

CLINICAL LEGAL EDUCATION: ENERGY AND TRANSFORMATION

*David J. Herring**

THE clinical movement has had a dramatic impact on the nation's law schools. Administrators and faculty members cannot successfully ignore it or wish it away. Instead, they must address it and seek ways to harness its energy.

My perspective on this subject stems from my entry into academia as a clinician. I was a faculty member in the University of Michigan's Child Advocacy Law Clinic for three years before joining the faculty at the University of Pittsburgh in 1990 with the charge to create and implement an in-house clinic program. Over the past ten years, I have assisted in the creation of the Child Welfare, Corporate Counsel, Elder, Environmental, Health, and Low Income Taxpayer Clinics. Thus, my actions indicate that I am a supporter of clinical legal education. However, my support is not unconditional. As indicated below, I recognize that clinical legal education poses uncomfortable challenges and significant problems for legal educators.

Because of its tremendous impact on law school environments, clinical education has generated a great deal of discussion at conferences and in the literature addressing legal education. Discussions have focused on two primary areas. First, clinical educators have presented their teaching methods as models for the transformation of legal education. Often, they have contrasted their teaching methods with traditional approaches, which typically involve large classes dominated by a faculty member who lectures or engages selected students in a Socratic dialogue, culminating in a single examination used primarily to rank students. Clinic courses, on the other hand, emphasize low student/faculty ratios and an educational environment characterized by teamwork, group learning, and ongoing assessment and feedback. At its best, clinical teaching does not aim merely to impart and foster the skill of legal analysis, but strives to develop a well-rounded legal professional who can learn from her own experiences through a rigorous process of critical self-assessment.

Second, the status of clinical faculty members has been the subject of endless debate, especially within the community of clinical teachers. Because it arrived late on the scene and because of funding realities, clinical education has not fit easily into the traditional tenure-track faculty system. Clinical faculty members often do not have job security equivalent to tenure, falling prey to the mentality of last in, first out. Clinical educators were the last members of the academy allowed in the door of the ivory tower, and, as a result, are often considered expendable, not part of the core educational enterprise.

Law school funding schemes certainly appear to be consistent with this view, with many clinic programs funded through temporary "soft-money" grants. Although more and more law schools have moved clinical positions onto their hard-money budgets, the stigma of soft-money roots and the related job insecurity lingers. Many

* Dean and Professor of Law, University of Pittsburgh School of Law. I would like to thank Martha Mannix, Alan Meisel, Thomas Ross and Lu-in Wang for their comments and support. ©David J. Herring. All rights reserved.

members of law school communities often view clinical faculty as second-class citizens. They do not perceive clinical faculty as "traditional," "stand-up" teachers who truly engage students in rigorous legal analysis. Many still see them as existing outside the core of legal education.

This is a somewhat ironic situation in light of the prominence of clinical programs in law school promotional materials. A review of law school admissions materials and alumni magazines reveals a strong emphasis on clinic programs. Prospective students are very interested in the opportunity for hands-on experiences. They want to step into the role of lawyer. Thus, admissions materials wisely stress such opportunities. In addition, alumni tend to want their law schools to provide practical skills training and to focus on teaching real-life issues rather than developing theoretical constructs. Thus, alumni magazines appropriately highlight clinic programs.

But despite the promotional focus on skills training and clinic programs, the overall regard for clinical faculty and clinical programs is one of ambivalence. It is fairly easy to establish one or two clinics that a school can promote heavily to external constituencies while still valuing traditional teaching and scholarship as the highest callings. In this way, a law school's clinics may serve a relatively low percentage of students but yet provide adequate cover for the faculty's actual focus. As a result, the hiring and retention of a few clinical faculty members is necessary and useful to most law schools, but the clinical faculty will almost certainly occupy a second-class position within the faculty community.

This situation leads to difficult discussions and debates. The status difference is always just below the surface, even in discussions that would seem to have nothing to do with clinical legal education. For example, members of the traditional faculty may be more likely to attack or dismiss the views of colleagues who teach clinical courses. This leads to a divisive environment that can embitter and dishearten clinical faculty members, and even the faculty as a whole. Within such an environment, there are no winners. The faculty becomes focused on unproductive battles over status, and in the process, foregoes opportunities to further the school's mission. As a result, everyone loses, especially the institution as a whole.

