NORTHWESTERN UNIVERSITY

LEGAL CLINIC

NEWS & NOTES

SPRING 1987

INTRODUCTORY REMARKS ...

Putting together a report such as this is a good institutional exercise because the product is the result of contributions of everyone involved in the Clinic - the staff, the faculty, and the students. The joint effort brings us together and gives us information with which to assess the Clinic's performance over the year.

We should get these reports out more often. But as those of you who have worked with us in the past know, getting everyone in the Clinic to pause to reflect upon the year's developments at the same time is an awesome undertaking. We, as all professionals, tend to respond more to immediate work pressure than to the need for long range planning. We enjoy the work we do and tend to take on too much of it. As much as we try to become more rational about the obligations we take on, the temptation to take on more than we should handle often prevails. My office, even in the relative splendor of the third floor of McCormick Hall (I use the word "splendor" for those of you who remember the basement of Thorne Hall) looks pretty much the same as it did ten or fifteen years ago.

This newsletter describes change and growth within the Clinic during the last year. Before going on to tell you about those developments, however, I am saddened to report that Albert Sherer, our valued colleague, died on December 27, 1986, after a long illness.

Albert graduated from the Harvard Law School in 1941. He was a decorated pilot in the Second World War and enjoyed a long and distinguished career in the State Department. Fluent in Polish, Czech, and French, he served in numerous assignments throughout the world, including Morocco, Eastern Europe, and Washington. He was Ambassador to Togo and was Deputy Chief of Mission in Warsaw. Albert headed the Conference on Security and Cooperation in Europe that ratified Europe's post war boundaries and culminated in the Helsinki Accords of 1975. He is credited as being the architect of the human rights provisions that were signed in Helsinki.

After retiring from the State Department, he moved back to Chicago where he grew up and sought a job in which he could help people. He was referred by a friend to the Legal Clinic and volunteered to help. Of course, we were delighted to have him join us. Despite this remarkable career, Albert was accessible and unassuming. At the Clinic, Albert supervised students working on social security disability and juvenile cases. He was committed to providing legal services to the poor and disadvantaged. He enjoyed his relationships with the law students, and our students learned much from him. We are grateful that Albert was our colleague.

Early in March, Pat McIntyre, class of 1972, stopped by. Pat is now deputy director of Evergreen Legal Services in Seattle. He had called me a few days earlier to let me know that he was going to be in town and that he wanted to interview Clinic students who might be interested in settling in Seattle. After his interviews, we went to lunch. At lunch, Pat reminisced about a criminal case that he tried with Jon Hyman at 26th and California. He remarked that the experience of trying a case in the criminal courts building back in 1972 made his early career appearances in the more civilized courtrooms of Washington state an absolute pleasure. Because of this clinical experience, Pat claimed

that he cannot recall a single time in the last 15 years that he has been successfully intimidated by a judge or by opposing counsel. His experience at 26th and California had weathered him. He has seen nothing to match the inhospitable Cook County criminal courts since he left Chicago.

Pat's acknowledgement, as overstated as perhaps it is, confirms how essential a component casework is to a successful clinical education program. The preparation of the case for trial and the numerous opportunities provided by the law school setting for discussion with Jon Hyman about the behavior of the client, the prosecutor, and the judge had obviously made an impact upon Pat's assessment of our system of justice and of his role in it. Over the years, I have heard many similar observations from students who have negotiated, settled, or tried cases while working in the Clinic. Although one's first case in always an educational experience, whether it occurs in law school or after graduation, casework experiences in a law school clinical setting have a particular impact. (See the reports of Tim Durst '87 and Adam Glazer '88, pages 10-12 below). This is because Clinical faculty carefully structure this experience and because Clinic students possess the orientation, time, and energy to view lawyering tasks from a "learning" perspective.

The Law School is committed to the preservation and improvement of this model of clinical education even as it becomes more expensive and demanding of our faculty. Last July, many of you affirmed the value of the Clinic education with your pledges during our first phonathon. On behalf of everyone at the Clinic, I thank you for your overwhelmingly positive response: over 80% of you who were contacted by the phonathon pledged. Some of you whom we could not reach during the phonathon contacted <u>us</u> to pledge! Our law school fundraising experts tell us they rarely see such a positive response.

