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From the Clinic to the Classroom: Or What I Would Have Learned if I Had Been Paying More Attention to my Students and Their Clients

Peter B. Knapp

Mitchell Hamline School of Law, peter.knapp@mitchellhamline.edu

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From the Clinic to the Classroom: Or What I Would Have Learned if I Had Been Paying More Attention to my Students and Their Clients

Abstract

This past year, two experiences related to clinical teaching—one a moment of personal epiphany and the other, a conversation with a colleague—have caused the author to spend more time thinking about what he should be learning in the clinic and applying in the classroom.

Keywords

clinical legal education, law school, legal clinics, clinical education, teaching

Disciplines

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**FROM THE CLINIC TO THE CLASSROOM: OR WHAT I
WOULD HAVE LEARNED IF I HAD BEEN PAYING MORE
ATTENTION TO MY STUDENTS AND THEIR CLIENTS**

Peter B. Knapp[†]

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Sorry, I know I won't have time . . . No, see, I'm signed up for clinic next semester and I know I'm going to be really busy . . .

—Anonymous Student, overheard on a cell phone in the Commons

For the last fifteen years, I've taught in William Mitchell's Civil Advocacy Clinic. I have the best job in town. It's the best job for a lawyer because in the clinic we can always find more clients, we are free to take the cases that seem the most pressing or most interesting, and we never have to worry about billing our clients. It's the best job for a teacher because, unlike other teachers, I get to see the end of the educational story. Each semester, I sit next to students and watch them as they interview and counsel clients, conduct direct and cross-examination, argue cases in front of the court of appeals, and generally demonstrate what it is they have learned about the law while they have been here at the college.

It is also the best job for a lawyer and a teacher because so much of the time spent on the job is expressly focused on figuring out what lessons have been learned from all that experience. Most of the time, of course, my clinic students talk about what it is *they* have learned. That, however, is only half the story. Like every other clinical teacher I have ever talked to, I have frequently

[†] Professor of Law, William Mitchell College of Law. I am indebted to my colleague Denise Roy. Her suggestions about this essay have strengthened and clarified it; her insights about these issues have inspired and sharpened my own thinking.

watched my students do something—during an interview, during a cross-examination, during an argument—and said to myself, “Wow! I never would have thought to do *that*. The next time I have a chance, I’ll have to try that myself.” My clinic students have taught me many lessons about lawyering and I’ve put many of those lessons to good use in my own work with clients.

Lately, though, as I’ve worked with my clinic students, I have started to pay more attention to the lessons I’ve learned—or should have learned—about my own teaching, and especially about my classroom teaching. In addition to teaching in the clinic, I have also taught Torts and Evidence. This past year, two experiences related to clinical teaching—one a moment of personal epiphany and the other, a conversation with a colleague—have caused me to spend more time thinking about what I should be learning in the clinic and applying in the classroom.

I. LIKE A BOLT FROM THE BLUE . . .

Not too long ago, I was sitting in on a student’s interview with a new client shortly before I was scheduled to teach my Torts class. The client was a woman who had been fired from her job in a nursing care facility and was seeking unemployment benefits. I listened to the student conduct the interview and thought for the umpteenth time how often I had seen this scene play out. My student had prepared well for the interview and he and I had talked about, among other things, the importance of obtaining information about the client’s work history as well as other background information. The student asked the questions he had prepared, but focused his time and attention during the interview almost exclusively on the incident of alleged insubordination leading up to the client’s termination. As a result, he learned precious little about what kind of work the client did, what the client’s relationship was with her supervisor, or what other problems the client had encountered on the job. As I walked down the hall to my Torts class, I wondered once again why it was that law students dealt so perfunctorily with background and contextual information about clients.

It was early in the fall semester and the case up for discussion that day in Torts was a straightforward illustration of the law of battery. I asked the students to identify the holding of the case, and we discussed different possible answers to that question. Once we had settled on what seemed to be the holding, I asked the

students to list the facts of the case that were critical to the court in reaching its holding. With little trouble, the students were able to identify the two or three salient facts that the court had articulated as central to its holding. I was pleased at the progress the students had made during the semester, because just a few weeks before they had had trouble in sorting out the wheat from the chaff and had tended to see all facts as equally relevant. Now, with relatively little guidance, they could move directly to the heart of the case and identify the facts that were truly important!

I thought back on the very first case we had discussed in Torts. I'd asked the students to identify the facts central to the holding and made a list on the whiteboard of every fact the students mentioned. Once the board was filled with different facts, we all discussed which of the facts listed were truly critical to the holding and gradually, fact by fact, I had erased the board until only the two or three salient facts remained. Now, I thought, they were doing essentially the same thing on their own.

. . . And there it was, my epiphany. Astonishingly, I don't think it was until that moment that I realized how large a part of the problem I was. My clinic student had dealt with his client's narrative in pretty much the same way I had dealt with the whiteboard in the Torts classroom. As he interviewed his client, he had allowed her to list many different facts, but he very quickly erased from his attention all but the two or three he judged most salient. Why did clinic students deal instinctively with all but the most clearly relevant facts? The answer, it seemed, was that in a sense they were just doing what I had taught them to do.

