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# On the Unique Value of Law School Clinics

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# *ON THE UNIQUE VALUE OF LAW SCHOOL CLINICS*

by Paul Chill<sup>1</sup>

## I.

Dean Macgill, members of the judiciary, members of the law review past and present, colleagues, family members and friends: Thank you for the honor you bestow on me by your presence this evening.

I am delighted to have been chosen for the 1999 Connecticut Law Review Award, for excellence in legal scholarship and service to the legal community. I must say I was startled when Adam Schweickert told me of my selection, and bewildered when I saw the list of past recipients. I feel wholly undeserving of comparison with those many distinguished members of our profession, people whose level and duration of accomplishment far exceed my own. I am therefore especially grateful for this tribute.

My surprise was sufficient to prompt me to undertake a brief investigation of the circumstances of this year's selection process. One colleague, notoriously cynical of such matters, argued that the abundant press coverage of the *Pamela B. v. Ment* lawsuit,<sup>2</sup> especially by the Connecticut Law Tribune, unduly influenced the result. The Law Tribune had run several front-page stories on the case during its three-year life span, several of which included a (fortunately!) old file photograph of me. My worst fears were confirmed by a conversation with one of the law review members, a student for whom I have very high regard. Responding to my inquiry about how exactly it is that law students know who is doing what for the legal community, she insisted that people had really done their homework, and made a point of assuring me that there are always copies of the Law Tribune lying around the law review office.

Joking aside, I do believe that this award has a fundamentally different tenor than it has in the past. My work for the past ten years has been a total collaboration with other faculty members and students -- that is the nature, if not the essence, of clinical legal education. I therefore believe that tonight's honor is at least as much about the clinical program that I represent, and that I have been privileged to be a part of for ten years, as it is about me personally. And to the extent the Law Review today honors our clinical program, my modesty is cast aside and I must tell you that I commend you for having chosen so wisely.

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<sup>2</sup> See *Pamela B. v. Ment*, 244 Conn. 296, 709 A.2d 1089 (1998).

Time prevents me from properly acknowledging each of the people who have made our clinical program into a defining strength of the law school, as Dean Macgill once described it. Two colleagues deserve my special recognition tonight, however, for without them I would surely not be standing here.

The first is Holly Brooks, my close and valued collaborator in the Disability Law Clinic for eight wonderful years. Holly was my co-counsel in the *Pamela v. Ment* case, although she turned out to be somewhat less adept at generating publicity for herself than I am. We shared a fabulous working relationship, as did Holly with the scores of students she supervised, mentored and served as a role model. Holly's great intelligence, common sense, and infectious positive energy made her a vital part of the clinic and the law school. Her departure was a serious loss for the institution, as well as for me personally.

The second person who deserves special recognition tonight is Jon Bauer, my colleague of ten years. Jon's wry sense of humor, tactical brilliance and public-spirited hard work, continue to set standards that I strive to approach. He is one of those people who is so good at what he does that you become a little bit lazy working with him, because you know he's probably got it covered (and better than you). Jon's assistance and support have been invaluable to me, and, as he often reminds me, I owe him a lot.

I also want to briefly recognize several other clinicians with whom I have been fortunate to teach and practice law over the years. They include: Jim Stark and Judge Mike Sheldon, the creators of our contemporary clinical program; Tim Everett and Todd Fernow, my long-time colleagues and friends, and Tanina Rostain and Ann Goldstein, each of whom I have been privileged to work with, though all too briefly, in the past ten years. And I would also like to thank Louise Renock, the clinics' long-time administrative assistant, and my co-worker since 1988.

Finally, I want to recognize some other people who are more important to me than any award, honor or professional achievement could ever be: my wife Brigid, the love of my life, and my inspiration in living, loving and learning; my beautiful daughters, Madeleine and Camille, the best teachers I will ever have; my mother, Polly Chill, who suggested to me at the age of eight that I should be a lawyer, and my other wonderful family members and friends who are here tonight.

## II.

These people can all tell you how much I love my work as a clinical teacher. I feel incredibly fortunate, almost every day, to have the job I do.

My work has made me an unabashed proponent of clinical legal education. I see its benefits, in preparing law students to be competent, ethical and public-spirited practitioners, as without parallel. Furthermore, I don't think there's an adequate substitute, given the arduous reality of law practice today, for clinical education. Call me an extremist, but I believe that every

law student should be provided the opportunity -- and indeed required -- to undergo at least a full year of training in a law school clinical program as a prerequisite to gaining admission to the bar.

Some of you, I know, are already true believers like myself. As for the rest of you, I'm not sure I can hope to persuade you of the rightness of my position in the brief time available tonight. So I will content myself with a few observations about the unique benefits of clinical legal education. Like a good cross-examiner I will limit myself to three points. (Actually I have four.)

First, most people learn better by doing -- much better. Confucius is credited with observing: what I hear, I forget; what I see, I remember; but what I do, I understand. This is no less true of learning the incredibly complex set of skills it takes to be a good lawyer, as it is true of learning anything else. I think we all know this intuitively. How many of us would go to a doctor who has never treated a real patient? Or hire a plumber who has never laid his hands on a wrench? Yet we annually set loose upon an unsuspecting world thousands of new lawyers who have never even had a client.