We hope to repeat our outstanding record for this year's phonathon and perhaps even top it. And, we have an exciting new initiative which should provide an incentive to do so. The Chicago Community Trust has awarded the Clinic a challenge grant of $15,000 for the Juvenile Advocacy Program. As many of you will remember, this program provides students with "hands-on" litigation experiences where their efforts have a positive impact upon a child's life. In many cases, our students are providing legal representation for clients who would otherwise have to depend upon woefully understaffed and overworked public defenders. Donations received from this year's phonathon pledges will go toward meeting this challenge grant. Please give our phone call this year your sincere consideration; your support will be deeply appreciated.

Now on to my report of our academic achievements. We have improved our real case supervision by establishing a relationship with a legal services office in Uptown. Our classroom component has improved through the contributions of our clinical faculty who continue to grow as teachers and as scholars. The size of the student population in the Clinic has grown because we have made our casework component more efficient.

Topping the list of these improvements are the revisions, currently underway, of the Clinic curriculum. These revisions include initiatives to strengthen both casework and classroom instruction. For the casework component, we have a new program, the Community Law Project, which was described briefly in our Summer, 1986 "News & Notes." Made possible by federal Title IX funding, this project currently supports 'on-site' skills training and education in poverty law issues at the Uptown People's Law Center. With this funding, Clinic students serve clients in a low-income community and are thereby exposed to the many legal and social problems of this area. Adhering to the best tradition of the Clinic, this community exposure provides students with increased client contact and with a keen appreciation of the contributions lawyers can make to such communities.

<u>Casework Component.</u> Despite what we hear about law student apathy concerning the need for legal services in the poor communities, this year's students are enthusiastic about working in the Uptown Center. There are several reasons for this positive reaction. The explanation of this phenomenon most common to our students is their interest in seeing that "justice" is done and/or in seeing whether "justice" can be done. The Clinic is a laboratory in which students are able to test their preconceptions about the way in which our legal system distributes justice. (The fact that Adam Glazer's '88 classmates pay for Adam's drinks while he tells his courtroom tales about the way in

which theory and role interact in the real world suggests more than a passing interest among law students in these matters.) This "testing," initiated while in law school, hopefully continues after graduation and makes our graduates unusually sensitive to the impact that their lawyering has upon the quality of justice dispensed by our legal system.

Another important reason for student interest in our Community Law Project - a reason with less lofty underpinnings - is that the project provides students with the opportunity to perform as lawyers for real clients with real legal problems. This rich and varied exposure to the real world of law is conducted under the supervision of effective clinical instructors. The basic premise of our clinical program has always been that such educational experiences stimulate and motivate students to test themselves in lawyering roles as they perform the tasks necessary for effective representation of their clients. Real cases allow students to reflect upon their roles as attorneys, to evaluate their ability to utilize theory on behalf of clients, and to learn lawyering skills such as interviewing, counseling, negotiation, writing, and trial advocacy. Whether motivated by practical or by theoretical concerns, the students engaged in casework rightly conclude that their lawyering skills, as undeveloped as they may be, may make a difference in the lives of their clients. Putting all of these "draws" to clinical education together, the potential for significant educational impact cannot be overestimated. It is logical that students learn best when the subject matter engages them.

Classroom Component. This year's efforts toward improving classroom instruction have involved an experiment with the CNL-CTA sequence. We offered "two courses in one": students enrolling in this sequence could enroll for classroom instruction and casework or they could enroll for classroom instruction only. Sixty students enrolled in the course, the largest number to date, with half electing to take casework and half participating only in the classroom component.

This experiment was designed to see whether we could increase enrollment in this sequence without compromising the quality of instruction. As many of you know, the size of the student enrollment in the Clinic has always been limited by the ability of the Clinic faculty to supervise students on cases; participation in the clinical sequence was in the past limited to those students who were doing casework. There are, however, no similar limits in our ability to teach students effectively in the classroom simulated setting. This year, therefore, we decided to admit students to the CNL-CTA sequence who were not handling cases. We gave these students three credits per semester while those who were handling cases received four credits.

The results of the experiment are not all in; nonetheless, we have learned a great deal. First, students overwhelmingly prefer the casework/classroom combination, and, I think that it is fair to say, that the students who successfully handled this combination had the best educational experience. Second, we found that the creation of two groups having different experiences in the same class created problems. Students who were not engaged in casework felt deprived of the experience that others were so enthusiastic about. Conversely, some students, overwhelmed with casework, wondered whether the additional hour of credit justified the immense expenditure of time and energy that casework requires.

