

CLINICAL PROGRAMS OF THE UNIVERSITY OF MARYLAND SCHOOL OF LAW

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The University of Maryland provides 'clinical education' in two distinct ways, through its Clinical Law Office, and through its Legal Theory and Practice courses. For many years the Law School has operated The Clinical Law Office, one of the largest and longest-lived 'in-house' clinics in any law school in the United States. Students may elect to enrol in this course in the upper years of the law degree program. It is a year-long, intensive practice experience, under faculty supervision. Quite recently, the Law Faculty began the Legal Theory and Practice courses, which combine the study of doctrine and legal theory with a lesser degree of client work. The course is required for law students in the first or second year. This paper describes the objectives, methods and features of each program.

The Clinical Law Program of the University of Maryland is a thriving example of the more successful law school clinics in the United States. It is practical vocational training, in that law students engage in supervised lawyer's work on behalf of real people, and gain instruction, experience, and critique in performative and analytic skills. The consequentiality of students' work for real clients directs considerable energy towards the competence of student performance. Yet clinical education implicates legal theory also in that the student's performance of a role in the legal system provides the starting point for intellectual inquiry concerning the force of doctrine, the operation of legal systems, ethical obligations and analytic judgments no longer safely hypothetical, and the relation of law practice to substantive justice.

In the U.S., clinical education in the law schools began in earnest during the 1960s. In its first incarnations, it most resembled the apprenticeship system that preceded university-based preparation for membership at the bar. Initially, little sophisticated thought was given to the pedagogical possibilities of this new teaching mode and method, other than that it afforded students earlier acquisition of real life experience. To the extent there was an explicit educational rationale, it was the assumed connection between learning and providing service.¹ In the 1970's, considerable attention was called to the need for American law schools to provide more effective skills training prior to students' graduation and bar examination. Chief Justice Burger gave speeches about the inadequacy of the trial bar (1972). There also arose concern to address a broader array of essential lawyer skills in addition to trial advocacy, for example, interviewing, counselling and negotiation.²

In this climate, clinical education was an obvious vehicle for increasing law-school-based instruction in skills and competency. Clinical education provided opportunities for students to perform the work of lawyers, and since skills cannot be acquired without performance, it was a natural step for law schools to locate most skills training in their clinical programs, and coincidentally, to equate the two.

In the mid-1970's, clinical legal education began to be seen as a particularly suitable vehicle for teaching professional responsibility. As many American authors have

noted, this coincided with the pall spread over the U.S. legal profession by Watergate, in which scandal virtually everyone involved was a lawyer. Renewed attention to the obligation of law schools to instill appropriate ethical as well as customary professional standards found a home in law school clinics.

The rise of clinical legal education in the U.S. followed on the heels of the civil legal services movement. President Lyndon Johnson declared the War on Poverty, the federally supported but independent Legal Services Corporation was established to serve indigents in civil matters, and lawyers throughout the land were exhorted to give life to professional ideals and participate in providing legal service to the poor. In some cities, major law firms opened storefront offices in poor communities and staffed them with lawyers on rotation. When this private effort folded in Baltimore, the managing attorney moved the office under the umbrella of the University of Maryland Law School, and thus began the first law school clinic in 1972, marrying service to pedagogical goals for the first time.

THE CLINICAL LAW OFFICE

The Clinical Law Office affords students the opportunity to begin the transition from law school to law practice; from learning to be a lawyer to being a lawyer. Students practice law under the close and supportive supervision of members of the faculty who are admitted to practice. As is common in the United States, court rules permit supervised law practice by enrolled law students who have completed one-third of their legal education, if enrolled in a law school clinic and supervised by a member of the bar.

The Clinical Program As Law Office

The practice in the clinic includes civil and criminal law matters and may include appearances before courts, administrative agencies, legislatures and other officials. Students are likely to be counsellors, negotiators, advocates and problem solvers for their clients. In recent years the practice has included representing defendants in misdemeanour and felony trials, probationers in probation revocation hearings, children and parents petitioning for special education and other habilitation services, juveniles before the juvenile court, unemployed workers seeking unemployment compensation, and petitioners for government disability benefits. Students in the clinic have also advised and represented tenants with problems arising from their housing, their relations with their landlords and lead paint poisoning. The office has represented clients seeking information under the federal Freedom of Information Act, and provided legal assistance to individuals and groups of persons with mental disabilities. Some students are permitted to work as Assistant Attorneys-General drafting opinions and conducting investigations and hearings from the Consumer Protection Division of the State's Office of Attorney-General.

