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The Role of Clinical Programs in Legal Education

By Suellen Scarnecchia

Their trial is next week. They have carefully investigated the case, and planned an opening statement, direct examinations, ideas for cross examinations, and an outline for a closing argument. We discuss refinement needed in their trial preparation. I stand and begin to end the meeting. One student says, "Shouldn't we talk about whether we should do this or not?" I take my seat and we begin, once again, to discuss the merits of our client's case and whether we should be moving for termination of parental rights.

These two young men, in their twenties, have been grappling for weeks now with the job of balancing the rights of a teenage mother against the rights of her one-year-old son. This is not a hypothetical case, filled with twists and turns by their professor. It is a real case where parental rights may actually be terminated. The real case is complicated by an expert who changes her conclusions less than a week before trial; difficult client counseling sessions; knowledge that opposing counsel will take little time to prepare (making the playing field not so level); and ethical concerns about calling a witness who is a minor and wants to limit his testimony to certain issues.

A professor could have written this complicated hypothetical, but the experience is profoundly different when faced with real deadlines and a real family at stake. These students feel the urgency of their decisions. They have an opportunity,

in clinic, to begin to form their own professional judgments in a setting where they are encouraged to ask hard questions and where time is built in to reflect on their performance as lawyers.

At its best, clinical legal education extends a student's learning beyond the point where the classroom stops. The task of "learning to think like a lawyer" is extended to include an effort to integrate the student's interpersonal, analytical, and advocacy skills, with her credibility, values and work habits to form a professional

The American Bar Association's standards for accreditation of law schools include specific requirements for the availability of clinical courses and for the treatment of clinical professors.

identity. It is suddenly not enough to be a good student. Much more is on the line than a grade or the student's own personal achievement. The responsibility of being a lawyer and the constant burden of making professional judgments come front and center for the first time.

Law students often write in their clinic evaluations: "This is the best course I have taken at the law school." In my early, more

naive, years of teaching, I thought this was somehow connected to the clinical professor's superior teaching methods and attention to the whole student, not just his or her analytical skills. Now, I know that this student reaction to clinical teaching merely reflects the relief and excitement students feel when they are permitted to put all of the pieces of being a lawyer together.

In clinic, students get a glance at the lawyer they will be someday. They gain confidence that, indeed, they will be a "good" lawyer. They understand the context in which their classroom learning will be applied. In short, they are able to integrate their law school experience.

Clinical legal education has gained a strong foothold in legal education nationally. The American Bar Association's standards for accreditation of law schools include specific requirements for the availability of clinical courses and for the treatment of clinical professors. Standard 302(d) requires law schools to offer "live-client or other real-life practice experience" to law students. Clinical faculty members must be offered "a form of security of position reasonably similar to tenure" under Standard 405(c). A national, peer-reviewed journal now exists to publish articles "devoted to issues of lawyering theory and clinical legal education."¹

The expansion and stabilization of clinics at the University of Michigan (U of M) Law School illustrates the national trend. Over 25 years ago, law schools, including U of M, began to develop clinical programs. For many years, U of M hosted two clinics,

the Michigan Clinical Law Program and the Child Advocacy Law Clinic. The programs were small, funded largely by federal and private grants. Clinical faculty members were hired on short-term contracts and they had no faculty governance rights.

In 1988, the U of M law faculty adopted a policy which created long-term appointments for clinical faculty, similar to tenure. The policy also gave clinical faculty members a variety of governance rights. The policy generally reflected a desire to begin the integration of the clinical faculty into the faculty as a whole. Since 1988, Deans Lee Bollinger and Jeffrey Lehman have authorized a total of eight long-term clinical positions for the faculty. With these positions, the clinical faculty members are now able to establish well-planned, securely funded programs, no longer solely dependent on the availability of external grant funds.

U of M law students can choose from the following clinical offerings:

Three in-house clinics (staffed by Law School faculty):

- Michigan Clinical Law Program: a general civil/criminal clinic, offering a wide variety of litigation experiences;
- Child Advocacy Law Clinic: students represent parties in child abuse and neglect cases in several counties in Southeastern Michigan; and
- Legal Assistance for Urban Communities Program: a transactional clinic, students represent community organizations involved in economic development and building affordable housing in the city of Detroit.

Two clinics offered in cooperation with public interest law offices:

- Criminal Appellate Defense: a program staffed by attorneys from the State Appellate Defender's Office, giving students

the opportunity to write an appellate brief on behalf of a client with a felony conviction; and

- Environmental Law Clinic: students work with the staff of the National Wildlife Federation's office in Ann Arbor on significant environmental litigation.