I speculate that this experiment will indicate that casework should be provided for all of our second year students in the setting of the Community Law Center. We will be able to accomplish this goal by more efficiently utilizing the resources of the Center. Fortunately, our ability to supervise more students on cases will be increased next year with the addition of a third clinical fellow. This clinical fellow will specialize in the representation of children in juvenile court.

We have also made significant changes in the CTA component of the clinical sequence. Those of us in the Clinic who have taught the large ethics course believe that many of the ethical issues covered in that course, especially as they relate to attorney-client relationships and to litigation, could best be taught in the context of a trial advocacy course in which students act in the role of attorneys engaged in litigation and trial. To this end we have added a structured discussion session to each class session while improving the simulated learning by doing part of the course through the use of smaller groups and more efficient ways of providing student feedback. The quality of feedback has also been enhanced by the Clinic's purchase of state-of-the-art video equipment.

Finally, the course has been improved as a result of the participation of adjunct faculty who bring their diverse practice backgrounds and enthusiasm for teaching to the CNL-CTA course. The Clinic students benefit from the adjuncts' excellence as teachers and from their differing perspectives on trial advocacy. The clinical faculty also benefit from the useful insights of the adjunct faculty regarding teaching methodology and subject matter. We are indeed grateful for the adjuncts' dedication to our program, and we are proud that many of them are graduates of the Law School and of the clinical program. To give you an idea of the number and diverse backgrounds of these teachers, I list them below:

Arthur Hill, '78, Assistant State's Attorney, Juvenile Division
Sheldon Zenner, '74, Assistant United State's Attorney
Sam Tenenbaum, '73, Becker and Tenenbaum
Margaret Frossard, Assistant State's Attorney
Sidney Schenkier, '79, Jenner & Block
Lawrence Storms, Winston & Strawn
Danae Prousis, Winston & Strawn
Thomas Reynolds, Winston & Strawn
Judge Michael Toomin, Circuit Court of Cook County
James Epstein, '78, Zaidman, Epstein & Esrig

FACULTY NEWS ...

Bob Burns is continuing to work on civil rights, government benefits, and criminal cases in the Clinic. He also mediates for the Chicago Neighborhood Justice Center. This year he is chairman of the Law School's Speakers' Committee and serves on the Faculty Advisory Committee of the Law School. He has recently published articles on ethics in the practice of law, alternative dispute resolution, and constitutional theory; he also co-authored a chapter in a law student textbook on mediation. He spoke on the enforceability of mediated agreements at the National Conference of the Society for Professionals in Dispute Resolution last fall and will speak on constitutional theory at the convention of the American Political Science Association at the end of the summer.

John Elson: On January 3, 1987 John Elson made a presentation at an annual convention workshop of the American Association of Law Schools Section on Clinical Education on the subject of comparative tenure standards for clinicans. He is presently on a four-member planning committee organizing the Midwest Clinical Law Teachers Conference to be held in Chicago on April 11-12, 1987, where he will give a presentation on the role of in-house and placement clinics. This year, John has also been a member of two ABA-AALS law school accreditation inspection teams for law schools in Los Angeles and San Francisco. Since the summer of 1986, he has been co-chair of an AALS Clinical Section Committee that is preparing a report on the future of in-house clinical programs. In March of 1987, John presided over a discussion of scholarship in clinical legal education at the A.A.L.S. Section of Clinical Education meeting in San Antonio. John's most recent article is entitled, "Suing To Make Schools Effective, or How To Make A Bad Situation Worse: A Response to Ratner," in 63 Texas L.R. 889. In March, 1987, he was among a select number of education law specialists invited by the Columbia Law School to participate in a forum on remedies for ineffective schools.John recently settled a Clinic case for $160,000 that he had been litigating for approximately ten years in State and Federal courts. The suit had been pursued on behalf of a juvenile who had been wrongfully imprisoned for six months. His other major litigation in cooperation with other Clinic faculty includes federal civil rights suits seeking remedies for a brutal police interrogation, the over long incarceration of a prisoner at Cook County Jail, and the denial of a Black person's right to enter a popular local bar free of racial discrimination.

Edward Feldman is one of the Clinic's two "fellows," and is completing the first year of his two-year fellowship. He graduated, magna cum laude, from Harvard Law School in 1984. During his

second and third years of law school he worked nearly full time for one of Harvard's two poverty law clinics, and represented clients primarily in landlord-tenant, public benefits, and domestic relations cases. Following graduation he clerked two years in Chicago for Federal District Judge Marvin E. Aspen.

