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# ROARK REED: THE QUIET INNOVATOR

*Mike McCollum\**

**R**OARK Reed was hired in 1975 by SMU School of Law<sup>1</sup> to direct its fledgling Criminal Justice Clinic. His background as a staff attorney in the District of Columbia Public Defender Service and as the director of the Maryland Division of the Georgetown Law School Criminal Justice Clinic made him ideally suited for the challenge.

Roark completely departed from the traditional clinic concept<sup>2</sup> and molded the SMU Criminal Justice Clinic into an exceptional, practical clinical program. By the time he retired in May, 2010, nearly a thousand law students had completed the Criminal Clinic and nearly half of them had tried at least one jury trial while still in law school. Roark's clinical program provided these students with true, rough-and-tumble courtroom experience—a program vastly different from the traditional clinical environment still used by most law schools today.

Coming out of his Clinic, students were armed with resumes that reflected first-chair experience in jury selection, direct and cross-examination of witnesses, and final arguments in real criminal cases for actual clients. Students didn't have to wait years to see they had made a positive impact on the lives of their clients. They saw their contributions immediately.

The shift in emphasis from the traditional to the practical happened within the first two years Roark served as the Clinic's director, and Dallas County was just the place for it to happen. In 1975, the criminal law environment in Dallas County offered SMU Law School an opportunity not available anywhere else: the chance for law students to try real criminal cases in front of actual juries. Roark quickly recognized the opportunity, and he was wise enough and flexible enough to take advantage of "courtroom-instead-of-classroom" teaching.

Initially Roark's reception in town was mixed. Recall, the mid-1970's was a time when a new "Yankee" law professor (i.e., a radical)—especially one coming to Dallas to expand the constitutional rights of criminal indigents—had to work quietly. But the understated Roark Reed soon melded right in because, while he wasn't reluctant to express his opinions,

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\* B.L. 1968, University of Texas School of Law.

1. SMU School of Law was renamed SMU Dedman School of Law in 2001.

2. In a traditional clinic students work on challenging constitutional issues in cases that could potentially set new Constitutional precedents. These often cases remain in litigation for years and students rarely see the impact of their individual contributions to an indigent client's case until long after graduation.

he wasn't eager to offer them either. And when he did speak, he made his point succinctly. Courthouse lawyers appreciated his brevity and dry wit.

Still, Roark's legal opposition was formidable. He faced off against an experienced office of trial attorneys who worked under Henry Wade, the legendary Dallas County District Attorney. Mr. Wade was known throughout the land for "letting juries sort it out." As a result, more appellate law originated in Dallas County than all the other counties in Texas combined.

On the defense side of the docket, Dallas County did not have a formal Public Defender's office at that time, nor did it want one. Indigents were given court appointed lawyers, and these attorneys were paid very little—usually \$25 per day. The court-appointment system taught young defense lawyers, who had never prosecuted, how to litigate (while they tried to earn a living), and it was trial by fire for them against the most experienced trial lawyers in the country—the Dallas County District Attorney's Office.

Initially, the SMU Clinic worked with clients who were accused of misdemeanors or third-degree felonies. The Clinic's policy was to take any qualified indigent who walked through the doors; this generated a large caseload. It was only through a large docket that the Clinic might chance upon that one perfect case with just the right facts to make new law, because the vast majority of criminal cases ended in a plea agreement.

Roark spotted just such a case in 1974 with the potential to make new law: a client charged with welfare fraud. And Roark was right: after she was convicted, the Clinic appealed and the Court of Criminal Appeals eventually reversed the conviction in 1979.<sup>3</sup> But during the four years this case wound its way through the appellate courts, thirteen semesters had gone by and over 100 students went through from Roark's Clinic.

He could see that while a caseload full of pleas would provide a student with some legal training, it was not enough to allow for six hours of meaningful law school credit. By January of 1977, Roark had completely revolutionized the Criminal Clinic so that students carried a real motion docket and a real trial docket. The esoteric legal issues were certainly there for the taking—but so was down-in-the-trenches trial work.

Roark's understated demeanor and quiet confidence impressed courthouse personnel who were expecting him to be just another "liberal troublemaker." He was respected and well-liked. And while there was no shortage of eager students, there was only one Roark. Accordingly, during the Clinic's early years, Roark retained a local criminal law practitioner who knew the courthouse terrain to help him work with the students. This arrangement worked fairly well for the Clinic, but it disrupted the private attorney's own docket such that a new one had to be recruited every semester.

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3. *Mayfield v. State*, 585 S.W.2d 693 (Tex. Crim. App. 1979).

The problem for students was that if the case was one of those few that presented a significant legal issue requiring a trial or a motion to suppress, a criminal defense lawyer—no matter how experienced—could contribute very little if his first involvement with the client and the student was the day of the trial or hearing.

Roark solved that problem by confining the Clinic's docket to misdemeanor cases and by requiring that each student meet with the supervising attorney at least two weeks prior to any motion or trial setting to work on courtroom skills well in advance of the hearing or trial. Using this formula, success in the courtroom was immediate. Acquittals became a regular occurrence. These results were possible because the State's misdemeanor prosecutors were often only months ahead of the students in terms of experience, and these misdemeanor prosecutors were saddled with an enormous caseload while Clinic students had the luxury of spending days preparing for just one jury trial.