No doubt some of you here tonight fit that description. I certainly do not mean to offend you. Indeed, my heart goes out to you. I was in the same boat coming out of law school, never having taken a clinic. For your sake, and that of your clients, I hope you are fortunate enough to have the kind of mentors I had when I entered practice thirteen years ago. I was very lucky -- my mentors were Joe Garrison and Judge Janet Arterton, fantastic lawyers who cared deeply about their clients, their ethical obligations, and their responsibility to mentor new lawyers like myself. But lawyers like that are rare, and the economics of running a law practice have changed dramatically since 1985. There is precious little time for mentoring today. Some of you, and many more around the country, will not be as lucky as I was. And all of us, and society, will pay the price.

My second observation is that the clinical method has the unique ability to slow down time. It's not that difficult a trick -- if students are only working on one or two cases at a time, a caseload impossible in any other practice setting. With that kind of case load, you can focus on the small things. You can focus on the dozens of little decisions -- about strategy, tactics and ethics -- that practicing lawyers make every day with little conscious thought. I'm talking about decisions like how to respond to a phone call from an opposing lawyer, or what evidence to seek to discover to prove a fact in dispute, or whether and how to discuss a sensitive topic with a client. In a clinical setting, you can analyze, debrief and deconstruct these little decisions. You can think systematically about how to connect these little dots with the big dots -- the purposes and themes of the representation -- as the dots change and shift in relation to one another. And you can stop time altogether when a significant ethical issue arises, and force yourself and others to resolve the issue before proceeding any further.

This is the kind of practical experience that develops not just technical competence, but skill in making decisions. It's the kind of training that cultivates not just an awareness of ethical rules, but a personal sense of, and interest in, the choices and values inherent in all that lawyers do. It's the kind of learning that develops not just good habits, but sound judgment.

If I may be allowed one sports metaphor, I think I can illustrate the point. Appropriately, it involves the game invented just up the road in Springfield a century or so ago, and recently perfected by our magnificent team from Storrs, for whose accomplishments the law school is justly proud -- and takes full credit.

Back in college, I took a course taught by the basketball coach entitled "Basketball in Depth." I learned many valuable lessons. One I've never forgotten is the proper form for shooting the basketball. You have to curl your forearm and wrist back into a u-shape -- not a v-shape, which results when wrist is straight. As you cradle the ball on your fingers, you keep your forearm perpendicular to the ground. When you shoot the ball, you push straight up with your forearm, keeping it perpendicular to the ground, rotating only your wrist forward. Watch Rip Hamilton someday, you'll see what I'm talking about.

The great thing about knowing the proper form is that when you're shooting erratically, you can actually help yourself get back on track. You just stand under the basket and shoot layups, emphasizing, even exaggerating, the correct form. Then you gradually back up, shooting from greater and greater distances, concentrating on form and follow-through all the way. Until you find yourself 30' away, swishing jump shots like it were easy. At least if you're Rip Hamilton, anyway.

Now I'm not sure which is more difficult, learning to shoot jumpers from 30' or learning to be a lawyer. I do suspect that lawyering, at least, is more learnable. And I think that the clinical method can provide the proper form for lawyering. It's not just that the first few times you go into court, or a negotiation, or a meeting with a client, you are better prepared than other beginning practitioners. It's much more than that. It's about having a basic template for lawyering. It's about being a reflective practitioner, and always knowing what questions to ask yourself to stay on the right track. It's about being able to go back to the basics when you're game is off. It's about remaining sensitive to the many little decisions about tactics and ethics you that you are making all the time, even as the time you have to consciously think about them dwindles in direct disproportion to your caseload. It's about knowing what you should be doing, even when the vicissitudes of practice limit you to doing only what you must. That, I believe, is a long-lasting impact of clinical legal education.

My third observation relates to the quality of teacher-student relationships in the clinic. They can be, and usually are, extraordinary. Representing clients together naturally breaks down barriers, and blurs distinctions, between teachers and students. Every client is unique, and presents a unique set of issues, so even the most experienced clinical teacher is in some sense on the same footing as students when the client walks in the door. The Rules of Professional Conduct, moreover, dictate that both teacher and student devote their undivided loyalty to the client. They must subordinate any personal interests that may conflict. There can be no sacred cows -- both teacher and student must be prepared to give and accept constructive criticism, indeed, to welcome it, since mutual criticism is essential to doing a better job for the client.

This shared sense of purpose, growing out of shared experience, and underwritten by the rules of ethics, promotes an atmosphere of openness, equality and trust in which the opportunities

for real learning -- and especially for learning values -- are enormous.

### III.

Last but not least, another thing that makes clinical legal education imperative is the ability, every once in a while, to bring a case like *Pamela B. v. Ment*. In an era of declining public funding for legal services to poor people, law school clinics can serve an important public interest, and fill a vital gap, by pursuing cases that achieve significant law reform on behalf of poor and otherwise underrepresented clientele. So let me close by briefly describing the *Pamela B. v. Ment* lawsuit, which after all is probably the main reason, or at least the catalyst, for my being up here tonight.