Most faculty members in the clinical program informally pursue law reform projects, some of which become clinic projects. Thus the Maryland clinical program has been a leader in the State on issues of lead paint poisoning, institutional care for the retarded, mental health law, etc. A referral arrangement with Legal Aid has provided a steady stream of more routine cases ideal for basic student learning: landlord-tenant, social security disability claims, and domestic law. The tension between the law reform ambitions of the faculty and the educational needs of the students pervades the program.

The Clinical Program As A Course Of Instruction

As a course of instruction, the Clinical Law Program at Maryland is organized as a single course. Ten members of the faculty teach principally in the Clinical Program (of about 45 full-time faculty). Many also teach some substantive law or skills courses or seminars. The program enrolls 45 to 60 students per year, most of whom enroll in a two-semester program for which they are awarded 8 credit hours. A few students enroll in a condensed, one-semester program for 7 credit hours. On average, one faculty member supervises eight students, although if one is teaching a second course, that number is reduced to six students. Faculty supervise the legal practice of students under State and Federal student practice rules. Each clinic student acts alone or in conjunction with other students, as counsel or co-counsel to clients. Faculty select cases with a view to giving the students the opportunity to work on matters involving substantial individual client contact, although some cases present law reform or public-impact aspects as well. Students are required to work in the clinic at least 20-30 hours a week. Formal instruction in classroom or seminar formats, and small weekly tutorials with students, are also the responsibility of faculty members teaching in the clinic.

Most faculty members teaching in the Clinic have developed specialized case loads, although there is some overlap. With the exception of the environmental law clinic, clients present the range of basic poor people's issues. When students register, they are invited to express preferences among the practice area specializations. Assignment of students to faculty is made in the attempt to accommodate student preferences, but many times perfect matches cannot be achieved.

The single program model evolved from several separate clinical offerings to a single clinical course taught in a 'law office' in the Law School. In the past, there was a Juvenile Law Clinic, a Bankruptcy Clinic, a General Practice Clinic, a Legal Service Clinic, an Attorney-General's Clinic, and a Developmental Disabilities Clinic. These were separate in content and administration, and many were located in buildings scattered near the law school. Since the school renovated a wing in 1983, the clinics have been together under one roof and under one administration plan, in order better to coordinate basic instruction, strengthen support staff and facilities, and provide better assistance to faculty in handling overloads and avoiding 'burnout'.

Faculty and student offices share a wing of the law school.³ Faculty share responsibility for the design and execution of formal instruction. The clinicians have worked out a rotation arrangement by which they provide each faculty member at least one free semester every four years for writing, teaching non-clinical courses, or special projects. The disadvantage of the single program model is that faculty must work together and with staff and students as in a law firm - a radical and sometimes painful undertaking for many faculty. One faculty member is paid a supplement for administrative duties as director of the clinical program.

Since the exigencies of clients' needs means that cases cannot be made to end with the school year, a summer clinic has been developed. This permits continued representation for students, allows additional students to enroll in the clinic; and affords most clinical professors the traditional academic summer break. The summer clinic is staffed by one faculty member, which responsibility rotates among the clinical faculty, and a second attorney is hired from Legal Aid to manage the caseload. The clinical faculty member who runs the summer clinic is excused from teaching responsibilities in the following fall term, although she or he is expected to

engage in work part time which will benefit the school or the clinic (such as grant writing or program development).

Of the full-time faculty in the clinical program, three have tenure, two are in the tenure track but are untenured, and five have non-tenured contracts of varying lengths. All the contract faculty have contracts which are renewable upon faculty approval. There is the expectation of tenure track faculty to engage in substantial scholarship. Scholarship is also a criterion for long-term contract renewal.

Educational Objectives And Methods

The central educational purpose of the clinic is to help students make the transition from doing what students or law clerks do, to doing what lawyers do, and to make this transition in a thoughtful, purposeful manner. The key to learning in the clinic is that the student is the 'lawyer'; supervising attorneys are available for consultation, but the clinic students are expected to do what working professionals are called upon to do: take first-hand responsibility, and exercise lawyering skill and professional judgement.