Roark capitalized on this shift in the playing field. Time in the classroom<sup>4</sup> was spent on pending cases; there were no hypothetical cases and no moot court exercises were ever assigned. Everything in the classroom—every written motion, every courtroom demonstration—dealt directly with a pending Clinic case. Students' courtroom presentations were videotaped and critiqued in front of the class. Feedback was immediate and students quickly shed their shyness or any inhibition to perform.

The Clinic's successes, fostered by Roark's quiet but steady and uncompromising dedication to Clinic clients, gained him unlikely allies at the courthouse. The first was Judge Ben Ellis, the Senior County Criminal Court Judge of Dallas County (and the trial judge in the *Mayfield* case). Judge Ellis, an SMU Law School alumnus, was a crusty, brusque trial judge. He believed—and rightfully so—that it was unethical for prosecutors to directly plea bargain with defendants, a practice common in other criminal courts. He was also intensely critical of having indigents who were unable to post bond sit in jail while they awaited trial, so he appointed private attorneys to represent all jailed defendants in his court.

Judge Ellis also strongly encouraged jury trials. In his 28 years on the bench, he presided over 3600 jury trials, and Henry Wade made sure his most promising prosecutors had a stint in Judge Ellis's court. What better way to get young prosecutors trial experience than before a stern, non-sense legal purist who demanded punctuality?

Judge Ellis respected Roark and could see the Criminal Clinic program provided valuable experience to law students from his alma mater. In the spring of 1977, Judge Ellis made Roark an offer: if the Clinic served as "the lawyer for the day" for the first four days of each week, Judge Ellis would appoint the Clinic for all of those defendants deemed by the Clinic to be indigent. In exchange, the Clinic would provide a vigorous and un-

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4. Two 1.5-hour classes per week.

relenting defense for all defendants it accepted as clients. Judge Ellis further assured Roark that he would give priority to all cases that the Clinic students set for jury trial.

Roark agreed and the payoff was immediate. Judge Ellis saved Dallas County taxpayers money by no longer using court-appointed lawyers; indigent clients received an aggressive and fully committed defense from eager and well-supervised law students, who were thrilled at the chance to try real cases before actual juries. During the rest of Roark's tenure with the Criminal Clinic, there were enough trials for at least half the students in every class to get a jury trial. In one memorable semester, the Clinic had eighteen jury trials.

Roark and Judge Ellis also worked together to find cases with issues of first impression in Texas to appeal. Eventually, the Clinic successfully secured the right for defendants to use the defense of necessity in hand-gun cases<sup>5</sup> and DWI roadblocks were effectively ended in Texas when the Texas Court of Criminal Appeals imposed stringent constitutional requirements for such roadblocks.<sup>6</sup> Both of these groundbreaking cases were tried in Judge Ellis's court.

An even more surprising supporter of Roark Reed was Henry Wade himself. Mr. Wade's oldest son was a Clinic student in the spring of 1977, and shortly thereafter Mr. Wade began hiring Clinic students directly out of law school to be prosecutors in his office. Indeed, two children of Mr. Wade's number-one assistant, Doug Mulder, successfully completed the Clinic.

Other lawyers saw the value of the Clinic students' court room experience as well. Charles Tessmer, George Milner "The Elder," and Ron Goranson—three of the most respected attorneys in Texas—were the first criminal defense lawyers in Dallas County to hire a Clinic student as a law clerk. The student they hired was so outstanding that word got around and other criminal defense attorneys soon followed suit. Clinic students enjoyed stellar reputations as young, eager lawyers equipped to competently practice criminal law.

Roark imbued his students with the importance of a quiet but vigorous defense and through the years he continued to innovate in the Clinic. For example, few know that Roark served in the Marine Corps. Much of his teaching philosophy originated from that experience. Roark also brought other innovative ideas to the Clinic from his teaching experiences in Japan. He taught students to never brag about an acquittal; to be unflinchingly polite, respectful, and discreet; and to count success not by verdicts but by passion and effort. Clinic students earned respect at the Dallas County courthouse because of their humility, tenacity, and earnest advocacy.

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5. *Armstrong v. State*, 653 S.W.2d 810, 811 (Tex. Crim. App. 1983).

6. *King v. State*, 800 S.W.2d 528, 529 (Tex. Crim. App. 1990).

Roark replaced the team concept by adding Chief Counsels (i.e., students from the previous semester) to mentor the current Clinic students and handle collateral duties like updating the electronic library of written motions, audio taped classes, and practices sessions. And he began experimenting with SMU's graduate school psychology students at a time when "trial psychology" was only just beginning to appear on the legal landscape. One such graduate student, Trina Davis, is now one of the best in the field of jury selection and she serves as a permanent volunteer on the Clinic's staff.

Roark's lasting legacy to SMU Dedman School of Law can never be captured in words. But because of his tireless work—and understated professionalism—the Clinic continues to turn out students who are known by lawyers throughout Texas for their ability to walk into a courtroom the day they are licensed and effectively handle anything they encounter. Because of Roark Reed, SMU Law enjoys tremendous good will in the Dallas legal community. Moreover, thousands of indigent clients have enjoyed an uncompromising and vigorous pro bono defense while the legal community has benefitted from a steady stream of imminently capable young attorneys graduating into the local legal community.

Perhaps Roark's most important gift to SMU Law is the inspiration that he gave his Clinic students, who include state and federal judges, U.S. (and Assistant) District Attorneys, public defenders, lawyers in private practice, and even a few CEOs of publicly-held companies. Not a day goes by that we don't hear a former student ask, "Is Roark still at the Clinic?" and not a day goes by when he is not sorely missed.



# Articles