In the in-house clinics at U of M, students represent clients, participate in skill-building simulations, and engage in a significant classroom component. In the litigation clinics students participate in a mock jury trial, which is videotaped. The videotape is reviewed with students by clinical faculty members. Often, this simulated trial is followed soon after by an actual trial, where students take the lead in all aspects of the representation.

The clinical professor's role is to prepare students and be available during courtroom appearances, if needed. The emphasis is on teaching every law student the habit of developing his or her professional identity through reflection on each clinical experience. Caseloads are low, allowing for a time-consuming collaborative effort between the faculty member and the student. Each step in the process of representing a client is closely analyzed by both teacher and student. Will you interview both children together or separately? Can you speak to their mother without permission from her attorney? What will you say if she insists on speaking with you? Should we advocate for the child's best interests or should we be guided by his own wishes? And on and on.

A series of questions guides the student through the representation. At some point in the semester, the student realizes that he, not the supervisor, is making the decisions. This is when I am often moved to say, "We're practicing law now!" After the students interview a client or make a court appearance or negotiate a settlement, another set of questions is presented. Did we meet our client's goals? What would you have argued if you were opposing counsel? Was opposing counsel prepared? Why not? What could we have done differently to reach a better outcome? And on and on. The student learns the habits of careful reflection, seeking feedback from supervisors and peers, and humility in the face of how profound an effect lawyers can have on people's lives.

Students can satisfy their ethics requirement at U of M Law School by taking a clinical course. In the litigation clinics, students



maintain an ethics journal throughout the semester. They document ethical issues as they arise and they discuss their own reactions and possible resolutions of the issues. In class and in supervision sessions, students discuss how the Michigan Rules of Professional Conduct do or do not provide guidance. They discuss how certain clients or cases challenge their own morals and values. Again, the faculty members emphasize that students should develop the habit of recognizing ethical problems and resolving them through discussions with supervisors and peers, and through careful, private reflection.

Another goal of the U of M clinical faculty is to expose students to public interest law practice. A small percentage of our students will pursue a full-time public service career, but all of our graduates will have a duty to participate in *pro bono* activities. Their clinical experiences provide a terrific introduction to a variety of public interest work. Many will be able to directly apply their clinical skills to *pro bono* work after graduation.

As the U of M law clinics become less dependant on external funding for their day-to-day existence, clinical faculty members have sought grants to develop innovative programs. The Legal Assistance for Urban Communities Program receives grant funding to expand the services it can provide to community organizations in Detroit, often working with other units of the University that are also involved in development work in the city. The Child Advocacy Law Clinic is in its final year of funding from the Kellogg Foundation's Families for



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has taught in the Child Advocacy Law Clinic since 1987. She would like to thank the following faculty members for providing information about their school's clinical law programs: Professors Ann Miller (Cooley); Erica Eisinger (Wayne); Gilbert Donohue (University of Detroit Mercy); and Robert Filia-trault (Detroit College of Law at MSU).

Members of the State Bar can support clinical legal education by volunteering when clinical faculty members ask for help, voicing support for our clinics, and financially contributing to our programs.

Kids Initiative. Two long-lasting results of that grant are the Summer Fellowship and the Child Welfare Law Resource Center.

In the Fellowship, students are placed in child welfare law offices in several states. Each summer, we recruit, train and place 20 law students from Michigan and around the country with the goal of providing these dedicated new lawyers a start on the road to a career in child law. The Resource Center was established to provide support services, such as research, publications and training to lawyers, judges and other professionals in Michigan who are involved in the child protection system. While still a new program, many members of the bar and judiciary are taking advantage of the Center's services.

The Michigan Poverty Law Program (MPLP) is the U of M Law School's most recent addition. In cooperation with two partners, Legal Services of Southeastern Michigan and the Michigan Migrant Legal Assistance Project, the law school cosponsors a legal services support center in Ann Arbor which provides training, publications, case support, and technological support to legal services offices throughout the state of Michigan.

In addition, the law school provides a clinical law component to MPLP, where students work on cases referred by legal services field offices. This joint venture may become a national model for the provision of statewide legal services support as federal funding for the representation of poor clients is further limited.

Other Michigan law schools also offer their students an array of clinical law courses.

The faculty of the Thomas M. Cooley Law School adopted a mandatory clinical law requirement in May 1996. Students must complete a minimum of three credit hours of clinical experience through either the in-house program, Sixty Plus Elder Clinic, or through an externship. Related skills courses are also required.

In the Sixty Plus Clinic, students represent seniors in the Lansing area on civil

law issues, including consumer, housing, guardianship, small estate planning, health care, and public benefits issues. Sixty Plus is staffed by four clinical faculty members and has a significant classroom and simulation component.