Tom Geraghty taught in an advanced trial advocacy seminar sponsored by the A.B.A. Section of Litigation held in Oxford, England last September. The materials used for that course, a medical malpractice and products liability case file, will be used throughout the country this year in the National Institute for Trial Advocacy's advanced trial advocacy programs. Tom continues to teach ethics and the CNL-CTA sequence. Last fall he co-taught negotiation with Steve Lubet. Tom was recently named a member of the Section of Litigation's panel on trial advocacy teaching. He is vice-president of the Chicago Council of Lawyers and chairman of the Council's Federal Judicial Evaluation Committee. He continues to be the Midwest Regional Director of the National Institute for Trial Advocacy, teaching and administering continuing legal education programs in trial advocacy and in negotiation skills.

Thomas Johnson devotes half-time to supervising Clinic students at the Uptown People's Law Center. He graduated, cum laude, from Harvard Law School in 1976 and clerked in the Federal District Court for the Northern District of Illinois from 1972 to 1974. For the next eight years, he was a staff attorney with the Legal Assistance Foundation of Chicago (LAFC), where he specialized in federal and state court class actions involving public benefits issues. In addition, Tom has been lead counsel, or shared substantial responsibility, on many class actions and other significant cases. These cases concerned election and First Amendment rights, and public benefit issues involving disabled persons, AFDC families, and general assistance recipients.

Leslie Jones is the other new clinical fellow. A graduate of the Harvard Law School, class of '82, Leslie worked for the Legal Assistance Foundation of Chicago before joining the Clinic staff. At the Legal Assistance Foundation of Chicago, Leslie specialized in housing law. At the Clinic, Leslie has organized and has received funding from the Joyce Foundation for an environmental law project and is also a part of the Clinic's Community Law Project. She continues to represent clients in housing cases, particularly those involving discrimination claims. She is also working on two employment discrimination, several environmental law cases, and numerous small contract actions. In addition to all of the above, Leslie participates in the teaching of the CNL-CTA sequence.

Steve Lubet is on leave from casework this year and has been concentrating on the development of a new ethics and trial advocacy curriculum for the Law School. The first step in this experiment is described in the introduction to this newsletter. In addition to developing this new curriculum, Steve, for the first time this year, taught a negotiation course. Steve's work in judicial ethics continues to draw national attention. During the last year, he spoke to the Conference of Chief Justices, Annual Meeting, on "Judicial Ethics: Do We Know It When We See It ?". He also spoke at the Utah Judicial Conference, at the Conference of Judicial Conduct Organizations, American Judicature Society, and at the Conference of Chief Judges of Courts of Appeal. Steve wrote articles on judicial ethics for the 1987 Arizona State Law Journal 1 (1987), the Connecticut Law Review (forthcoming, 1987), and the Nebraska Law Review (forthcoming, 1987). Steve spoke at the UCLA-Warwick International Clinical conference, on "What We Should Teach (But Don't) When We Teach Trial Advocacy." He also was named coordinator of law firm programs for the National Institute of Trial Advocacy. In March, 1987, he taught at the first NITA program in Australia. Steve's active involvement in international law has included chairing the subcommittee on prosecution of war crimes and crimes against humanity for the American Bar Association Section of International Law and Practice. He will speak at the University of Connecticut's Annual Law Review Symposium on the subject of protecting Americans from terrorism. Steve will spend the 1987-88 academic year as a visiting professor at Emory University in Atlanta, Georgia. At Emory, he will teach in the litigation program, including courses in negotiation, legal profession and trial practice. In addition, Steve will teach a seminar in advanced litigation to twelve LL.M. students - a course that he hopes to bring back to Northwestern.

CLINIC PROJECTS ...

Altgeld Gardens.

About fifteen miles south of the Loop, wedged between the Calumet River and Lake Michigan, is a quarter mile war zone. This "hot spot" is the home to over thirty major sources of industrial waste, including numerous landfill operations, steel mills, paint producers, chemical companies and most important, a Metropolitan Sanitary District (MSD) sewage treatment plant and sludge drying beds. It is also the home to hundreds of families living in the Chicago Housing Authority's Altgeld Gardens.

For years now, the residents of Altgeld Gardens have complained of the noxious odors that permeate the area. Many of the residents suffer from chronic eye, ear, nose and throat irritation, respiratory problems, and there may be a higher rate of cancer and birth defects. Despite numerous attempts to fight this pollution problem, these residents need help combating powerful polluters. Last year, they asked the Legal Clinic for help.