As epiphanies go, I have to admit that this one seems, well, a bit obvious. (Your own reaction may be "Duh!" Mine was "D'oh!") But it was not until that moment in Torts class that I understood the extent to which I had been ignoring the lessons about classroom teaching that my clinical experience ought to have imparted. Ignoring those lessons, I had failed to see the full impact of some of the decisions I was making as a Torts teacher. Make no mistake, I do think it is important for law students to be able to sort through an undifferentiated array of facts and make some judgment about which of those facts is the most critical to the application of a legal rule. That skill is an important one and one that ought to be learned early on in law school, and I was doing a reasonably good job of teaching it. The way I was teaching that skill to my Torts students, however, had a side effect I hadn't

anticipated. I was using a technique that encouraged students to ignore their own life-based understanding of the importance of background and context to any factual narrative. In short, I was steering them away from using a skill that would prove necessary once they needed to work with clients as well as cases.

As I thought more about this, I suspected the problem wasn't confined to my Torts class. My own law school experience taught me a great deal about working with cases, but very little about working with clients. As a result, much of my time during my first years in practice was spent trying to figure out how to make the skills I learned in a classroom relevant to my work in a law office. The disjunction between legal education and legal practice is a frequently observed phenomenon. Colleagues in clinical teaching and elsewhere in the academy have written about this, and I had thought about it myself. When I had thought about this disjunction, however, I had usually thought about what could be added to the law school classroom, what could be added to the law school curriculum that would improve students' practical skills. I had spent relatively little time thinking about how classroom teaching methods might afflict my students' ability to relate to clients.

Instead of viewing clinical education as an antidote to deficiencies in legal education, I should have been thinking about it as a laboratory for developing a vaccine to help prevent the ailment in the first place. What is the ailment? More and more, I am convinced that the central problem with much of my classroom teaching is this: I have spent too little time in my Torts and Evidence classes thinking about clients and, as a result, my students are too seldom thinking about clients when they are in Torts or Evidence, too. And I strongly suspect it's not just my students.

Formulating a vaccine for that ailment may prove difficult, not to mention formulating one without side effects. But the effort is worthwhile. Clinic students and new lawyers alike struggle to reconcile what they have learned in the classroom with what they must do to represent clients effectively and responsibly. Some of that struggle is probably unavoidable, some of that struggle may even be beneficial, but at least some of that struggle can and ought to be prevented. I believe that spending more time thinking and talking and teaching about clients in the classroom will benefit our students in several ways.

First, law students could emerge from the classroom with a

fuller, more realistic, and robust vision of the role fact plays in the representation of clients. Right now, my students, and I believe most law students, come from the classroom with a very limited vision of how it is the world of fact and the world of law interrelate. I saw the limits of this vision every time I watched one of my clinic students rush a client to the “relevant” part of the interview. Part of the reason for this is that investigating facts, understanding facts, working with facts is something we spend relatively little time teaching in the law school classroom. Thinking over my own experience in Torts and clinic, I believe another part of the explanation is that the way we teach law warps our students’ understanding of the way in which lawyers work with facts and the way in which lawyers work with clients. I am certain that my students need to understand what facts are important to appellate judges, but I am equally certain that my students need to understand what facts are important to clients, why it is many of those facts never find their way onto the pages of the casebook, and how it is that learning about those facts may be valuable to a lawyer.

II. HOW DOES LAW WORK?

There is a second benefit that would come from making clients more visible in the classroom. The absence from the classroom of the client’s perspective has an impact on students’ understanding of law as well as fact. A colleague who teaches in a transactional clinic told me about a discussion she and her students had about counseling a client in the process of making some preliminary decisions about how to structure a business. As the students were talking about their work with this client, it became clear that they felt it was their responsibility to advise the client of the consequences of those decisions once those decisions had been made—but not before. The students felt it would be inappropriate to advise the client of legal consequences prior to the point the client made the decision, because that would be akin to counseling the client to change the facts to fit the law. Giving them legal advice first would be, in a sense, “cheating.” A client’s perspective on this issue is, of course, quite a bit different. Clients come to lawyers, particularly outside the context of litigation, to obtain the benefit of legal advice before making decisions with legal consequences.

While it would be easy to dismiss the students’ point of view as the product of inexperience, it seems to me that lets all of us law

teachers off the hook too easily. In my Torts class, for example, the principal medium of instruction is, like most other first-year law classes, appellate opinions. We discuss these cases oftentimes from much the same perspective occupied by the men and women who wrote them—looking back on the facts, which are already fixed in time, and then making a decision about which rules apply to those facts and what legal consequences ought to flow from the operation of those rules. In my Evidence class, students are more often reading problems rather than case decisions, and often I ask my students to assume the role of lawyers on opposing sides of a question. Shifting roles, however, does little to alter the students' perspective. They are still looking at a fixed set of facts and making arguments about which rules should apply and what the resulting application will mean.

