

**Biting off what they can chew: strategies for involving students in problem-solving beyond individual client representation**

K Kruse

8 *Clinical L Rev*, 2002, pp 405–443

Problem-solving is most often taught in the context of representing individual clients in small manageable cases where students retain primary control and develop a sense of ownership. Increasingly, law school clinical programs are involving students in broader service projects designed to meet the needs of clients that go unaddressed by the legal system. Student involvement in these projects presents challenges for the traditional model of problem-solving taught in individual case representation. This article explores the challenges of translating the problem-solving techniques employed in direct representation of individual clients into the larger context of problem-solving for a client community by examining each step of the traditional problem-solving process.

Among the multitude of skills that make a good lawyer, the ability to effectively analyse and solve problems stands out as one of the most important. Although there is little controversy over the value of teaching problem-solving in legal education, the process of problem-solving has not been widely examined. Few lawyering skills texts devote attention to the process of problem-solving as a discrete legal skill. Law school clinical programs have been an important venue for effective teaching of problem-solving.

For pedagogical reasons, many clinics choose to limit their students' work to a few carefully chosen cases that are small and manageable enough to give the students full ownership and control over the cases, to develop the primary relationship with the client, and to see the cases from beginning to end. This individual client case model gives students the luxury of providing full representation to a few clients and an opportunity to carefully dissect,

analyse and reflect on the myriad choices and issues that arise in the process of representing an individual client.

Despite the prevalence of the individual case model, law school clinics are increasingly taking up the challenge of involving students in projects that require students to engage in problem-solving more broadly, beyond the needs of an individual client. Yet designing problem-solving experiences for students in these broader contexts presents pedagogical challenges. It is important to conserve the components of the small, manageable cases that make them good vehicles for learning: primary student control, a sense of ownership for the student, and the ability to see a project through from initiation to completion. But how can law school clinics meaningfully involve students in framing and brainstorming solutions to problems that are large, complex, and difficult to grasp? How can students gain a sense of ownership in a problem-solving enterprise that spans several semesters, or even several years?

The author outlines a family law project he directed as part of a larger clinical program at the University of Wisconsin that has a long-standing contract with the state's department of corrections to provide legal assistance to state prison inmates. Family law cases were split off into a separate project, designed to attract a new group of students into a two-semester, academic-year clinic representing prison inmates in divorce and paternity proceedings. The goal for the semester was not to provide any additional legal assistance to unrepresented inmates, but simply to learn more about the problem of *pro se* family law litigants in the prison context and to envision possible solutions. At the end of the semester the students moved from merely studying the problem to conceptualising a solution. The plan for the last class had been for the students to share 'final reports' about what they

had learned from working on their individual projects. The next step involved the students in implementing these goals which were identified. Each student was assigned a particular substantive law subject area in which to work, alone or in pairs, on creating *pro se* materials.

Each component of the individual case model: individual clients, a small number of cases, and the ability for students to see cases from beginning to end, combine to make small manageable cases ideal learning vehicles. The relationship between the law student and an individual client in a traditional clinical setting, coupled with the client-centred approach to lawyering, mediates the law student's lack of legal background and experience by allowing the student access to the information that is most crucial in the problem-solving process. In a client-centred approach to lawyering, the client provides what the law student lacks in the background information necessary to effectively solve the client's problems, because a client-centred approach places a premium on client information regarding facts and goals, and client decision-making about priorities and strategies. A limited caseload permits students to do the background research and investigation that compensates for their lack of legal experience. Finally, the ability to see a case from beginning to end permits students to remain involved at the critical stage of revising and modifying the problem-solving strategy. Assuming that primary ownership and control is the best vehicle for teaching, the use of small, manageable cases in which students assist individual clients in the process of problem-solving makes good pedagogical sense.

