tax provisions but not how to gain an appreciation of how to interpret the provisions. The passive teacher avoids the time consuming exercise of close analysis.

An active approach requires the student to examine and apply the code and regulations. Requiring students to be accountable in class by indicating that they may be called on to analyse a provision of the code ensures focused preparation for the class.

While passive approach textbooks are still used, replete with comprehensive explanations of the Code and regulations, students are warned that their responses to class questions must be based on the language of the assigned provisions. Classroom analysis of provisions begins by asking students for a general explanation of the main rule and underlying legislative policy behind the provision, as well as a typical situation where the rule applies. The answers must be in plain English without any jargon. Beyond the overview of the provision, an assigned problem or a hypothetical is used to flesh out the analysis of the provision. Students are encouraged to work through examples of tax calculations in the regulations and create flow charts. This analysis is quite time-consuming and it is impossible to cover as many topics as a passive-approach teacher.

A take home exam is used to grade students. They are given a month to complete it and can ask questions about the provision, but not about its application. Students are also allowed to collaborate with other students in the course.

The active approach advocated has its opponents and attracts criticisms. The first is that it does not cover enough tax law to equip the graduate to practise in tax. However, this objection falsely assumes that the student will retain a clear recollection of the relevant provisions and of the content of the course. An attorney with a perfect long-term memory of outdated provisions will be lost without the analytical skills to learn about the ever-changing body of statutes and regulations. Student resistance to the active approach is also cited against it. However, law teachers have a duty to develop students' skills in interpreting statutes and regulations and the only effective way of doing so is to provide a structure in which the students are required to perform their own analyses of these sources.

## LEGAL ETHICS

**On teaching legal ethics in the law office**

T L Shaffer

71 *Notre Dame L Rev* 4, pp 605–618

Since 1993 Notre Dame University has mounted 12 clinical ethics seminars in its law office as part of a three year experiment in clinical legal ethics. This essay is a reflection on what a practice-centred approach to morals in the law office looks like to a law teacher who has been in university legal education for 33 years, many of which have been spent teaching and writing about legal ethics.

The Notre Dame law faculty approved the clinical ethics seminars and decided that students could substitute one of them for the required upper-class course in legal ethics. The clinical seminar sessions would be like meetings in law firms with morals as the agenda. The cases and dilemmas used are current moral problems which student lawyers in the clinic and their supervising attorneys *have* to solve or ignore, because they involve real people in real situations - students acting as lawyers under Indiana's student practice rule; clinical faculty young and old; a supportive local bar and bench; and clients who retain the law office to represent them in a wide range of civil cases.

Americans in the late 20th century evade moral discussion of what they are about, as do law students in 'professional responsibility' courses and law faculties and lawyers in practice. The methods of evasion include resolutions of problems that dig no deeper than rules of practice imposed by courts, rules which virtually everyone identifies as ethically inadequate or labels as a superficial moral minimum.

The most dramatic effect from seminar discussions of live, current moral questions within the practice of a single law office is that it pushes past some of the modern barriers to moral discourse. The author has found that when a teacher and a seminar of student lawyers gets past inhibitions which seem to relate to a common feeling that discussion of morals involves religion and, as such, is a private thing, moral conversation is able to flourish.

The clinical ethics seminars are often fun to teach and sometimes open a window on the tragic character of professional life. Outside and around the seminar lessons the law office becomes a place of moral discourse. Cases involving battered women or illegal aliens, for example, are talked about for weeks. Bodies of opinion gather around these moral conversations. The cases and the clients clarify our personal convictions and take some

of the academic bombast out of them.

The clinical ethics seminar is also an academically respectable seminar. Students read books and handouts; they write journals and papers; they are expected to learn from the clinical faculty how to draft motions and try lawsuits. They are expected to apply their learning in writing about and discussing our cases and to demonstrate in academically respectable ways that they have done so. The difference between the cases and dilemmas used in a classroom professional responsibility course and what we take up in a clinical ethics seminar is that if the law office meeting on the morals of practice, using specific cases, does not come up with *answers*, it is a waste of time. The author finds that rarely, if ever, does he have to insist on the group coming to a conclusion because the student lawyers understand, as a group of lawyers in a down-town law firm would, that the issues are not just for talking about.

One reason that leading students to resolve dilemmas is an easy duty is that no law office is generic. Each is an association of particular people, in a particular place, at a time and among a distinct population. We practise at the centre of concentric circles. We are professional members in a civil community. We agreed that we should endeavour to live and work in this wide community with some serious gestures of civic virtue, as the best American lawyers do and always have done. Within that wider circle, we work in a community of lawyers and judges. It is this lawyers' community of ours that imposes the *Rules of Professional Conduct* on itself, not the civil community. The community of lawyers is a source of our educational endeavour, and therefore of our work for clients. Within the two circles there is our law office. If, often if not always, issues that relate to the outer circles that are resolved with civility and with rules; issues that relate to the work together in our office relate to policies. And policies, unlike rules, are vulnerable not only to analysis but to discussion and change.

It is hard to export this communal quality of moral discourse. However, the author concludes that the Notre Dame faculty has demonstrated to its student lawyers and to themselves, if to no one else, that it is possible to create moral discourse in a law office.

**Into the thicket: pursuing moral and political visions in labor law**

J W Teeter

46 *J Legal Educ* 2, June 1996, pp 252–262

Legal education tends to place ethical concerns in the ghetto of professional responsibility. This is shortsighted as moral and ethical dilemmas pervade all of the subjects taught. Whilst students should not have ethical beliefs thrust upon them, they should be encouraged to address them by their own moral and political beliefs as they arise. Labor law brings such dilemmas to the forefront. Moral and ideological conundrums are rife, yet often countered by sad truths such as *someone has to do it*.

The pervading ethical dilemmas stem from decided cases and elements of strategy calculated to weaken the other side. For example, misrepresentation of facts to win a union election is non-actionable but the wider ethical context encourages counsel not to advise their clients to lie, as such misrepresentation may make the client unpopular with its constituency. Is sexual harassment in the workplace a management or union issue or both? Tactical delay is a technique employed by many management-side firms. Does a lawyer's duty zealously to represent the client include dragging matters out if it would be to the client's advantage?

The author prefers to acquaint students with a diversity of perspectives. Is it a case of what the judge says is correct and the attorney's view on the issue is to be surrounded and replaced by that of the judge's. Is the pursuit of a client's legal right always morally worthy? The ethic of care from feminist jurisprudence would allow the inclusion of more than the usual parties to the dispute and invoke client participation in the decision. At the same time the polarising effect of labor law disputes seems very distant from the ethic of care. The maxim that you are what you do is never far away and an instant justification that whatever you are doing is all right. The opposite side of this maxim belies the lawyer as the one who can twist his/her soul from hot to cold as required. Something must give when one's ideological commitments conflict with one's role as an attorney. It could be argued that the ideal lawyer is more than the instrument of his/her client's will. Despite the virtue of the view that the lawyer should assume the role of a statesman, this stance can easily be crushed by economic and social realities. At one end of the spectrum there is the politicisation of law which advocates that the attorney should refuse to fight against unionism.

Students may interpret the visions as mutually exclusive or consider that the author has provided an exhaustive list of approaches to sorting out moral and ethical