

Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy

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Preface

Clinical Legal Education started in response to the failure of traditional legal education to prepare students to engage in the craft of being a lawyer. Modern clinical legal education began with the belief that having law students represent real clients in underserved communities was important, both to teach students the skills and values necessary to their careers as lawyers and to improve justice for clients. From its beginning, clinical education has been a reform movement, one intended to transform the content and methods of the legal academy.

Clinicians provide students their first moment of responsibility for clients, a role that requires them to take actions that have consequences in the real world. Doing this under the tutelage of faculty members ensures that the lessons that come from that profound moment are ones that express the highest aspirations of the legal profession. To teach students engaged in practice requires thoughtful pedagogy. Clinical teachers from around the country and now around the world have worked together to develop and improve that pedagogy. Over more than four decades, the clinical community has gathered at conferences (most importantly, the annual Association of American Law Schools Clinical Teachers' Conference), written articles and textbooks, created teaching materials, and participated in small intellectual networks, all to create the methods and content of the clinical curriculum.

This community has from the beginning developed innovative ways to teach both new and experienced teachers. Because clinical education is part of legal education reform in many parts of the world, that teaching is now an international phenomena. The need for law schools to teach students to understand the complexity of law as it takes shape through practice and to prepare students to undertake the responsibilities of practice has meant that the cadre of clinicians who are able to do this important work continues to expand.

As we write and edit this book, legal education is in a period of transition, responding partly to critical evaluations of legal education from many voices, but also to current transformation in the nature of law practice. As we write, we do not know where these shifts will take the legal profession and what society will need and expect from lawyers. Thus, we prepare students for a changing practice and, at the same time, identify and teach enduring norms about what being a lawyer means. In the current terminology, many legal educators have embraced a goal of making students more "practice ready," but clinical education has since its inception been committed to the broader goals of ensuring that law schools educate students in the complex ways of thinking and acting required of lawyers to fulfill their critical roles in society.

Legal education that includes faculty-supervised practice enables law schools to educate lawyers with the capacity to adapt to change and be agents in reshaping law and the profession. In the book, we describe clinical education's transformative potential to create ethical, skilled, thoughtful practitioners imbued with professional values of seeking justice and serving clients. We are convinced that educating students in a faculty-supervised

practice community enables deep, expansive, and enduring learning about how to practice and how to continue to learn. The book illustrates the vibrant learning potential of these practice communities as well as the methodologies teachers have to realize the potential of clinical education.

While the main audience for the book is the faculty who teach and supervise in these law-school sponsored practice communities located in the United States, we hope the book will prove valuable for all teachers, here and abroad, who teach about practice and professional identity. The book's examples of how to teach come from faculty-supervised clinical programs and illustrate the depth and vibrancy of learning that is grounded in students' experiences, guided by faculty, of exercising responsibility for clients. The pedagogical theories we identify for learning the necessary practice skills, ways of thinking, and perspectives on the legal system, as well as the suggestions we offer for how to use these theories apply to a broad range of experiential learning courses. In addition to identifying how students learn, the book, explicitly and implicitly through our examples, identifies how a teacher sets priorities for what students learn.

The book articulates an ambitious agenda for student learning and therefore for teachers who facilitate this learning. The chapters on the four clinical methodologies—fieldwork, supervision, seminar, and rounds—identify a variety of choices teachers face in designing each one. We know these lists of possible choices can be overwhelming, especially as one is beginning to teach. Indeed, in our own professional development, we focus on different aspects of our teaching or lawyering in different years to manage this feeling. The book is written in a way that allows a reader to focus on particular chapters without reading the whole at one time. We hope those in fellowship programs and other beginners will find the book a welcoming introduction to becoming a clinical teacher and that it will be resource for future development. We hope the book's varied frameworks and approaches resonate with our experienced colleagues' practices of good teaching, renew commitments to intentional teaching, organize thinking about established ways of approaching our educational activities, and offer new ideas.

The changing nature of professional work provides opportunities for teachers to explore anew innovative approaches to practice, to achieving justice, and to inspiring a new generation of lawyers. Evolving approaches to practice signal the need for careful thought about how and what to teach. In this book, we have aspired to do what we intend to do in our teaching: to provide concrete ideas for handling the work that is before us and create theories and frameworks for guiding our current and future work.

In writing this book we worked together with many wonderful colleagues from around the country. They have generously served as chapter co-authors or have written essays that add additional examples of the methodologies. We are grateful to them. They are a diverse group, all committed to the innovation and experimentation that characterize clinical education. Our work with them reminds us how much we have influenced each other in our thinking about clinical teaching. We are fortunate to be part of a community of law teachers who learn from each other about teaching students, representing clients, and achieving justice. We are indebted to this community for our development as teachers and for this book. Our field is an on-going collaboration among people who are passionate and thoughtful about the privilege we have to be clinical teachers.

Many clinicians whose voices are not heard directly in this book have contributed to what we know and have given feedback or offered suggestions for improving this project. We thank them for being willing and effective participants in this intellectual community

that taught us all so much. Finally, the book is not a research project so the footnotes and bibliography are minimal. In the endnotes to chapters, we acknowledge thinkers whose work is precisely necessary for understanding particular ideas we are developing and identify a few specific sources for this learning. We, therefore, leave for another day references to the many who have influenced our thinking.

Sue, Elliott & Ann

Dedication and Acknowledgments

Throughout our long and joyous careers in clinical education, we have been part of a community of committed lawyer-teacher-scholars who have worked together to understand and teach lawyering. These colleagues and friends have created a new field of inquiry. Together they have generated knowledge about the work of lawyers, the role of lawyering in law and society, and the education of lawyers. They have sought to inspire students, improve legal education and the legal profession, and promote justice. We cherish them and hope that this book honors all who have shared their ideas with us, taught us, and learned with us.

The book is a collaborative effort, a demonstration of the collective tradition of clinical legal education. Our chapter co-authors, Jane Aiken, Robert Dinerstein, Conrad Johnson, and Jean Koh Peters, shaped our thinking and helped us realize our aspirations for this project.

Our essayists joined us in making it possible for this book to contain wisdom produced through the contributions of many.

The colleagues with whom we work every day, the faculties of American University Washington College of Law and CUNY School of Law, especially our clinical colleagues, are the first line of intellectual exchange in our lives. We are proud of our association with them.

We thank our law schools for supporting our work and providing research assistance over the life of the project.

We dedicate this book to all of these colleagues and friends. But most of all, we dedicate it to all those we love for supporting us and sustaining us over the long life of this project.

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