Bellow's influential article in 1973 described clinical education as a methodology, using the student's lawyering experiences as fodder for intellectual inquiry, and bringing forefront the learning opportunities in law practice settings (Bellow 1973). Under Bellow's definition, there is nothing inherently limiting about clinical education other than that it make use of the student's activity in a role in the legal system as the focal point for inquiry. Thus, educational forays may be made into any dimension of lawyers' work:

- * the performative skill dimension (for example, identifying client objectives, framing questions, preparing witnesses, drafting documents);
- * professional responsibility (for example, identifying duties to client, court, the legal system, others, and responsible decision-making when these conflict);
- * the student-lawyer's developing clinical judgement (that is, developing the abilities to plan and predict appropriately from what is known, to implement plans, to review actions taken in light of objectives and results obtained, and thus continually to learn from one's experience);
- * comprehension of doctrine (that is, identification of applicable legal rules, application to particular situations, appreciation of the gaps between formal law and its operation);
- * theoretical perspective (that is, the ability to identify, use, generate, reply to, legal or other theories - general propositions offered as explanatory with respect to ends and values in law, the machinery of justice or methods of lawyers and judges).

Although skill instruction is not the central purpose of clinical education, it is clearly important. Yet, instead of expecting the law school to turn out polished trial lawyers, it is enough to pursue a lesser goal: to advance students beyond the first-level mistakes that so unnerve the new lawyer and fail as valuable learning

experiences in one's life after law school. A clinical course allows students to make this first level of error in school, coupled with the opportunity for assistance to reflect upon those errors, and develop some preliminary insight into causes and possible curatives. Thus, law schools can aim to graduate lawyers who are capable of erring in more productive ways and learning from them in practice (Amsterdam 1984).

The central features of a clinical teaching method, cribbed from Tony Amsterdam's writings on the subject, are as follows:

1. Students confront problem situations of the kind met by lawyers in practice.
2. The problem situations are concrete, complex, and not predigested.
3. Law students must address the problem from within a lawyer role.
4. The student shoulders the responsibility for decision and action to solve the problem: to identify and analyse it, consider and evaluate possible responses, plan a course of action, and implement that plan.
5. In so doing, the students interact with people, and thus must give and interpret communications through the lens of interpersonal dynamics.
6. The students' work - that is, their analysis, planning, decision-making, interactions, and implementations - is made the subject of rigorous critical review.
7. This review focuses on the development of models of analysis for understanding past experience, and for planning and predicting future conduct.

Supervision

The foregoing method is most readily applied in the individualized or small group settings of clinical supervision. Supervision is the primary teaching activity in the Clinical Law Program as in American law school clinics generally. While important educational benefits flow merely from the assumption of lawyer role and the first-blush experiences with clients, it is the quality of the supervision that is widely viewed as the determinant of the quality of a clinical program, and the primary element distinguishing clinical training from the unstructured experience of law practice following the student's graduation. Supervision takes many different forms, depending on the educational and representational needs of the moment: spontaneous exchange between student and teacher; regularly scheduled case team meetings (commonly, once a week); and still more structured conferences addressing a specified agenda.

The teacher supervising clinical students has the task of engaging each student with experiences that will accomplish educational objectives of the clinical course. In conference, then, combinations of the following kinds of learning/teaching exchanges take place:

1. lawyer role - the student participates as principal lawyer on the case, and from that perspective, discusses every topic addressed;
2. dialogue - clinical teacher and student lawyer engage in discussion;
3. feedback - the teacher engages the student lawyer in review and critique of current understanding or skill of the matter(s) under discussion;
4. demonstration - the teacher may demonstrate a skill or model of analysis that is pertinent to the conference;
5. exposition - the teacher may convey information to the student lawyer.

Regular weekly clinical seminars are held in addition to supervision sessions. After introductory seminars devoted to affirmative instruction in the substance and procedure of the law which students must master to serve their clients well, and in the theory, practice and ethics of interviewing, counselling and advocating, the subject matter generally is drawn from ongoing experience in the clinic. As students gain more lawyering experience of their own, they are better able to identify and seek to understand dimensions of practice that cut across specific subject areas and lawyer tasks, such as the impacts of race and gender in lawyers' work, and clients' experiences with law and legal processes. Some seminars are designed to facilitate students' more explicit analysis of these issues, and faculty may assign readings from the disciplines of sociology and psychology, or critical legal theory to spur group discussion and inform personal reflection. Through the combination of personal experience, supervision and coursework, students have the extended opportunity to think reflectively about the legal profession, about their work as lawyers and about the role of lawyers in a just society.⁴

THE FIRST-YEAR LEGAL THEORY AND PRACTICE REQUIREMENT

In 1988, the Law Faculty created a new course requirement for all students, whether or not they elect the Clinical Law Office course. Maryland's Legal Theory and Practice (LTP) requirement is designed to provide all of our law students with an integrated learning experience which links together legal theory, doctrine and the provision of legal assistance to poor and marginalized people. All full-time day students at the University of Maryland participate in one of these courses, in their second or third semester of law school. Considerable importance is placed on the position of LTP in the early, formative years of students' legal education.

