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# INTEGRATION OF PROFESSIONAL SKILLS INTO THE LAW SCHOOL CURRICULUM: WHERE WE'VE BEEN AND WHERE WE'RE GOING

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The efforts of law schools around the country to integrate professional skills into the law school curriculum as a whole have been an important recent development in legal education. As a law teacher who has done both clinical and non-clinical classroom teaching, I have been an advocate for integration. This essay provides an historical perspective on and overview of various curricular approaches that attempt to integrate professional skills either in the first year or throughout the three years of law school and raises some issues concerning integration that need to be considered by law schools.<sup>1</sup>

I start by explaining my experience that shapes my perspective on the issue of integration. I was a practicing lawyer in New York City for seven years doing civil rights and constitutional litigation at the Center for Constitutional Rights. Then I worked as a clinical teacher for three and a half years in the Constitutional Litigation clinic at Rutgers Law School-Newark. Now I am a non-clinical/classroom teacher at Brooklyn Law School where I teach Civil Procedure, Constitutional Law and Women and the Law. In these classes I try to use clinical methodology as a pedagogical method and integrate professional skills into the classroom experience. In general, I am an advocate for the use of clinical methodology within the non-clinical/classroom setting and as a former clinical teacher I try to be a bridge between clinical and non-clinical teachers. Luckily at Brooklyn we have several clinical and non-clinical faculty interested in these approaches.<sup>2</sup>

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\*Professor of Law, Brooklyn Law School. B.A. 1968, Bryn Mawr College; M.Sc. 1969, The London School of Economics and Political Science; J.D. 1973, New York University Law School. An earlier version of this essay was presented at the American Bar Association National Conference on Professional Skills and Legal Education in Albuquerque, New Mexico on October 15-18, 1987 as the introduction to a panel entitled An Overview of Professional Skills Programs. Susan Bryant helped me think through the issues presented in this essay and put a fine panel together. The energy, enthusiasm and thoughtfulness of the other members of the panel, Bari Burke, Victor Goode and Michael Sheldon, also contributed to the essay.

1. The panel, An Overview of Professional Skills Programs, for which this essay was originally developed, focused on the efforts of law schools around the country to integrate professional skills training into the law school curriculum as a whole and explore the possibilities presented by different curricular approaches. It included the following speakers and topics: Professor Bari Burke, Director of Legal Writing at the University of Montana Law School and former Assistant Dean discussed the issue of identification of what professional skills the law school should teach and considerations concerning choice of curricular model drawing on Montana's experience. Professor Victor Goode of CUNY Law School at Queens College, who has been coordinator of innovative CUNY Law School curriculum treats a particular professional skill, professional responsibility, by integrating its study in all aspects of its three year program. Finally, Professor Michael Sheldon, Director of the Criminal Trial and Criminal Appellate Clinic and Moot Court Program at the University of Connecticut Law School, discussed issues presented by curricular models for the vast range of law schools that have not gotten as far as Montana and CUNY in developing structured curriculum that integrates professional skills.

2. At the ABA Conference, Dean Margaret Berger of Brooklyn Law School discussed some of Brooklyn Law School's efforts with regard to the first-year curriculum in a presentation following this panel. Brooklyn Law School has a first-year seminar section program in which all first-year students are in a small or "seminar" section (no more than 32 students) in one of their first-year courses. Depending on the instructor, the course can integrate professional skills training into the first-year program. For discussion of these

I want to begin by briefly reviewing the range of lawyering skills which might be included in a broad definition of professional skills. The more traditional ones include legal reasoning, case and doctrinal analysis, and written and oral advocacy skills. Skills that we have begun to recognize include professional responsibility and sense of legal ethics, sensitivity to facts, fact-gathering, ends-means analysis, cost-benefit analysis, hypothesis-testing, understanding of the interrelationship between fact and law, ability to project ideas, common sense, judgment, the ability to work with others in a collaborative fashion and a host of interpersonal skills: communication, the ability to listen and hear, empathy and finally what Rosalie Wahl has referred to so movingly as the ability to integrate heart and mind.<sup>3</sup> Many of these skills are quite complex and have many different dimensions. A sensitivity to professional responsibility, for example, or the development of judgment involves a range of intellectual and human qualities. The teaching of these skills has not traditionally been thought to be within the goals of legal education. These are skills based on self-awareness, that involve an ability to be self-reflective and to consider and analyze one's own actions. It is important that when we talk about professional skills we include the range of these qualities.