If this is the experience my students have had in the classroom, is it any wonder that when they come to the clinic they find it difficult to see and use the law in a fundamentally different way? As lawyers involved in counseling or transactional work, the very essence of our work involves offering judgment and advice about the law at a point prior to critical decisions about what is to be done. We use the law to make predictions about a world of fact when that world is still in flux. While it is harder to see, the same holds true for litigators. As lawyers involved in litigation or other dispute-resolution work, we have no choice but to conduct discovery, draft motions, interrogate witnesses, and make arguments in the face of an imperfect and sometimes rapidly shifting understanding of the facts. While litigators work to avoid surprises at trial, it is the rare deposition and, frankly, the rare trial that doesn't change a lawyer's understanding of what happened.

Small wonder that clinic students chafe at the idea that they may have to opine about the law before the facts have been fixed. In our classrooms, they have worked hard to learn how to apply law to facts that are frozen on the page of the appellate opinion or in the hypothetical we have posed. This is the skill we have taught in the classroom and it is the skill students bring to the clinic. This understanding of the law—that the law is used to judge that which has already happened—isn't wrong, but it is incomplete. Spending more time in our classrooms thinking about the law from the perspective of a client who needs to make a decision about the future ought to improve not only our students' ability to later work with clients, but also improve our students' understanding of the

law itself.

As my colleague's experience with her clinic student suggests, a limited vision of the law infuses our students' approach to interviewing and counseling clients. I strongly suspect that it also infuses our students' approach to many other tasks that bring them into contact with the world of fact. A third example of how making clients more visible in the classroom would improve understanding of the work lawyers do relates to the issue of uncertainty. I can think of any number of times when a student investigating a case was ready to reach a conclusion about "what really had happened" after talking with the first witness who recounted a version of events somewhat at odds with the client's. Some students are willing to suspend judgment, make tentative conclusions, investigate with an open mind, and formulate preliminary and hesitant theories born of an understanding of the facts that is much less than certain. These are rare students, however, and that is hardly surprising. In my classroom I have fed my students a steady diet of legal opinions typically written in language anything but tentative, hesitant, or uncertain. Decisions are decisive and probably must be so. The habit of mind reflected in those decisions, a habit of mind I have lauded and promoted in my classroom, frequently does a disservice to the student new to the clinic. More to the point, if that habit of mind does a disservice to the student in the clinic, it probably also does a disservice to that student's clients—both in the clinic and in practice after graduation.

And so what? We recognize that the MacCrate Report was right to characterize legal education as a process that continues long after the student leaves the law school. Students need to learn to read cases, parse facts, and apply the law to those facts before they can represent clients. Why not teach those skills in law school and leave teaching about work with clients for the first couple of years of practice? That question has nipped at the heels of clinical legal education for a generation, and teachers, students in the clinic, and lawyers in practice have offered a variety of different answers.

Here's mine. After years of teaching, both in the clinic and the classroom, I am finally developing a better understanding of the difficulties my classroom teaching is creating for my students and their clients. I am also beginning to understand that what I see my students in the clinic learning—some of them for the first time—when they start working with clients would have been

tremendously valuable back in their first-year Torts class.

Yes, the law can be used to make decisions about what has happened, but it can also be used to guide people who need to decide what to do. The facts that judges recount in their decisions are important, but incomplete. The factual information we need to understand our client's concerns and provide counsel about those concerns may be far deeper and broader than the facts necessary to write an appellate decision. The world of fact—even facts about events that have already happened—is a world of conflicting versions riddled with nuance and uncertainty.

All these are truisms, of course, but they are truisms that have received too little attention in the law school classroom. Making the classroom a place where clients aren't occasional visitors—and visitors fleeting and flimsy at that—will make my students better lawyers but also better students of the law. The law, as it is used working with clients, is a subtle and versatile tool. Learning to read cases with a client's perspective in mind should sharpen a student's skills of critical analysis. Thinking about facts as contingent and dynamic ought to open a student's mind to a fuller critique of the ruling in any particular case. To be sure, students should ask themselves if a holding in a case has done justice to the parties. It can't be harmful, however, for a student to also ask, "Who will my clients be and how will this case change their lives?" Using our learning from the clinic to bring a fuller vision of the client into the classroom may not be the only way to teach these lessons, of course, but I suspect it may be the most effective.

As Roger Haydock discusses in his essay in this volume, part of the vision of the clinical movement was nothing less than a transformation of all of legal education. In the past thirty years, legal education has changed and clinical instruction has certainly been part of that change. We can do more to help make that vision of change a reality if those of us who teach in the clinic bring more of what we have learned into the doctrinal classroom. The lessons learned in the clinic—from our students, from their clients—need to be taught in Torts and Tax and everywhere else in the law school curriculum. I'm not sure I yet know how, but I do know that I will be working to try. And so, you'll excuse me, but I must be going. See, I'm signed up for clinic next semester and I know I'm going to be really busy.