CLINICAL LEGAL EDUCATION

Political interference with clinical legal education: denying access to justice

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A law student's representation of clients is made possible by the student practice rule in the jurisdiction where the student practises law through a clinical program. Every state in the United States of America has adopted student practice rules to facilitate law students representing clients as their clients' attorneys in legal proceedings. However, amendments to the Louisiana student practice rule prompted litigation in the federal district court by clinic clients, potential clinic clients, clinical law students and faculty, law student organisations and a donor to one clinical program.

In 1998, the Louisiana student practice rule was amended specifically to restrict law student representation of individuals and community organisations. It is difficult to consider the practical implications of the Louisiana Supreme Court's amendments to the student practice rule without reference to the circumstances preceding the amendments. In 1993, approximately four years after the Tulane Environmental Law Clinic (TELC) started representing clients, a former Louisiana Governor asked the Louisiana Supreme Court to investigate and change the student practice rule. In 1994, Louisiana's biggest business lobby was directly involved in judicial elections and there was political pressure on the Louisiana Supreme Court to change the student practice rule during the election campaign. This is the context that prompted the plaintiffs to allege that the amendments amounted to viewpoint discrimination against the TELC's clients as well as interference with the academic freedom of law students and faculty at Louisiana's law schools.

There were no public hearings or a public comment period concerning the proposed changes to the student practice rule, nor were there any public proceedings or deliberations of the Louisiana Supreme Court over the requests for changes to the student practice rule. Furthermore, the court has not made public any reports or results of its investigations into the operation of the student practice rule in Louisiana.

The amendments to the student practice rule seriously infringe upon clinical learning opportunities and the academic freedom rights of clinical students and law faculty. By responding to the business groups' demands to impose restrictions on the types of clients, and therefore types of cases, that clinical faculty select for teaching purposes, the Louisiana Supreme Court has intruded significantly on how students learn and faculty teach. The amendments raise questions concerning the availability of legal counsel for all persons and groups with legal problems and the role of clinical legal education programs in providing access to the courts for those in need.

Political interference with law school clinical programs and efforts to curtail traditionally unrepresented persons' access to justice are not new. Attempting to provide equal access to justice in a society where a client's right to a lawyer is generally conditioned on the client's ability to pay is a project charged with conflict. Inevitably, clinical programs providing meaningful access to justice for poor clients, unpopular clients, or clients challenging the interests of governments officials or more powerful clients and institutions will suffer attacks like those attacks experienced by clinical programs in Louisiana.

The amendments to the student practice rule in Louisiana precipitate concerns about interference with clinical legal education programs, concerns about how the organised bar, the judiciary and our legal system provide access to justice for persons with legal claims and concerns about whether judges fairly treat the parties and issues before them. These underlying issues of fairness of the judicial system and the allocation and delivery of legal services are the most pressing issues for our society. Regrettably, the Louisiana Supreme Court's recent restrictions on the clinical programs have the practical effect of narrowing access to justice rather than broadening it, simultaneously intruding on the academic freedom of law students and faculty.

CURRICULUM

Cognitive bridges: law courses structured for application and knowledge transfer

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The most common organisations of legal textbooks and syllabi adopt legal experts' substantive knowledge networks. This assumes that teaching law is like transplanting the legal expert's knowledge networks into his/her students. Instead of using specific disputes, such as the car accident, and abstracting from such an event how it would be analysed from a legal perspective, law texts attempt to teach from the abstract. Without concrete examples, the novice's legal knowledge network floats unconnected, fragile, and unprepared for application to new business contexts.

By shifting the organisation of introductory law classes from legal experts' knowledge organisations to students' legal knowledge networks, pro-

fessors can help students to assimilate new concepts into students' existing knowledge networks. Building on students' laymen terminology for legal terms builds a firm foundation for students to integrate their prior knowledge with new vocabulary. Integrating new knowledge with prior knowledge networks places fewer demands on cognitive capacity. Piaget called this process assimilation.

Cognition research findings support the proposition that more learning occurs when one builds on existing novice networks. The author provides concrete examples of how cognition research can provide a model to inform business law teaching. She also describes an experiment she designed to test whether restructuring syllabi around students' prior legal knowledge would result in students achieving on a par with students whose course was organised traditionally around the topics presented in the text. Achievement in both conditions was measured by using a pre-post test design and a post test performance comparison across a control and an experimental group. The results are presented and analysed.

Traditionally organised law classes appear less effective in strengthening, elaborating, and restructuring students' legal knowledge networks for application to business contexts. Student knowledge-centred law classes are organised around students' existing knowledge networks. By using students generated cases, problems, and examples, class and study time can be devoted to created multiple connections among students' prior knowledge organisation and problem solving strategies with new legal issue spotting and analysis strategies. The student knowledge-centred approach prepares students for transferring concepts learned in prior cases to examine and analyse novel contexts.

Since the long-term goal of legal studies classes is to prepare students to recognise and prevent legal problems from arising in business contexts, courses organised to build cognitive bridges between formal legal training and application to real world settings serves students' long-term needs.

INSTITUTIONS & ORGANISATIONS

The professional responsibilities of professional schools

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Law schools have a distinctive responsibility to examine both the public life that law helps constitute and the professional life of those who help constitute law. Underlying the current professionalism crusade is a pervasive discontent with legal practice. Law schools are insulated from much of this disaffection. Professionalism issues receive little systematic attention in today's curricula. Rather, the vast majority of law schools relegate almost all the discussion to a single required course, with the rest of the faculty treating professional responsibility as someone else's responsibility.

Moreover, an excessively doctrinal framework leaves out many of the crucial issues facing the legal profession: inadequate access to justice for low and moderate income citizens; disciplinary processes that provide no effective remedies for most complainants; excessively adversarial norms that escalate costs for parties and devalue the interests of non-parties; and practice structures that pre-empt other commitments to families, communities and public service. Neither these problems nor other common ethical dilemmas receive significant attention outside of professional responsibility courses.

Our failure to make professional responsibility a professional priority has multiple causes, but faculty reluctance is surely high among them. Part of that reluctance reflects scepticism about the value of discussing values in professional school. Such concerns are not without force, but they suggest reasons to avoid overstating our influence, not reasons to abandon our efforts. Research on ethics education finds that moral views and strategies change significantly during early adulthood and that well-designed courses can improve capacities for moral reasoning.

For some faculty the greatest obstacle to covering legal ethics material involves doubts, less about its effectiveness than about their own. Many are uncomfortable when venturing into value-laden discussion. The dilemma is real, but the answer is not to avoid the ethical issues that present it. To make professional values central in professional schools requires a significant institutional commitment. The conventional approach – add ethics and stir – is inadequate to the task.

A similar gap persists in law school pro bono policies. In 1996 the ABA amended its accreditation standards to call on schools to encourage students to participate in pro bono activities and to provide opportunities for them to do so. Over 90 percent of institutions offer voluntary programs, but their scope and quality vary considerably. About a third of schools have no law-related pro bono projects or have projects involving fewer than 50 participants per year. That lack of involvement persists among practitioners. Bar ethical codes have long proclaimed that all lawyers have obligations to assist individuals who cannot afford counsel. And attorneys who have assumed those obligations have made enormous contributions to the public interest. Yet the proportion of lawyers who contribute has remained dispiritingly small.