Over the past year, Leslie Jones and several of her students have worked to find a way to help the Altgeld Gardens residents. So far, Clinic students have attended several community meetings and have designed and distributed an odor log and health survey to quantify and collect evidence for a future law suit. Clinic students have also written several Freedom of Information Act requests which unearthed an extensive Illinois Environmental Protection Agency health study of the region and information about MSD and its sewage treatment facilities. In addition, one third year student is exploring numerous legal theories under which the Altgeld residents can sue. The Clinic is hopeful that when the research is complete and all the evidence is collected, the Clinic will be able to set the legal wheels in motion to get relief for our clients.

This project is being funded in part by a grant from the Joyce Foundation.

Community Law Project.

The Community Law Project (CLP) is one of the Clinic's important, new initiatives. Described in Tom's opening letter to the issue of "News & Notes," this project is based at the Uptown People's Law Center. This on-site facility for the CLP was founded in 1975 and is one of four private community law centers in Chicago that offer civil and criminal legal services to the poor. The original mission of the Uptown Center was to handle Black Lung Disability claims for the many ex-coal miners who lived in the Uptown area. Handling these early cases were a non-attorney volunteer staff and three volunteer attorneys. Today, the Center enjoys the services of 40 volunteer lawyers plus a large non-attorney staff. Its case load has expanded to include the defense of serious felony prosecutions, Social Security Disability cases, evictions, and various problems involving governmental benefit programs. The Law Center is affiliated with other community organizations which, among other things, provide public health education and food for the hungry.

Clinic students travel about three or four times a semester to the Uptown Center, located at 1220 West Wilson Avenue, a short 'L' ride from the Law School. Under the supervision of Thomas Johnson, Director of the four community-based law centers, and Edward Feldman, Clinic Fellow, students interview many prospective Uptown clients. After the interview, students meet with Clinic faculty and volunteer attorneys in a "case review," during which a decision is made as to whether to accept the case or give advice. Students work with Clinic faculty or an Uptown volunteer attorney in handling cases which have been accepted; in addition, students provide advice to those whose cases are not accepted.

Students have worked on dozens of cases from the Uptown Law Center this year. Jim Peters and Janet Smerling, along with supervisors Eddie Feldman and Tom Geraghty, successfully defended an eleven year-old boy charged with raping a fourteen year-old girl. Eddie and Tom have recently taken a murder case from the Law Center, in which police officers detained our seventeen year-old client incommunicado for over forty hours, allegedly beating him until he gave the confession they wanted to

hear. Students Adam Glazer and George Dougherty will work on investigating the case, as well as preparing a motion to suppress. Tom Johnson has supervised about ten students representing ex-coal miners at adversary hearings to determine the clients' eligibility for Black Lung Disability Benefits. No decisions have yet been made in these cases. Julie Bolz has quickly developed expertise in landlord-tenant law, working with Eddie Feldman in defending six evictions.

CASE REPORTS...

• Eddie Feldman and Tom Johnson supervised students on a case which was tried for three weeks in federal court this past fall. Joe Margulies and Glennia Campbell helped Tom and Eddie defend a civil rights and libel case, in which a white former principal sued ten black parents, including Alderman Dorothy Tillman. The principal claimed that in 1981 the parents tried to drive her out of the school because she was White. The defense team won a directed verdict on the discrimination claim and most of the libel claim. The all-white jury then found for the defense on all but one allegedly libelous statements, and awarded $1.00 in damages for that statement. The principal has appealed and Clinic students will help draft the responsive brief.

• The Clinic represents a quadriplegic who, as a former prisoner in Stateville, was denied appropriate medical treatment. After many years of preparation and delay, the case will be tried before the Illinois Court of Claims this semester. Students have prepared the pre-trial order and are in the process of preparing our witnesses to testify.

• The Chapman case may finally be over! Most of you will remember mention of this case in many previous issues of this newsletter. The case was filed in 1972 on behalf of a black muslim inmate at the Marion Penitentiary who was placed in segregation for 189 days for refusing to touch pork. After four district court decisions and four Seventh Circuit opinions, the federal district court in Springfield awarded our client $7,000 plus costs. The Government appealed to the Seventh Circuit which affirmed the district court. The Government then filed a petition for rehearing en banc. That petition was denied, the Seventh Circuit voting 6-4 not to rehear the case.

• Clinic attorneys and students recently lost a jury trial in which we represented a defendant charged with robbery. The defendant was accused of accosting a young man on the street and demanding and taking his money. The case turned on the credibility of the victim's identification. The defendant did not testify. At the time of his arrest, the defendant had been out of the Penitentiary for six days after serving a term for burglary. He was sentenced to eight years in the Penitentiary.