Students at Cooley can participate in structured local externships during their third year. Placed in law offices throughout the Lansing area, students gain experience in general practice, government, environmental, legal services, criminal and many other areas of law. They attend a contemporaneous class throughout the term, keep a journal and time sheets, and meet regularly with a faculty supervisor. The option of local externships, with a significant classroom component and close monitoring by a faculty member, is a popular mode of clinical education nationally.

Wayne State University Law School recently hired Professor Erica M. Eisinger to direct the school's Law-yring Skills Program. It is her goal to strengthen and expand Wayne's existing programs. Next year she will be joined by a second full-time clinical faculty member. Taking advantage of its urban setting, Wayne provides a wide variety of local internships for law students, including work in federal offices such as the IRS, EEOC, and U.S. Customs. Increased credits, a greater variety of placements and a seminar component have recently been added to the internship program.

In addition to internships, each semester nearly 70 law students deliver legal services to low-income Detroit residents through the Free Legal Aid Clinic. A cooperative venture with Wayne County Neighborhood Legal Services (WCNLS), the program gives students experience in primarily family law under the supervision of experienced WCNLS attorneys. Like U of M, Wayne offers a clinical course in criminal appellate practice under the direction of the State Appellate Defender's Office. Finally, two major law firms in Detroit have developed experiences for law students

in transactional law, using materials drawn from their commercial and bankruptcy practices.

The Clinical Program at the University of Detroit Mercy School of Law has been in operation since early 1966, making it the oldest program in the state. In the in-house component of the University of Detroit Mercy Urban Law Clinic, senior law student interns (with faculty supervision) provide low-income clients with legal service in criminal misdemeanor as well as civil matters. Typical cases in the civil area include the drafting of simple wills and trusts, representation in landlord-tenant disputes, and advocacy in child custody litigation.

As in the in-house programs at U of M and Cooley, interns are required to interview clients and witnesses, obtain discovery orders, research the applicable law, negotiate possible settlement, and, when in the best interest of the client, prepare and proceed to representation at trial. The law school also has an externship program. Although these placements tend to be primarily research and writing, offerings in various prosecuting attorney and government agencies often involve complex trial and appellate advocacy.

Finally, the Detroit College of Law at Michigan State University provides an externship program for students. There are three categories of placement available: judicial; legal aid; and government attorney. Students are required to submit a written report at the end of the term and participate in a classroom component throughout the semester.

The growth and stabilization of clinical programs in Michigan's law schools has been steady, but not without significant barriers. Traditional classroom faculty sometimes question the need for clinical education. After all, they might argue, generations of lawyers were trained without the availability of clinics. This point of view ignores the changes in legal practice that we have experienced most significantly in the last two or three decades. It is much harder now for recent law graduates to receive on-the-job training, when many attorneys strike out on their own early in their career, or join a larger firm or agency which requires them to be a productive member from the start.

In 1992, the American Bar Association published *The Report of the Task Force on Law Schools and the Profession: Narrowing*

the Gap (often referred to as the MacCrate Report, after Robert MacCrate the leader of the effort). The Report challenged law schools to move legal education beyond only legal analysis, to teach a number of skills and values central to the practice of law. Clinical programs go a long way toward responding to that challenge. In addition, clinics provide a uniquely "safe" environment for a law student to explore his or her values, try on different styles of lawyering, and ask "dumb" questions. This important chance to mold one's own professional identity is harder to do when a graduate is attempting to impress a new boss or survive in a solo practice.

Another barrier to clinical legal education is its cost. Programs must keep teacher to student ratios low (typically 1:8-10). Most law school courses are still taught to large groups of students. Therefore, clinical faculty members seem particularly expensive in relationship to the number of students that they teach. Programs can alleviate this burden somewhat by asking clinical faculty members to teach larger courses on occasion or by increasing the credit hours offered for clinical courses. Many programs also continue to seek external grant funding.

Unfortunately, cost becomes a convenient excuse for failing to provide clinics,

when a law school faculty is not yet convinced of the need for a clinic. Once clinics are accepted as a vital part of the law school experience, they become as important a funding priority as having a law library or hiring a contracts professor.

The State Bar is enriched by the existence of clinical programs in Michigan. They provide valuable training in legal analysis, practical skills, ethics, and professional responsibility. Clinics also provide service to the community. Members of the State Bar can support clinical legal education by volunteering when clinical faculty members ask for help, voicing support for our clinics, and financially contributing to our programs. Judges can continue to welcome law students into their courts through externships and as advocates under Michigan Court Rule 8.120. This investment in lawyers at such an early stage is an important investment in the future of the bar and the legal system. ■

Footnote

1. "The *Clinical Law Review* is a semi-annual peer-edited journal... jointly sponsored by the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and New York University School of Law." Inside cover to Vol. 4, No. 1 (Fall 1997).

