

CLINICAL LEGAL EDUCATION

There is a method(ology) to this madness: a review and analysis of feedback in the clinical process

VM Goode

53 *Okla L Rev* 2, 2000, pp 223-279

From its earliest days, the clinical legal education movement distinguished itself from its pedagogical cousin in the traditional law school classroom in not relying, unlike the latter, on the use of the Langdellian reworking of the Socratic method. While the latter approach to teaching law has remained dominant in the last half century, it proved poorly suited to the teaching of legal skills, which clinical education emphasises. As a consequence, clinical teachers had to develop approaches better suited to the specific goal that clinical education targets – the development of qualified practising lawyers.

The elaboration of new teaching techniques thus constituted a central part of the innovation of the clinical education movement. As they were developed, these techniques became generally designated 'experiential learning methods'. With refinement extending through more than three decades of application, the techniques have metamorphosed into a fully evolved theory of legal education. While experiential learning is the framework of the clinical teaching method, the traditional method hinges on the process of supervision. In addition, simulation, role play, student lawyer/real client contacts and professional responsibility problems are all used as the clinical teacher closely engages the students. Finally, the engagement includes opportunities for critique, evaluation, reflection and feedback.

Feedback, or student performance critique, has been a feature of clinical education from the earliest days of the modern clinical movement. This simple process of giving students information about their performance on a particular task with the goal of redirecting and improving their efforts on future similar tasks was, at its inception, a revolutionary departure from the norms of legal education and quickly be-

came a central component of the clinical method of teaching. Despite the longevity of using this process, feedback has received little specific attention in the clinical literature.

A critical element of law school clinics is that, first and foremost, they are experiential learning environments. Although clinics share the typical employer's goal of increasing quality – and to some extent productivity – unlike the typical law firm, clinics are not driven by the need to measure their effectiveness by the amount of client business they accumulate and do not base student performance evaluations on billable hours.

In the clinical setting, teachers constitute the predominant – though not exclusive – source of feedback to students. However, to further understand the dynamics of feedback, it is useful to divide the feedback source into two basic components, each having influential sub-elements that affect how feedback is perceived. One of these components is the task or the environment in which the task is performed. The task and the environment generate a flow of information during the simple act of performing the task that affects the recipient's perception of the feedback message. This flow of feedback input requires no human intervention and can be described as 'closed feedback loop'. The actor engages in an activity and constantly makes self-correcting judgments relative to the goal or purpose of the activity. This is the classic 'learning by doing' feedback. When the generated feedback is inherent in the task, it is called 'augmented feedback'.

The second component of the source of feedback, then, is a human intervention, most commonly from a supervisor, but also potentially from peers, co-workers, or others engaged in the work environment. A critical factor influencing the effectiveness of the feedback process in this context is that of bias or recipients' perception of bias. Teachers often have ideas about their students and their abilities that are not based on any fact, such as objective measurements of past performances on tasks relevant to their clinical setting. Two obvi-

ous biases prevalent in American culture that are potentially extremely disruptive to the feedback process concern perceptions of race and gender.

Several researchers have concluded in consequence that minority group members tend to attribute negative feedback to discrimination. If this hypothesis is true, the importance of maintaining an atmosphere of trust and mutual respect in interracial and intergender settings becomes manifest. Perceptions of gender or racial bias normally should not inhibit teachers in the feedback process. All the same, clinical teachers should be aware and cautious of the general tendency of minority students and women students to deny the presence of bias, particularly as it affects them personally.

The lessons from studies of bias in the clinical feedback process are clear yet complex. When a lack of response to a feedback message occurs across interracial or intergender boundaries, it is prudent for the feedback giver to systematically review the message and the source for elements that might have created distortion. It is equally important to realise that, because of the dynamic nature of the feedback process, a number of factors more germane to the recipient may have affected perception of the feedback message and limited its impact. Being specific, focusing feedback on events that the teacher has personally observed, being objective and willing to discuss the feedback with students and openly eliciting their responses to what the teacher has said, all improve the delivery of the feedback message and reduce distortion.

It is generally accepted in clinics that feedback be timely. Timeliness means that the delivery of the feedback must be as close as possible to the performance being observed, so that the events at issue remain fresh in the minds of both the teacher and the recipient. Studies have found that specificity strengthens the feedback message. Keeping feedback focused on the task or performance being assessed – and not the person – is closely related to the long-held view that feedback should be non-judgmental. While judgmental

feedback should be avoided, praise – a feature of positive feedback – may be delivered if tailored to clear learning goals.