I do not wish to explore the issues raised within these common discussions of clinical education in any detail. I would like to move the discussion of clinical legal education in a different direction. No matter what one thinks about clinical teaching methods, clinical faculty status, or even clinical education in general, I believe that the creation of clinics can transform a law school's curriculum and environment in many positive ways.

First and foremost, the creation of clinic programs requires and unleashes entrepreneurial energy. For a clinic program to be established, a critical mass of faculty members and administrators must join together to design a clinic program and to secure the necessary resources. The resource-raising aspect makes this a very pragmatic venture that requires teamwork. Engaging in such an endeavor can transform those involved, requiring and allowing them to think and work in new ways. This is because law school faculties have a tradition of acting as a group of independent scholars, with little or no collaboration among them on anything other than committee work that is often accorded a low priority. Upon becoming involved in starting a clinic program, a faculty member who is used to working in a solitary

mode as a legal theorist and scholar will have to work closely with colleagues to achieve a pragmatic, tangible result.

The transformation from solitary scholar to pragmatic creator and revenue raiser may not be unqualifiedly positive. Although an environment characterized by energetic teamwork may result, the fundraising effort may require compromises. For instance, a legal scholar who has always devoted substantial time to his research and writing may find that he can no longer produce the type or quantity of scholarship he is accustomed to producing. The fundraising goal may become a paramount focus and a life devoted primarily to the production of scholarship may be compromised.

Overall, however, the initiative to design and fund a clinic tends to affect participating faculty members in a dynamic and positive way. Entering the real world, they work together to serve their students and their communities, and often come to appreciate the pressures faced by administrators. The effort unleashes a great deal of energy and allows for the discovery of common ground. The positive effects of such a transformation of a law school's environment cannot be overestimated.

A new clinic will also bring new members to the law school community. Typically, a law school will hire a full-time clinical faculty member to implement the clinic program and supervise student work. It is likely that this faculty member will possess a very different background and perspective from that of members of the traditional faculty. This individual may have less impressive educational credentials, possibly having graduated from a law school not included in the "top ten" and possibly lacking a law review position or prestigious clerkship. But this individual will likely have a more extensive practice background, probably in a specific area of public interest law, and may also have more extensive administrative experience.

In light of this different background and perspective, the hiring of a clinical faculty member can change the character and dynamics of faculty discussions. The clinical faculty member is likely to be more willing to challenge traditional approaches and views and may be more accustomed to contentious debate. She will likely come from a practice environment within which different views have been shared forthrightly, debated and decided without undue personal animosity. She will not be steeped in the intricacies and niceties of faculty politics, with its subtle barbs and muted warfare.

Bringing such forthrightness to faculty discussions can be quite refreshing and useful. It can lead to the engagement of the entire faculty in important discussions of teaching methods and curricular design. For example, as the clinical faculty member designs interdisciplinary skills exercises and other group-learning methodologies, she can challenge the rest of the faculty to adopt such approaches in traditional classes. She will likely demonstrate that these methods work and that faculty members can successfully depart from the standard lecture or Socratic dialogue formats. In the context of curricular reform, the clinical faculty member may challenge colleagues to consider incorporating a practice skills and legal ethics course in the first-year curriculum.

Of course, a clinical faculty member can have more impact by enlisting members of the traditional faculty to participate actively in the clinic program. Involving

other faculty members in the clinic will expose them to new teaching methods and to a new type of student engagement. The most effective clinical faculty strive to include selected members of the traditional faculty in their grant proposals through the designation of a percentage of their teaching and service activity to the clinic program. Once a portion of a traditional faculty member's salary is formally underwritten by a clinic grant, that faculty member's involvement in the clinic program is assured and the clinical faculty will now have an opportunity to vividly demonstrate the strength of clinical education.

This is true even for faculty who have opposed clinics. Based on my experience, the best way to overcome opposition is to involve the opposition in the clinics. Once they observe the possibilities for student engagement, client service, and professional collaborations, they are usually hooked. They become invested in teaching students sophisticated skills through the exploration and discussion of the complex situations and issues presented by clinic clients. They also come to realize the personal and professional fulfillment that results from solving the problems of actual individuals. In addition, they begin to realize the benefits that can come from collaborating with professionals from other disciplines. As a result of their participation, they become champions for the clinic and their natural creativity will likely lead them to pursue clinical education initiatives, or at least to explore initiatives that grow out of and relate to their clinic experiences.