LTP courses are conceived and implemented as a bridge between Maryland's 'stand-up' curriculum and its longstanding elective clinical law program. Five faculty members, joined at times by other members of the Maryland faculty, have concentrated their energies on developing and teaching these courses.

Educational Objectives

The overarching task of the LTP requirement is to construct with students an understanding of legal process, inseparably coupled to a conception of responsibility to the poor. The LTP course requirement goes beyond merely

requiring **pro bono** work during the law school years. It offers instead a more intensive and integrated model that seeks to make apparent to students the deep connection between legal rules, lawyers' choices, and the realities of law's impact on the lives of the poor. A principal rationale of the LTP requirement is to engage students with the value of devoting some of one's practice to the representation of poor and disadvantaged people.

To accomplish this task requires a range of pedagogical goals that extends from the mastery of rule systems, to the development of insights about poverty and the political workings of the law, to the study of systems for the delivery of effective legal services to unrepresented populations.

Spurred by the Maryland Legal Services Corporation's findings in 1988 that the legal needs of the state's poor generally were not being met, the state legislature and Governor directed Maryland's two law schools to provide more service to the poor and to modify their curricula to instill in future lawyers a belief in the value of service to the poor. The University of Maryland Law School responded, and went beyond the legislative mandate, by developing a set of institutional objectives, to be met by the LTP program:

1. To instill in law students, in more than rhetorical or conventional ways, a set of professional values that encompass the career long obligation and capacity to serve poor and under-represented people and communities;
2. To provide real, needed legal service to poor and under-represented persons and communities, thereby making immediate and concrete the law school's contribution to meeting the legal needs of Maryland's poor;
3. To address these objectives through teaching methods which integrate legal doctrine, theory and practice.

Actualizing the Objectives

To bridge the customary divide between the classroom and clinical sides of Maryland's curriculum, a number of courses in the familiar law school line-up have been expanded and reconfigured as LTP courses. Students provide actual client representation in the context of traditional core subjects such as torts, civil procedure, property, criminal law, constitutional law, and legal profession, as well as an expanding array of upper year courses such as legislation, law & homelessness, and mental health law.

Each course undertakes a critical examination of the law, bringing to the center the legal system's treatment of the poor, people of colour, women and children, and other under-represented client populations. The students' legal work has included the representation of tenants challenging dangerous defective conditions in their rented dwellings, victims of lead paint poisoning, battered women accused of homicide, death row inmates, children with disabilities in special education and school-discipline cases, and recipients of drug and alcohol treatment services.

While the combinations of doctrinal subjects and legal service opportunities may be nearly infinite, there are some requisites for any LTP course:

1. Each student must be given the opportunity for significant experience in providing legal services to poor people;
2. The representational work is to be integrated with the study of some area of legal regulation, so that students' learning of doctrine occurs in a context that aids the development of a critical understanding of the law and its processes;
3. Issues of professional responsibility, choice and identity are to be the subject of regular consideration; and
4. Students' autonomous learning is to be promoted through pedagogical diversity.

In this way, the LTP concept seeks to restore to law study the nondoctrinal elements of human decision and social context, that give law power and meaning. Each of these elements, and the task of synthesizing them, creates particular demands for teaching materials and models. The courses aim to enlarge students' comprehension of the traditional elements of legal education - role, doctrine, policy, procedure - by reassembling them in real contexts. This reassembly occurs in two directions, by bringing the legal doctrine and theory of the classroom into the real world of the students' legal work, and by making the thick description of students' legal work experiences a part of the work of the classroom. The fact that LTP students perform legal work on behalf of clients is just one significant element of students' experience and course design.

A significant measure of LTP courses entails instruction in the doctrinal subject of the course. LTP faculty reconfigure classroom sessions to transform the intellectual activities of learning a subject into mastering its meanings, utilities, and consequences in concrete terms outside the law school walls. While casebooks are widely used in LTP courses, they are supplemented extensively with materials drawn from trial records, pleadings, lawyers' files, client documents and interviews, statutes and regulations, media reports, census data, sociological accounts, and so forth. Analysis is frequently directed toward students' real and imagined work on behalf of people who, in the conventional distribution of legal services, are rarely 'clients.' Doing so fosters for students the development of an appreciation that legal rules are produced in response to evidentiary accounts, constructed by lawyers; that parties' different perspectives, and opportunities for representation by counsel, importantly shape such accounts; that clients, lawyers, and judges all face a range of choices for resolving 'doctrinal' questions; and that the class, gender, and race of the people implicated by legal disputes may influence the operation of legal decision-making at each of these junctures.