The process of problem-solving for a larger client community poses challenges for the models and methods of problem-solving usually taught in clinical education. Because the process occurs outside the context of an indi-

vidual attorney-client relationship, students cannot draw on the usual client-based interviewing and counselling methods to help them identify the problem and choose a course of action or strategy to attempt to solve it. They also lack the legal background and lawyering experience that can help them conceptualise problems more broadly.

Yet there are powerful reasons to involve students in broader problem-solving projects that seek to address the needs of a client community beyond individual case representation. Some of the same pedagogical insights that would lead one to conclude that maximum student ownership in individual case representation is the best way to teach lawyering skills also suggest that actively engaging students in grappling with the bigger social problems may be the best way to position them to be responsible members of the legal profession after they graduate.

In designing a clinical experience to give students meaningful ownership and control over a problem-solving project for a larger community or client base, the author employed four distinct types of strategies and called them compartmentalisation, connection, collaboration and continuity. To preserve each student's sense of ownership and control in the problem-solving endeavour, it is essential to break the problem down into pieces that each group of students can manage within their time in the clinic, and that each individual student can call his or her own. Collaboration among students can be built into the process in much the same way as it is in representing individual clients: through group brainstorming exercises, class discussions or individual presentations to the group.

The challenges of involving students in larger problem-solving endeavours beyond individual case representation are real, but they are not insurmountable. The challenges can be largely met by remaining aware of the

need to compartmentalise the students' work, so each student invests a sense of ownership in one piece of the project, and to consciously structure the clinical experience to allow for connection between the students and the clients they are serving, collaboration between students and with others in the community, and continuity between the work of students in different years of the project.

### **Towards a theory of assimilating law students into the culture of the legal profession**

M Manahan

51 *Cath U L Rev*, Fall 2001, pp 215–242

The role of skills teaching in law school has been the subject of much debate. Countless articles discuss which skills should be taught in law school, how they should be taught, and whether and how they should be integrated into doctrinal courses. This article focuses on the subject of teaching legal skills within the context of skills-oriented courses. Specifically, legal skills may be introduced to law students intensively in a number of different courses, including legal writing, moot court, trial advocacy, counselling and negotiation and clinical experiences. Whether a law school curriculum includes all or some of these skills-oriented courses, there is likely to be some overlap of the skills taught. However, various courses address different aspects of the same skills to varying degrees of sophistication.

Recognising this continuum of skills learning in law school education is the first step in creating a curricular environment that maximises a student's exposure to skills learning. Additionally, adopting a teaching perspective or pedagogical philosophy for teaching legal skills enhances the value and underscores the continuity of skills learning for law students.

Legal writing and the judicial externship are courses in law school that focus primarily on the teaching

of legal skills. Legal writing courses must cover certain fundamental concepts, including the mastery of writing particular legal documents, the use of authority, and proper citation form. However, these fundamental concepts are taught within the broader context of skills training. In fact, a legal writing course is the beginning of a law student's exposure to the skills needed for the effective practice of law. Similarly, in judicial externship courses, knowledge of certain fundamental concepts is necessary for success. For example, a basic understanding of civil procedure and motion practice is helpful to a judicial extern. However, the overriding goal in an externship involves mastery of skills such as communication and time management. While both courses impart a mastery of similar legal skills, they do so at different times in a law student's career and to different degrees.

Although legal writing instruction has a substantive component, the hallmark of teaching such writing is a focus on skills uniquely associated with the practice of law. Some of the skills-oriented goals of a legal writing course include: (1) developing a writer's persona; (2) mastering legal research and legal analysis; (3) communicating; and (4) considering ethical issues. Similarly, judicial externships also allow students to gain a mastery of various skills, including: (1) organisation and management of work; (2) problem solving; (3) effective communication; (4) recognising and resolving ethical dilemmas; (5) improvement of analytical and research skills; and (6) development of a professional persona. Each of these skills is necessary in a successful legal practice.

Ideally, an effective skills curriculum would be integrated, not only with other skills courses, but also within the entire curriculum. Skills learning would be viewed as a continuum of mastering the same skills,