• In another criminal case, Clinic lawyers and students were able to achieve a better result. Our client was charged with burglary of a store from which $10,000 in cash was taken. The State's case rested upon the testimony of the janitor who worked next to the store and who claimed that he saw our client commit the burglary. Our investigation revealed that the witness had told several people in the neighborhood that he was not sure whom he saw in the store. The Clinic obtained a written statement from the witness in which he indicated this uncertainty. Upon receiving this statement, the prosecution refused to dismiss the case until it had received the results of fingerprint tests comparing our client's fingerprints with those taken from the store. We were informed by the prosecution that these test results take four to six weeks. In the meantime our client would remain in jail. Only with the assistance of Professor Inbau was the print comparison made immediately and in our client's favor. Despite this evidence, the State still refused to dismiss the case. The case was tried, and the defendant was acquitted.

• The Clinic represents a young man who has sued the Illinois Department of Public Aid in federal court, because the Department refused to provide in-patient psychiatric care through Medicaid to minors in private hospital. Under the State's discriminatory system, a child on Medicaid who needs psychiatric hospitalization for more than twenty days cannot get it, regardless of how serious his illness is. This class action was filed on behalf of our juvenile client after Clinic attorneys found that it

was impossible for him to obtain the psychiatric care that he needed within the existing state system. Clinic attorneys first secured treatment for this client, and are now in the process of negotiating a settlement of this case with the Department's attorneys which should result in the provision of in-patient psychiatric services on a class basis to many children and adolescents with serious mental problems who now cannot receive them.

• The Clinic was appointed to represent a prisoner who claims that his civil rights were violated when the police obtained a coerced confession from him. Six police officers detained him for twenty-four hours, beat him, refused him food, and interrogated him at length until he confessed. The prisoner sued pro se. Since being appointed, the Clinic has amended the complaint, taken discovery, including seven student-taken depositions, and has briefed a motion to dismiss, which is now pending.

• Nina Puglia, '87, (whom you may remember from the last newsletter) recently argued a sex discrimination case in the United States Court of Appeals for the Seventh Circuit. The case, which was tried in the Federal District Court for the Central District, involved the claim of a clinical psychologist at the Manteno State Hospital that she was denied promotion because of her sex. The record showed that she had excellent academic qualifications and job ratings, but that four males were nonetheless promoted over her. The district court judge expressed skepticism concerning the explanations offered by the Hospital, especially in light of the fact that there had never been a supervising woman psychologist in all the years of Manteno's history, but held for the defendant since he was not convinced that the defendant's motion was intentional discrimination. The plaintiff argued on appeal that the district court judge had made an error of law in requiring the plaintiff to prove anything more than that the defendant's reason for not promoting the psychologist was not worthy of credence, the standard set out by the United States Supreme Court in Texas Department of Community Affairs v. Burdine. A panel of Judges Easterbrook, Posner, and Parsons rejected our argument. A petition for certiorari is being prepared.

• A Clinic attorney and three students prepared a brief in an important administrative law case now pending before the Illinois Appellate Court. The state pension board denied a survivor's pension to the disabled spouse of a cancer victim who worked for a state agency and paid into a pension fund for over twelve years. The notice informed him that the denial was the "final administrative review" of his application. In fact, there was a rehearing procedure available under the (uncodified) agency regulations which he could have invoked within 90 days from the adverse determination. He obtained legal representation, but the action in administrative review was filed after the jurisdictional 35 day period (though within the 90 day rehearing period). The trial judge denied the defendant's motion to dismiss, reasoning that the agency's failure to inform the claimant of the 35 day limitation period precluded its assertion of the jurisdictional bar, but certified the question to the Appellate Court. On appeal, we argued that the agency is constitutionally required to inform the claimant at least of the availability of an additional administrative remedy (such as the rehearing procedure) and the applicable limitations period and that the 35 day period for judicial review will not run from a constitutionally defective notice. The case now awaits decision.