Students' practice experiences serve as one important type of 'teaching material'. LTP students spend about 10 hours per week accomplishing this work (in contrast to the 20 to 30 hours devoted by students in the elective Clinic). The significance of the practice element of LTP courses is that each student assist identifiable poor persons to secure some law-related objective, and does so with attention to the realities of the concrete personal, social and political contexts within which the representation occurs. While LTP courses necessarily instruct students in the practice area in which students assist clients, the primary focus is not to teach practice skills. Rather, the goal is to promote the study of law and legal processes in their operational dimensions; and to provide a rich opportunity for students to explore issues central to learning responsibility in the practice of law, and to

forging their own professional identities. These issues include the meanings of professionalism, the nature and goals of lawyer-client relationships, notions and experiences of lawyer roles, and of the effects of differences in class, race, and gender, in the operations of lawyers and of law with regard to people who are poor.

Faculty carefully select and structure the students' course experiences, in order to make available for them the links between legal theory and practice. Legal work is selected so that it both invokes the doctrine and theory of the course, and gives students substantial responsibility for some client matters. Because lawyering experiences often do not, alone, enable students to draw the connections among legal regulation, lawyer operations, and social knowledge, class sessions are directed to seeking out intersections between students' practice experiences and the theoretical and doctrinal analysis presented by the course.

Variations in Operational Detail

The specific LTP courses vary considerably in their operational details. Course configurations have run the gamut, from sections of ten students taught by a single faculty member; to sections of twenty-five taught by a team of four teachers; to coordinated sections of twenty-five students, each led by one LTP faculty member, pursuing the same subject through quite different practice areas. Such differences in size and organization carry with them varied decisions in the use of upper-year teaching assistants; involvement of cooperating attorneys to achieve some or all of the needed practice supervision; and the focus of legal work on litigative, remedial, or preventative efforts on clients' behalf.

The flexibility in the LTP concept has permitted faculty to configure LTP courses so that they may draw on faculty expertise, do double-duty in curriculum planning, and serve other administrative needs. Moreover, it has created invaluable opportunities for collaboration with faculty members who otherwise have seen insufficient practical opportunity to bridge the gap between classroom and practice. A further benefit is that the upper division clinical program can build upon the themes of study begun in the LTP courses.

For a full explanation of the Legal Theory and Practice courses' purposes and methods, see Bezdek, Boldt, Feldman, Glennon and La Rue, 'Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy,' *43 Hastings L.J.* (forthcoming 1992).

NOTES

- 1 For further discussion of this history, see the paper by my colleague Robert Condlin (1983.)
- 2 The ABA Section on Legal Education and Admission to the Bar, Report and Recommendations of the Task Force on Competency: The Role of the Law School, 1979, (R. Cramton, Chair), recommended that law schools provide such instruction.
- 3 The clinical program is housed in modern facilities resembling a small law firm located on 1^{1/2} floors of the four storey faculty office wing of the

school. The office includes 45 carrels for the students, providing them largely independent work space. There are also four interview and conference rooms in which students can meet with clients, and which are equipped with video equipment. In addition, there are a small working library, a classroom and small moot court room, and a complete computer network connection of about 25 IBM and AT & T PCs and 3 laser printers. The clinic is staffed by an administrator, a receptionist, and five secretaries who provide assistance to faculty and students. A sixth secretary works from 5 pm to 8 pm providing evening coverage.

- 4 The curriculum contains an array of simulation courses in trial practice, trial planning and advocacy, counselling and negotiation, and mediation and arbitration which make heavy use of role playing and videotaped reviews of performances. None of these courses is a prerequisite for enrollment in the clinical program. They may be regarded as 'clinical' in the methodological sense, although it is widely if not universally acknowledged that simulation programs suffer by comparison with representational programs as a vehicle for learning professional responsibility, clinical judgement, and relational development.

The Law School also operates a field placement program (named for a law school benefactor), quite independent of the creation of the present clinical program. Some 32-40 students a year enrol for 2 or 3 credit hours for placement in courts, governmental agencies, and public service organizations. The large majority of these placements are now clerks for judges who 'employ' the students as traditional clerks, although students receive academic credit, not pay, for their labour. The judges or individual attorneys at these placements are the supervisors, and the students are expected to work 16 to 20 hours a week for 3 credit hours and 10 hours a week for 2 credit hours. A student may take no more than one Asper Fellowship. Full-time faculty do not take responsibility for this program, and it is in no proper sense a 'clinical' offering.

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