work. For faculty who supervise clinical programs, tenure and status are threatened in an academic community which prizes scholarly research and writing.

Third, some members of law school faculty and administration fail to see any educational value in clinical programs. Rather, they see clinical courses as merely an early opportunity for students to escape the classroom.

Finally, there is also a concern of law school administrations over the costs of clinical programs. Because of the low student-to-faculty ratio in clinical courses, they are often the most expensive courses in a law school's curriculum.

Of course, some criticism of clinical programs is quite valid. Most often, they have failed where proper emphasis and attention has not been placed on the educational purposes or goals of the program. As noted above, there is a wide variety of educational goals which a clinical course may serve. Yet, it should be readily apparent that no clinical course should attempt to achieve all of these goals. Some clinical programs have failed because they have been too aggressive and attempted to achieve too much.

More often, however, failure occurs because program administrators have failed to carefully plan for educational goals and provide adequate supervision. This has most often occurred in "farm out" programs where students are placed in private firms or government agencies. Generally, in these programs students have not been supervised by faculty but have been supervised by cooperating attorneys who work for the firm or agency. The cooperating attorney perceives the student as an unpaid employee. Unfortunately, the role of the employee and the role of the student are not equivalent. Therefore, in many such programs, economic, and not educational, ob-

jectives have been achieved. Moreover, in many of the programs, particularly in legal aid or defender placements, the cooperating attorneys are only recent graduates themselves and do not have the experience necessary to supervise the students adequately.

Fortunately, many of the difficulties encountered with clinical programs have been corrected. They have gone through a maturing process. Numerous articles have been written on clinical programs which have been successful and on those which have not been successful. Additionally, there is an increasing volume of theoretical material both on methodology for running clinical programs and on substantive technical skills such as client interviewing and counseling and negotiation. Thus, clinical teachers have an increasing body of literature to assist them in planning and administering clinical courses.

Overall, despite the difficulties encountered in its early development, clinical programs offer excellent opportunities for law students. When properly planned and supported, clinical courses can effectively overcome many shortcomings of traditional legal education.

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