• Clinic attorneys represent a sixteen year-old girl accused of a murder allegedly committed a few months after her fourteenth birthday. Her Department of Children and Family Services records indicate that she was seriously abused as a very young child and that she was recommended for long-term psychiatric hospitalization by a Department of Mental Health psychiatrist when she was twelve. The recommendation was ignored, and she was placed in a loose group home situation from which she ran away. After a contested hearing in the fall of 1985, she was found unfit to stand trial and has finally been receiving intensive psychiatric care since then. The court recently found that she was not likely to become fit to stand trial. We are now pursuing the complex statutory procedure that applies in those situations. We are preparing a hearing on her motion to suppress her statement, made difficult by the recent Supreme Court decision in Colorado v. Connelly, 107 S. Ct. 515 (1986). A "discharge hearing" to determine whether there exists evidence sufficient to prove her guilty beyond a reasonable doubt, a constitutional prerequisite to her continued detention, will be held soon. It is, in effect, a full

criminal trial, save only that there is no jury right and she can not be found "guilty." We are also negotiating with the Department of Children and Family Services to make sure that she receives high quality psychiatric care should she be discharged from the jurisdiction of the criminal court.

• A Clinic student will soon argue an unemployment compensation case in the Circuit Court of Cook County that could, if appealed, have important consequences. It concerns the eligibility for unemployment benefits of a substitute teacher who was locked out by the Board of Education during a strike by the regular teachers, a strike he did not support and in which he did not participate. The statute renders ineligible persons in the same "grade or class" of the strikers and those who participate in or have a "direct interest" in the outcome of the strike. After the strike, the substitute teachers received a negligible increase in their salaries which did not equal the money they had lost during the lock-out. The case thus involves the reach of the statutory requirement that those excluded from benefits must have a direct interest in the outcome of the strike.

• A Clinic student will argue another unemployment compensation case in which a chronically ill person was fired for absenteeism based on the employer's "point system" that assigns negative points for each absence, regardless of fault. The agency denied benefits, claiming that the employee was fired for misconduct. We argued that, though the employer had a right to dismiss the employee in the interests of the business, absenteeism caused by sickness was not the kind of "misconduct" that results in ineligibility under the statute.

• Clinic students prepared a legally complex case for widows' benefits under the Social Security Act. Our client is a seventy year old woman who lived together with her husband for thirty five years and raised their three children, all in the mistaken belief that she was married at common law under the law of Illinois (which abolished common law marriages early in the twentieth century). The Social Security Act makes the law of the state where the deceased person lived at the time of his death controlling. After considering, then rejecting the possibility of an equal protection challenge to the federal statute, we developed an argument which relied on the provision in the Illinois law that recognizes common law marriages validly contracted in other states. Our client travelled to and lived for very short periods in other states which both recognized common law marriages and have no durational residency requirements. We convinced the federal court to remand the case for a hearing on the question of whether our client is eligible for benefits by virtue of the interrelation of the Social Security Act, the Illinois comity provision, and the laws of several other states. The hearing has been held and we await the decision of the Administrative Law Judge.

• Clinic students and attorneys and students have also been litigating the case of an illegitimate child seeking survivor's benefits under the Social Security Act on his father's account. His mother is herself a disabled recipient of Supplemental Security Income. The case is now in federal court for the second time. It has been complicated by the original dismissal of the child's paternity action some twelve years ago under circumstances that even the Social Security Administration concluded strongly suggested judicial impropriety of the worst sort. When we took the case an administrative hearing had already taken place, there was abundant evidence of paternity, and the case was on judicial review in the federal court. We argued that the Administration had misinterpreted the applicable Illinois laws and had imposed an impermissibly high burden of proving paternity on the claimant. The magistrate to whom the case had been assigned accepted our legal argument and issued a recommended decision. The government did not file objections within the statutory ten day period and the district court judge accepted the recommended decision and entered judgment for claimant. Failure to file objections waives the government's rights to object in the district court or to appeal. After judgment was entered, the government moved to vacate the judgment on the grounds that it had not received the magistrate's report and that it wanted to file objections. We opposed the government's motion. In an unusual twist on an already unusual case, we obtained and have completed an evidentiary hearing on whether the government's failure to file within the ten day period is excusable. The case awaits decision on this decisive procedural question.

• After prevailing in federal court, a clinic student conducted an administrative hearing in a Social Security disability case that has dragged on for almost 5 years. Our client does not speak English, has never worked outside the home, and suffers from an unbelievable combination of physical and

psychological illnesses. The Administrative Law Judge finally ruled favorably. The Administration then managed to lose the case file, occasioning a further delay which we are working to end. This case is typical of several other Social Security disability cases that the Clinic is handling, both in the federal courts and in the agency.