A good example is the health law program at the University of Pittsburgh School of Law. The Law School came to clinical education late, initiating an in-house clinic program in 1990. After successfully applying for funding from the United States Department of Education, the School created an Elder Law Clinic in 1991 and a Health Law Clinic in 1992. The School hired three full-time clinical faculty members to implement these new clinics.

The new clinical faculty members involved several members of the traditional faculty in their clinic courses. In addition, the faculty established a long-term contract system for clinical faculty that required several traditional faculty members to observe and evaluate the clinical faculty members' teaching each year. Through these experiences, traditional faculty members became exposed to clinical teaching methods and a significant number began incorporating skills exercises and group problem-solving approaches in their courses.

More dramatically, the traditional faculty in the health law area came to realize that the Law School and the University had substantial resources with which they could construct a specialty program. Using the clinics as core required courses, they worked with the clinical faculty to design a Health Law Certificate Program. This program has been a great success in terms of student recruitment and career placement. *U.S. News and World Report* recently ranked Pitt's Health Law Program 13th in the nation, a noteworthy achievement for a school that does not offer an LL.M. degree in the area.

The momentum provided by the clinics powered this significant curricular initiative. It seems that the members of the School's traditional faculty, having observed the energy of the clinic programs, decided to reinvigorate their own teaching agendas. The clinics appeared to unleash the entrepreneurial spirit of the faculty, giving rise to an environment of collegial competition over new program initiatives.

This environment of friendly competition has propelled discrete groups of faculty to contemplate the development of other specialty programs that attract highly qualified students, guide students in structuring their legal education, and assist them in securing employment. Separate groups of faculty have now created certificate programs in Civil Litigation, Environmental Law, and International Law. Other groups are considering programs in Estate Planning and Elder Law, Family Law, Intellectual Property Law, and Tax Law. Whether one favors the development of specialty programs or not, the development of these programs at Pitt provides clear evidence of the high level of energy generated within the faculty as a result, at least in part, of clinical initiatives.

Interestingly, a clinic or experiential learning program anchors each of the certificate programs. The environmental law program is the most dramatic example. The faculty group that proposed this program refused to initiate it without the establishment of a clinic and the provision of necessary administrative support. This position resulted in a three-year delay in implementing the program as the School sought funding for the clinic component. Fortunately, this effort was successful, with a local foundation providing a \$2 million endowment for the program. The faculty group is now implementing the certificate program. The civil litigation program is structured around a broad array of skills courses, moot court experiences, practicum courses and clinics. In addition, a major component of the international law program consists of study abroad opportunities, relevant field placements with law firms and corporate law offices, and a unique, skills-oriented set of foreign languages for lawyers courses.

The introduction of clinical education at the University of Pittsburgh School of Law has given rise to a spirit of curricular reform within the faculty. This reform movement has been slow, incremental, and relentless. In my mind, it is the best and strongest type of reform movement—one that bubbles up from individual faculty interest and initiatives, not one that is imposed by the administration. It is true reform—not the often false reform exercise characterized by faculty retreats, the development of mission statements, and the preparation of comprehensive strategic plans.

In addition to its impact on teaching and curricular design, the introduction of clinical education spurs a different type of legal scholarship. As traditional faculty become involved in the clinics, they often become interested in the issues raised by their clinical experiences. This naturally leads to inquiries that may result in pragmatic research and writing projects that are often practice-oriented and interdisciplinary in nature rather than focused almost exclusively on legal or political theory.

For example, students and faculty involved in a child welfare law clinic program could examine the fundamental reform of child welfare laws over the past two decades that has been based on permanency planning concepts emanating from the field of social work. Their involvement in the trenches of a public child welfare system may cause them to question these concepts, which are based on child development theories and are largely unverified by empirical research. Participation in the clinic may inspire a faculty member to engage in scholarly activities that explore this pressing child welfare law issue. It may even spur the faculty member to engage in empirical research to test the crucial hypotheses that support

permanency planning concepts. Such an endeavor may require the law faculty member to reach out to others who can help design and implement a sophisticated empirical research project and may inspire an effort to raise external funding for such work.

Of course, legal scholarship at a theoretical level is extremely useful and should be encouraged. But it need not be the only type of scholarly endeavor in which faculty members engage. The introduction of clinical education can help to diversify a faculty's scholarly efforts. It will often result in a more pragmatic scholarship that a dean can honestly and successfully present to the school's prospective students, current students, and alumni as being relevant and useful.