A useful technique for improving the message component of feedback is carefully to structure specific learning goals for the feedback session. Different types of feedback can be employed to achieve different goals. If one goal is to reduce a student's anxiety, directed informational feedback – which is designed to give students a quantity of information above and beyond what they already know – might be effective. The goal of instructive feedback is to encourage and guide growth without particular focus on past performance or specific knowledge.

Feedback can convey different types of affective information to the recipient. The three general categories of affective information to the feedback recipient are: maintaining a sense of competence; maintaining a sense of control; and believing that their efforts will result in extrinsic rewards or positive results. When these three elements are met, intrinsic motivation will remain high and a student or employee will maintain a strong level of task commitment.

Goal orientation is an important feature of effective feedback. Credibility is a characteristic that most clinical teachers possess and maintain throughout their relationship with their students. Since credibility is based in large part on the teacher's expertise and knowledge, clinical teachers are seen by their students as being experienced and adept at their craft.

Researchers have been trying to discover the exact combination of factors to create the optimal feedback message. Armed with this new knowledge, managers and supervisors would be prepared to address the age-old problem of enhancing communication, particularly across barriers of power and authority that have historically been the focal point of conflict and misunderstanding. Despite their efforts and thousands of studies, the inescapable conclusion is that effective feedback is by far more process than product.

The clinical legal education movement fortunately was developing at a time when new theories in feedback delivery were emerging, and by adopting basic feedback theories and practices from humanistic psychology, the clinical process established itself on very solid ground that has shifted little in the past thirty years.

CURRICULUM

Access courses: meeting the needs of the adult learner

P Carter

34 *Law Teacher* 3, 2000, pp 289-295

Colleges of Further Education in the United Kingdom have always offered a broad curriculum, providing both academic and vocational courses. While many of these courses are aimed at the 16-19 age group there is also considerable attention paid to the needs of the adult learner. The Kennedy Report recommended that there should be a lifetime entitlement to education to 'A' level standard with free courses for people from deprived areas or with no qualifications. Access courses provide one way of giving educational opportunities to such groups. They provide an alternative route to the more traditional 'A' levels for adults with no formal qualifications who wish to progress into higher education. The last decade has seen a growth in Access provision, assisted by a greater willingness on the part of universities to take students who have successfully completed such courses.

Bexley College first introduced an Access programme in 1989 and Law has been offered since 1992. The target group is identified as including the following: adults who have been unable to take full advantage of educational opportunities; members of groups under-represented in Higher Education; adults not having the necessary qualifications to meet normal entry; and adults who need a degree of language support and/or pastoral support not normally available on traditional courses. All students have to be over the age of 21 and show potential for develop-

ing the necessary academic skills needed for higher education.

One of the first challenges for the team of three law lecturers was the drawing up of an appropriate syllabus for the Access to Law group. The difficulties included trying to identify the needs of a body of students with different educational and cultural backgrounds and devising a curriculum which could meet those needs and at the same time satisfy the conditions laid down by the London Open College Network. With this in mind the teaching team decided on a combination of substantive areas of law together with legal methodology. Some Access courses do not include substantive law on the basis that this will merely be repeated at degree level but they believed that student confidence would be increased by having some basic understanding of underlying principles of areas, such as Criminal Law and the Law of Obligations, which could then be built on in higher education. The emphasis is, however, placed on using material to develop legal skills rather than merely enabling the student to accumulate knowledge. Units on Politics and Historical and Social Studies completed the units on offer. The team also tried to incorporate some flexibility into the content so that account could be taken of the previous experiences of the students.

This element of flexibility is an acknowledgment that teaching adults requires some difference in approach to that of teaching younger students. If Access is to be a real alternative to conventional routes to higher education, then the needs of the particular client group must be recognised and a test of success could be the extent to which the course differs from more traditional study.

Lecturers have to be supportive and find ways of building up students' self-confidence, while at the same time equipping them for the realities of studying at degree level. Such considerations also influenced the quest for workable assessment criteria. The teachers felt there had to be a constant emphasis on student participation. As a result, assessment has been based on written assignments, re-