We did not go out looking for a case with which to make a broader impact. The *Pamela B. v. Ment* lawsuit grew instead out of the clinic's representation of a poor, mentally handicapped mother facing the permanent loss of her child. In August of 1995, the Department of Children and Families (DCF) took emergency custody of Pamela B's then nineteen-month-old son, Johnathan, because of suspected medical neglect. It was a time when DCF, responding to the tragic death of Baby Emily Hernandez here in Hartford a few months earlier, and fueled by intense political and media pressure, was summarily removing large numbers of at-risk children from poor families and placing them in foster care.

Ten days after Johnathan was removed, Pamela B. appeared in juvenile court for a hearing to seek his return. The trial judge, however, citing a large backlog of cases and inadequate judicial resources with which to handle them, denied Pamela B. a hearing. He instead set the hearing down for the next available trial date -- in March of 1996, some seven months later. That meant that young Johnathan would remain separated from his mother for at least that long, without his mother having any opportunity at all to be heard on the subject.

Students and faculty in the clinic furiously set to work researching and evaluating our client's options. In December 1995, the clinic filed a civil action in state Superior Court on behalf of Pamela B., as well as a class consisting of "all parents in the state whose children have been or may be seized by . . . [DCF] and who have been or may be denied their statutory and constitutional right to challenge" the state's temporary custody in timely evidentiary hearing.<sup>3</sup>

The complaint alleged that delays in holding temporary custody hearings were pervasive in the juvenile court system, and that those delays caused great harm to parents and children. It named as defendants the governor, the administrative head of the state Judicial Branch, and the DCF Commissioner. The claim against the governor was withdrawn early on for tactical reasons.

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<sup>3</sup> *Id.* at 303 n.4, 709 A.2d at 1095. Because of the unusual disposition of the case, the class was never formally certified. *See id.*

(There is absolutely no truth to the rumor that we withdrew this claim to alleviate the uncontrollable crying spells the Dean began to experience when he found out about the lawsuit.)

The state responded to the lawsuit with a series of motions arguing, in essence, that Connecticut courts lacked any power to remedy claims of systemic violations of constitutional rights within the operation of the court system itself. Those motions succeeded in stripping several specific requests for injunctive relief from our complaint, but were ultimately unsuccessful in getting the whole case thrown out.

Two years after the suit was filed, just as it appeared we were out of the woods and on the road to trial, the state filed an extraordinary request, with the Chief Justice of the Connecticut Supreme Court, seeking permission to file an interlocutory appeal on the issues the state had been pursuing in the trial court. Chief Justice Callahan granted the request, and the case thus proceeded up on appeal despite the absence of any final decision below.

Almost exactly one year ago, the Supreme Court, sitting en banc, soundly rejected the defendant's arguments and remanded the case for trial. The Court basically held that the constitutional right of family integrity is too important for courthouse doors to remain shut, for months and months, to a parent trying to regain custody of her child. The Court ruled the state judiciary has the power, and indeed the obligation, to respond to a complaint such as Pamela B.'s alleging that "a deluge of cases, combined with . . . inadequate resources with which to process them, [are] work[ing] together to deprive aggrieved parents and children of meaningful review of the department's conduct resulting in significant interference with their constitutional rights to family integrity."<sup>4</sup> That decision set up a trial in the Superior Court on the issue of whether the Chief Court Administrator's allocation of resources and management of the Judicial Branch was constitutionally proper.

Five weeks later, on the heels of the Supreme Court decision, the state legislature passed a bill guaranteeing parents and children speedier court hearings when DCF removes children because of suspected abuse or neglect.<sup>5</sup> The clinic declared victory, and the lawsuit was subsequently quietly settled.

The new legislation took effect just six months ago. Sadly, it came too late to help Pamela B. herself, who had since surrendered her parental rights to Johnathan. The new law, moreover, is far from perfect: if DCF were to remove your kids tomorrow, you would still face a wait of up to three-and-a-half weeks for your day in court. Nevertheless, the new law clearly represents a vast improvement, one that safeguards the rights, and protects the wellbeing, of parents and children alike.

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<sup>4</sup> *Id.* at 331, 709 A.2d 1108.

<sup>5</sup> 1999 Conn. Pub. Acts 98-241 § 5.

#### IV.

For the people of this state, the *Pamela B. v. Ment* lawsuit, and the legislation it spawned, provided an important check on the government's fearsome power to separate parents and children in the name of protecting the latter. For the law students and teachers who litigated the case, it also provided a rare opportunity to get behind the headlines and really see into one of the key issues of our time. And it empowered us all by demonstrating that we can make a difference, that lawyers can not only do well, but do good, with the fruits of our training.

But as I've tried to suggest, big cases like *Pamela B. v. Ment* are not primarily what has made our clinical program worthy of the honor you bestow on us tonight. Indeed, if another case like it never came along, the clinic would remain just as worthy of your tribute. And providing all law students with a clinical experience before joining the bar would remain no less important an objective.

Thank you once again for this high honor, and for the added inspiration you have given me to continue the work that I love.