Surely the initiative for the broadened definition of professional skills that I have suggested has come from the clinical education movement. But it is also important that we acknowledge that many non-clinical teachers have had some of these skills in mind as part of their educational agenda, even if they didn't self-consciously identify them as "lawyering skills." Thus there is in some sense a dilemma for us in the identification of some of these areas as professional skills in contrast with other analytic tasks. The dichotomy between theory and practice, doctrine and skills, is false—it must be rejected by both clinical and non-clinical teachers and leadership must be given to the project of eradicating these distinctions by deans. The richest curriculum—the curriculum that is rich in theory *and* practice, most intellectually challenging and most profoundly useful to students—is based on a notion of *praxis* that sees theory and practice as part of a dialectical process. Both theory and practice in legal education are sterile if divorced from each other. The intellectual process of connecting theory and practice must be a major focus of legal education.

Law schools have taken a number of different approaches to the incorporation of professional skills within the curriculum. None of these approaches are perhaps so self-conscious that they are really "models," but on a continuum, these approaches can be identified as a separation model, an integration model, and a mixed-model that has elements of both.

Historically, the development of clinical education in the late 1960's emerged from a recognition of the importance of professional skills within the law school curriculum. Law school clinical programs—almost exclusively fieldwork and

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approaches in the teaching of Civil Procedure, see Schneider, *Rethinking the Teaching of Civil Procedure*, 37 JOURNAL OF LEGAL EDUC. 41 (March 1987); Schneider and O'Neill, *Simulation Materials for Civil Procedure: The Cases of Ellen Warren and Marian Fleming* (1986), (available from National Institute for Dispute Resolution, Washington, D.C.).

3. Justice Rosalie Wahl of the Minnesota Supreme Court and Chair of the ABA Section on Legal Education and Admissions to the Bar spoke of the integration of "heart and mind" in her introductory remarks to the ABA conference.

live-client—were separate programs in the law school curriculum, which, as they evolved, focused on the development of lawyering skills, case analysis, interviewing, negotiation, legal writing and oral advocacy. In some schools, even at that time, there were individual courses, mostly trial advocacy which focused on a particular lawyering skill. To a large extent though, the advent of clinical education gave the law schools a sense that they were dealing with professional skills training in the curriculum as a whole by having *separate* programs in which students could be exposed to professional skills training. The clinics would do the service for the law school in fulfilling its professional skills obligation.

The second model, the integration model, is at the other end of the continuum. This model, typified perhaps by CUNY Law School and programs in a few other schools such as the University of Montana Law School, is based on a vision of integrating professional skills training in all courses within the curriculum. At CUNY for example, professional skills training, legal writing, advocacy, case analysis, and the range of other skills that I have mentioned are integrated into the curriculum beginning in the first year in simulation exercises and in coursework and developed in special lawyering seminars and in live-client clinics in the third year.

The third model, which represents the experience of the vast number of law schools today, combines elements of both. There are developed law school clinics but also a variety of other programs within the curriculum, including an increasing number of simulation courses that focus on teaching lawyering skills in one form or another. The range of those programs is documented in the ABA Study of Professional Skills Courses in the Law School curriculum by William Powers, the materials that the ABA has gathered in response to its inquiries to the law schools concerning the implementation of the ABA Standard respecting professional skills training.<sup>4</sup>

Within this large middle category, it is possible to see the beginning of some models for structured development of professional skills within the curriculum. First, we see law schools that have focused some attention on the development of professional skills training within the first year. For example, some law schools like NYU and Boston College,<sup>5</sup> have special lawyering courses that are mandatory within the first year. However, both of these courses reflect a “separation” approach; a separate course in lawyering is taught distinct from the other first-year courses. Other schools, like Brooklyn, have developed seminar section programs, which are smaller first-year course sections of the traditional first-year courses that are integrated in a limited way with legal writing or other lawyering skills such as oral advocacy, interviewing, counseling, or negotiation. Some schools have developed first year programs that are consciously or sequentially tied to later courses. Other schools have not focused so much on the first-year program, but provided a series of separate upper-level courses which offer professional skills training. Here we see a very wide range of courses: interviewing, counseling, negotiation, separate professional responsibility courses, courses that focus on the lawyer’s role, office management, appellate advocacy

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4. W. Powers, A Study of Contemporary Law School Curricula II: Professional Skills Courses 1986 (American Bar Association, Office of the Consultant on Legal Education).