The development of clinical programs can also lead to a powerful sense of teamwork. As discussed above, clinical faculty members often enlist their colleagues to become part of the clinic team. In addition, they often require their students to work in teams. In this way, they encourage participants to engage in a collegial problem-solving endeavor rather than a solitary, individualistic effort. In the best clinical programs, faculty and students join together to creatively solve client problems and address important public policy issues. Every participant begins to see how he or she can work with others to further his or her lawyering skills, teaching, scholarship, and service.

Clinic programs cannot only affect law schools by teaming law students and faculty, but also by including individuals from other disciplines. Because expertise in fields other than the law is often needed in order to solve client problems, participants in clinics will frequently make connections with outside experts such as psychiatrists, psychologists, physicians, economists, biologists, and social work professionals. As a result, a clinic will often involve experts from other units of the university.

For example, in beginning the University of Pittsburgh's Child Welfare Law Clinic, faculty and students realized that they needed guidance from experts in the field of social work. The faculty opened a discussion with their counterparts at the University's School of Social Work, who were thrilled to become involved with the law school, a unit previously perceived as isolated and unapproachable. Two social work faculty members became very involved in the law clinic, with one eventually team-teaching the course with the law faculty.

The social work faculty members provided the law students with invaluable insights in their cases and also broadened their education as legal professionals. For instance, they educated the law students on the appropriate roles of other professionals. This allowed the law students to realize that they did not control every aspect of a case and that they needed to work with other professionals, acting appropriately within their role as legal professionals.

The Law School faculty also benefited from their interactions with the social work faculty. First, they observed a very different style in the classroom—predominantly lecture combined with group problem-solving discussions that did not include a Socratic dialogue. Once the lecture was presented, there was no inquisitor, no master. Students learned by thinking and doing together, placing themselves in the professional role in order to solve client problems.

Second, the law faculty had an exciting opportunity to explore issues from the perspective of another discipline as the interdisciplinary clinic faculty planned for

class sessions together. In the child welfare context, for instance, the law faculty learned about a whole new source of research on foster care and kinship care. This introduction to new knowledge and new perspectives opened doors to fruitful avenues for scholarly work. Their scholarship became more nuanced and creative as a result.

In addition to the tangible interdisciplinary benefits realized within the university community, clinics also provide enormous benefits through participants' interactions with members of the community at large. For example, faculty and students in the clinics must interact with other legal professionals in the community. Through their casework, clinic participants often gain tremendous respect from other attorneys and from judges. Such respect enhances the law school's reputation within the community and provides tremendous support for a dean's effort to establish and maintain positive relationships with the school's alumni. The graduates of the school feel good about what the school is doing. They feel that the school teaches, and most importantly, values what they do. They also see real opportunities to become involved with the school by teaching or assisting in the clinic programs. The school gains a level of credibility with a vital constituency that it usually cannot achieve through its traditional teaching and scholarly endeavors. (This credibility gain is especially pronounced when the members of the traditional faculty who many alumni had as teachers become involved in the clinics. Again, it sends a message that the actual practice of law is respected and valued.)

As is clear from the preceding discussion, I believe very strongly that clinical legal education provides many by-products that should be fully considered as a law school community charts its course. Full appreciation of these by-products may not be necessary to sustain the clinical movement; this dynamic form of legal education has clearly established a permanent niche for itself, with most law schools having created at least one quality in-house program. But a full consideration of the incidental benefits produced by clinic programs could help us to break free from nasty, divisive status disputes and to engage in fundamental discussions of legal education that extend well beyond the exploration of clinical teaching methodologies. It could help us accord clinical education and educators the respect that they deserve. Law school communities could then engage in honest, rigorous strategic planning that includes, and sometimes centers on, clinical education.

It must be said that not even the dean and the faculty at a particular school can predict exactly where specific clinical initiatives will lead them. But such initiatives are highly likely to generate a great deal of entrepreneurial energy within a law school community. In order to harness and control this type of energy, the dean and faculty must make strategic choices as to the appropriate areas in which to initiate clinic programs. Such strategic planning will allow the dean and faculty to target clinic initiatives in order to attract available funds and to mobilize specific faculty members who are willing to see the initiatives through to fruition. In addition, this strategic planning process will often assist the dean in fostering good relations with university administrators, who appreciate evidence of deliberate decisions to make targeted investments.

Clinic initiatives provide deans with exciting opportunities to move law schools forward in a way that gains faculty and university support. Deans should not lose

sight of these opportunities as they consider, and engage in debates about, the funding and status of clinical programs.