

Volume 67 | Issue 1

---

2016

# Tribute To Professor Ken Margolis

Peter M. Gerhart

Follow this and additional works at: <http://scholarlycommons.law.case.edu/caselrev>

---

## Recommended Citation

Peter M. Gerhart, *Tribute To Professor Ken Margolis*, 67 Case W. Res. L. Rev. 1 (2016)  
Available at: <http://scholarlycommons.law.case.edu/caselrev/vol67/iss1/3>

This Tribute is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## TRIBUTE TO PROFESSOR KEN MARGOLIS

The editors of the *Case Western Reserve Law Review* respectfully dedicate this issue to Professor Ken Margolis.

---

*Peter M. Gerhart*<sup>†</sup>

Ken Margolis has been a champion of the academic role of clinical legal education, and his career has been devoted to linking what clinicians do to the academic mission of the law school. The goal he defined for himself was not just to protect the clinicians' turf, but to project the clinical philosophy into the broader law school community. He did not just defend clinical legal education from academic skeptics; he took the offensive to show how clinical legal education is, in fact, academic education.

The gap between clinical and nonclinical legal education can be closed if we think of legal reasoning in terms of a constant movement of reasoning between the particular and the general. Clinical legal education starts with the particular. A client comes in, puts his burdens on the desk, and asks the student (and the faculty coach) to help him work through the problem. Legal reasoning in the clinic starts with a particular problem of a particular person in a particular context, and the student has to link that particular problem to the general sources available to address the problem. In the nonclinical courses (I do not call them doctrinal courses), legal reasoning focuses on the general—general principles, general rules, and general methods of reasoning about the law. To be sure, nonclinical courses are built around particular cases that present discrete problems, but we have our students read them because they are thought to give us a hint about the law's general propositions and reasoning.

Ken knew that understanding how the law operates, and the evolutionary process that drives the law, requires a student to see the law as a process of thinking that understands a particular dispute as a part of a process of implementing and refining general reasoning. He thus saw clinical legal education as academic because of the need for students to develop the ability to reason from the particular to the general, and back again. But his vision was not that clinical legal education was confined to the particulars of the law, leaving nonclinical courses to address law's generalities. Rather, he saw clinical and nonclinical

---

<sup>†</sup> Professor of Law, Case Western Reserve University School of Law. The author was dean of the law school from 1986 to 1996.

courses as a way of moving back and forth between the particular and the general. Clinical education would start with the particular but invoke general principles of law and reasoning as problem-solving devices, while nonclinical courses would be enriched when a student understood how the factors governing a particular dispute shape and rely on general principles and reasons.

Ken displayed this keen understanding of the academic nature of clinical legal education in several ways. As a principal designer of the CaseArc program (which lives on under a new name), Ken understood that “lawyering skills” cannot be equated to “plumbing skills.” Lawyering skills are reasoning skills that are situated in the particular, for they presuppose a method of thinking about a particular matter within the general framework of the law. Plumbing skills may connect the faucet to the drain pipe, but lawyering skills connect the particular to the general by subjecting students to the skill of reasoning between the particular and the general in a variety of different settings: writing, negotiating, mediation, and other advocacy.

Ken also understood that the end of law is not law itself; the end of law is to address social problems within the framework of general social and institutional constraints. He correctly saw law as a problem-solving profession, reminding students that their objective as lawyers is to address their client’s problems, not to reflexively invoke law to address their client’s problems. He made our graduates aware of the many ways in which the optimum solution to a particular problem might not involve resort to law. That is what led Ken to advocate that we expose our students to new dimensions in academic reasoning by exposing them to a course in problem solving. The students did not always appreciate the course (it did not give students the comfort of legal doctrine and may have seemed to students to be oversimplified). But it clearly adds an academic dimension to our students’ experience.

Another way by which Ken demonstrated his commitment to the academic role of clinical legal studies came in his work with the funders of the Milton A. Kramer Law Clinic Center. Legal clinics run the risk of being perceived to be legal services agencies, because they provide direct service to the indigent, or because they train students to provide such services. Indeed, Charlotte Kramer had such a legal services model in mind when she first approached the law school (through Professor Leon Gabinet) to discuss the possibility of establishing an endowment to support the legal clinic in honor of her late husband, Milton A. Kramer. Although Charlotte’s husband had graduated from a law school in the state northwest of Ohio, the Kramers had run a successful business in Cleveland, and Mrs. Kramer thought that it would be fitting to keep their money in Cleveland so that it could go to work to help Cleveland’s indigent population.

Ken was a part of the group that worked with Charlotte Kramer and her son Mark to develop the educational philosophy that guides

the Milton A. Kramer Law Clinic Center today. When he became director of the clinic, he led discussions among the funders, an advisory committee of nationally known academics, and the faculty, to implement that philosophy. Throughout these discussions, Ken led with great attention to the academic content of the evolving programs. He understood the value of the legal service model, but knew that the higher mission of the Milton A. Kramer Law Clinic Center is to help students reason about the law and the problems that lawyers address. For him, the most important skill was the skill of reasoning, and in emphasizing that skill, he used his prodigious powers of analysis to integrate the clinical and nonclinical aspects of academic education.

---

*Peter A. Joy†*

The first time I saw Ken Margolis was in the fall of 1974. I had just arrived at Case Western Reserve University School of Law as a first-year law student, and in the first week or two of school, I attended a student organization meeting and Ken was there. I do not remember the exact topic of that meeting, but I do remember that most of the first-year law students (or at least me) were having doubts about law school and whether we were cut out to make it. Remember, this was just a year after the movie *Paper Chase* came out, and more than a few law professors at Case Western and elsewhere still believed that terrifying 1L law students in class would motivate them to learn better. Indeed, one classmate of mine went to see one of our professors to discuss his self-doubts, and the professor advised him that if he had doubts perhaps law wasn't a good career choice. Unlike those professors, Ken was standing in the front of the classroom in an unthreatening manner. At one point he dispensed the sage advice that only an upper-level student can give a 1L: "Don't worry, you can do it. It is going to be alright."

More than his words, I remember Ken as warm and welcoming, measured and calm, and obviously bright. Although still a student, standing in front of that classroom Ken was commanding it much like he would go on to command classrooms for the more than thirty years once he became a law professor.

That first year I got to know Ken better, and I also got to know Sally, his wonderful spouse. Ken invited me and other law students to their rented house with a large yard, and we had potlucks and listened to Ken play the keyboard and sing songs that he composed. Ken had been a member of The Choir, a Cleveland rock band, and he remains a

---

† Henry Hitchcock Professor of Law, Washington University in St. Louis School of Law.