LAW SCHOOL CLINICS AND ATTORNEY GRIEVANCE PROCEDURES

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Law students at Yale participate fully in Connecticut's attorney grievance proceedings. Under the supervision of law school faculty and of attorneys in the Connecticut Disciplinary Counsel's office, they conduct investigations, negotiate with respondent lawyers and their counsel, conduct direct and cross examination of witnesses, including complainants and respondent lawyers, and make closing arguments. The purpose of this short paper is to describe how this law school clinical program came to be established.

I have been a clinical law teacher for 37 years. I began at Yale Law School in 1969, where my partner Stephen Wizner and I created Yale's first clinical program. In the beginning, students under our supervision represented federal prisoners and patients in state mental hospitals, as well as traditional legal aid clients. Later, as we received more resources, we expanded to include immigration clients, small businesses, domestic violence victims, juveniles, and landlord-tenant matters. In 1981, I left Yale to teach at the University of Southern California Law Center, where I developed a program similar to the one at Yale.

Both at Yale and USC, I also taught non-clinical courses, primarily in the areas of criminal law and professional responsibility. My clinical teaching exposed me to many instances of poor quality lawyering, especially in the criminal area, and I began to infuse my teaching of legal ethics and professional responsibility with examples of misconduct of lawyers at the baseline level of criminal practice. At the same time, I realized that neither I nor my students had real knowledge about how lawyer discipline systems really worked. I returned to Yale in 1997, and decided that one of the first things that I would do would be to investigate the possibility of creating a clinical program in the area of attorney discipline.

In 1997, the Connecticut system of lawyer discipline was quite different than it is today. Then, as now, the system was under the control of the state's Judiciary Department, and was administered by the Statewide Grievance Committee, a twenty-one member volunteer group of fourteen attorneys and seven lay members, appointed by the judiciary. Once probable cause was found that a rule violation had occurred, cases went automatically to a hearing before a three-member panel of the Statewide Grievance Committee, composed of two lawyers and one lay member. At that time, however, there was no prosecutor, and those who complained about lawyers who violated ethical rules either had to hire their own lawyers or present their cases by themselves.

We approached the judiciary for permission to institute a clinic in which our students, under faculty supervision, would represent complainants in the disciplinary process. Under the State's Student Practice Rule, our students had been active in Connecticut's courts and administrative agencies for thirty years or more, and approval was forthcoming, though not without some qualms on the part of some judges that attorney discipline was somehow different than the other kinds of cases that our students were involved in. At any rate, for the first seven years of the program our students

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represented individual complainants, and learned a great deal both about grievance procedures and the kinds of lawyer conduct that resulted in disciplinary sanctions.

In 2004, Connecticut's grievance system changed in several ways, the two most important from our standpoint were that the office of Disciplinary Counsel was created, with the responsibility to present cases to the Statewide Grievance Committee, and the Disciplinary Counsel was given the power to negotiate with respondents concerning complaints, and make recommendations to the Statewide Grievance Committee for dispositions. Given that the Disciplinary Counsel, essentially a prosecutor, now had the job of presenting cases, our previous role as counsel for the complainants was obviously facing a significant reduction. With the approval and cooperation of Mark Dubois, the newly appointed Disciplinary counsel, our students began to function as interns in the Office of Disciplinary Counsel. Under our agreement with that office, our clinic takes referrals from Disciplinary Counsel (usually cases with some interesting and perhaps challenging set of facts or interpretations of law).

Here a brief description of the Connecticut's disciplinary process is in order. Complaints by aggrieved clients are vetted by the staff of the Statewide Grievance Committee, and if possible violations of Connecticut's Rules of Professional Responsibility are noted, the complaints are sent to local panels of two attorneys and one lay person to determine if probable cause exists to proceed to a hearing. If probable cause is found, the case is sent to Disciplinary Counsel and also put on the docket for a hearing to be conducted, as before, by three members of the Statewide Grievance Committee. It is at this point that cases are referred to our clinic.

In the clinic, students are jointly supervised by me and by another member of the faculty, and by attorneys in Disciplinary Counsel's office. We get cases about three, maybe four weeks before the hearing is scheduled. Briefs are due a week before the hearing. Students begin investigation immediately, and are in close contact with clinic faculty and with their supervising attorneys in Disciplinary Counsel's office. It is during this time that the decision is made whether or not to negotiate with the respondent attorney to see if an agreement can be worked out. If so, students carry out the negotiations, checking continually with Disciplinary Counsel for guidance and instructions. If there is a negotiated settlement, students prepare a document setting forth the agreement, and present it as a recommendation to the Committee on the hearing date. If there is no agreement, students get ready for the hearing, including preparing a brief, which usually goes through two or three drafts before it is submitted by Disciplinary Counsel. As noted above, at the hearing, students present witnesses, conduct direct and cross examination, and deliver closing arguments. The hearings are formal, though the rules of evidence are somewhat relaxed.

In addition to investigating cases and preparing for hearings, students attend classroom sessions once a week for two hours. I have attached a course description, a list of our course materials, and our clinic protocol to illustrate the subjects discussed in these classes, and our ground rules for student participation. In addition, we invite judges, lawyers and members of the Statewide Grievance Committee to visit our classes to give their perspectives on the disciplinary system. Attorneys from the Disciplinary Counsel's office also attend several of the classes, to meet with students on particular cases and to participate in teaching about professional responsibility in a broader sense than simply marching through the Rules.

In sum, student practice in the disciplinary setting provides an excellent clinical experience. Because the cases usually move quickly, students may work on three or more cases in a semester, each either a negotiation or a mini-trial. Students get a concentrated dose of courtroom experience and see legal ethics played out in the field. The courtroom experience is heightened because many experienced and highly competent lawyers represent respondents in these cases, so that students often find themselves facing vigorous and sophisticated opposition. Students also learn first hand, from seeing bad lawyering, what good lawyering entails. Poor communication, unclear fee agreements, conflicts, lack of diligence, unexplained delays, and simple incompetence are the common fare of the disciplinary process. Students are stunned at times by what they experience, and internalize the professional obligations of lawyers in a way that could not happen without their clinical experience. More than one student has told me that, in practice, they will never fail to return a client's phone call, if only to say that nothing new has occurred. I believe that programs like ours can serve to raise the consciousness of students about what professional responsibility really means.