5. Both NYU and Boston College have first-year lawyering programs which are separate courses.

and trial advocacy programs, simulation courses in a range of skills and substantive areas and moot court programs are some examples. Almost all schools now have at least some form of clinical program—either externship or field work—although it seems that the number of “live-client” field work clinics is declining. It appears, however, that few schools have self-consciously structured an entire curriculum that focuses on the sequenced development of coursework that builds toward the live-client clinic. Some provide upper-level courses that do that, in fact, such as Interviewing, Counseling and Negotiation, but these courses are not viewed as prerequisites to the clinic.

This brief overview of approaches that have been developed to professional skills training suggests a number of important issues for law schools to consider. First, the move from a separate (and, I might add, unequal) model of professional skills training, with the clinic as its *exclusive* focus is healthy. Integration of professional skills training within the clinical and non-clinical curriculum as a whole is preferable. It is important that we attempt to integrate professional skills into the curriculum as a whole to teach students to understand the crucial interrelationship between theory and practice, fact and law, and law on the books and law in action. A dangerous message is given to students when we distinguish lawyering skills from substance, and view skills as some kind of technical acquisition.

Second, integration of professional skills training starting in the first year is critical, for several reasons. The first year of law school plays a critical role in giving students important messages about what is important in legal education and legal practice. It is important for them to see the more traditional first year case-analysis and legal reasoning skills as interconnected with the range of other professional skills that I previously described. It is also useful and empowering to students to be exposed to clinical methodology and experiential learning in the first year. We should give students a sense of the importance of judgment, ethics, values, and the lawyer-client relationship as early as possible. These messages should be transmitted repeatedly over the entire three years but begin with the first year.

Third, it is important to recognize the central role of the clinic, particularly the live-client clinic, in the development of professional skills training even as we integrate professional skills into the curriculum more broadly. The move towards integration, simulation and proliferation of lawyering skills courses should not substitute for the invaluable experience of live-client clinics. We need both, and all, a host of varied and different opportunities. But the live-client clinics should still be viewed as the central aspect of professional skills programs.

Fourth, in envisioning an integrated curriculum, and considering the structure and sequencing of professional skills courses within the curricular as a whole, we should think about the questions of whether there is both an optimal and a minimal curriculum that does the job of developing professional skills, and, if so, should law schools make some of this coursework mandatory for graduation?

Finally, a few words about ways that these curricular visions can become realities in law schools. First—the attitude of the Dean and the tone set for the law school is important. The Dean must perceive the importance of professional

skills and clinical approach to the curriculum as a whole. This curricular approach can be implemented in hiring—new appointments should be made to individuals who share a vision of integration and want to do that work whether in clinic or classroom. The Dean must be willing to commit resources for the development of professional skills programs which may be costly to the law school. Courses that integrate clinical methodology and focus on professional skills tend to be more labor-intensive and faculty who do this work need release time to develop new courses and can teach fewer courses. In addition, the law school may need video machines and other technical and institutional support. Finally, the law school should encourage personal contacts and professional dialogue between clinic and non-clinic faculty.

Clinical work, skills work, and work that focuses on the lawyering process can be the most intellectually rich part of the curriculum. In my view, it is linked with important contemporary trends in legal thinking, critical legal studies, feminist jurisprudence, and law and society.<sup>6</sup> Several years ago, the late Bob Cover, Professor of Law at Yale, told me that he had moved his office into the law school next to the Yale clinic because the work that was going on in the clinic was the most intellectually challenging and exciting work in the law school and he wanted to be part of it. Our curricular vision must be broad enough to resist the impulse to segregate skills and put it at the margin. Instead, we must commit ourselves to see the integration of skills and substance, of heart and mind, as the central task of legal education.

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6. For a brief discussion of the interrelationship between these theoretical trends in the context of Civil Procedure see Schneider, *Rethinking the Teaching of Civil Procedure*, *supra* note 2, at 45.