• A Clinic attorney and students continue to prepare for what will be a long civil rights jury trial in the federal court. The case involves a policeman who appears to be the only black employee ever hired by the suburban township defendant. The policeman, a decorated war veteran, alleges that he was subjected to racially explicit harassment and various forms of discriminatory treatment including public humiliation through groundless disciplinary proceedings. The case presents complicated factual questions of equal treatment and difficult legal issues in developing areas of the law.

• Clinic attorneys and students are preparing an insanity defense for a teenage girl in another murder case. The defendant grew up subject to physical and sexual abuse and suffers from serious mental illness. The case is an example of an ongoing and fruitful relationship between the Clinic and the Adolescent Unit of the Department of Psychiatry of the Northwestern School of Medicine. The relationship is contributing to the Clinic's historical excellence in the representation of children.

STUDENT REPORTS ...

Tim Durst, '87

We are currently drafting final settlement documents for a race discrimination case that the Clinic took on in September 1985. The Clinic represents a Northwestern law student in his federal suit against a popular local bar that refused him admission because of his race.

From a student's perspective, working on this case has provided a valuable insight into the process of litigating such a suit. Assuming the settlement agreement is approved as expected, I will have been involved in this case from beginning to end. In the beginning, I participated in the initial interview of the client. At each stage of the case since then, I have had the opportunity to help with (or actually conduct) the case preparation. I have been exposed to both the practical and legal sides of pursuing such a case.

Practically, we (the professor and the group of students assigned to him - as a discussion group) debated the merits of pursuing the case, whether the client would benefit or be disadvantaged by law student representation, and whether the Clinic should take the case or refer the client elsewhere. In deciding whether the Clinic should take the case (and assuming it would ultimately go to jury trial), we had concerns about the perception jurors would have of N.U.L.S. students litigating on behalf of a classmate. In the end, we decided that the client would benefit from our services, not likely be prejudiced by Clinic representations and that the case would provide a positive educational experience for the students involved - a good and correct decision.

I learned much from the discussions about whether to take the case. The discussions focused on different issues than I imagine arise in similar discussions in private firms. First and most obvious, the client's ability to pay a fee was not a condition of accepting the case. Another difference between the Clinic approach to this case and what I imagined a private firm's approach would be was that we spent what seemed to me an inordinate amount of time researching various angles on the case which ultimately proved irrelevant or fruitless. At the time I felt a bit disappointed that my Clinic experience was not going to be more "real world." Now, however, I think that the obvious absence of such concerns in our discussions brought home for me the reality that private firms may be very constrained in the cases (and causes) which they choose to pursue.

Second, with this case, there seemed to be a real possiblity that if the Clinic did not take the case the client might not be able to pursue his remedy. From the outset it seemed that our client had been

wronged by the soon-to-be defendants. Nonetheless, the possibility that the defendants would "get away" with their actions (and continue acting in such a manner) loomed large if the Clinic did not take the case. There was a wrong that might go unredressed without Clinic intervention.

In all, these discussions about taking the case changed my initial concern about a lack of "real worldness" into an appreciation of the role that legal aid organizations can play. My Clinic experiences have given me a greater awareness of legal needs that will go unredressed (often because the client can't afford private help) without some aid. I am much more committed now to the idea of doing pro bono work than I would be absent my Clinic experience.

In the process of all of this, I gained substantive knowledge, developed my fledgling legal skills and have experienced the process of developing theory and strategy. When formulating our case we explored the various possible approaches, evaluating each and ultimately deciding upon the legal theories most advantageous for accomplishing the client's goals. These decisions (such as where to bring suit and under which statute) were not always clear cut and some of the options were exclusive of others.

Our discovery strategy was governed by our "theory of the case." I learned about the different avenues of discovery (e.g. formal discovery dovetailing into informal efforts) and their respective uses. I deposed one of the defendants and two key employees of the defendants and defended several depositions. One of the most striking lessons I learned during the discovery stage was the need for thoroughness. While we discussed and rediscussed what we wanted out of discovery and how we should get it, the defendants were less thorough and missed several key aspects of our case that could have been helpful to them. Because I had the benefit of guidance from the professors I avoided some mistakes that I saw the young and inexperienced opposing counsel make. I learned from watching the comparison.

Perhaps the most unique (in the context of my limited legal work to date) experience in this case was consultation with opposing counsel. While my role in this aspect was primarily passive, I sat in on most of the sessions with opposing counsel. Discussions with the professors before and after such sessions illustrated to me the art of negotiation at work. Settlement discussions were always underway during the case, and I had the opportunity to watch the posturing by the defendants. I helped to evaluate their posturing and then to formulate our response.

This case also raised some personal value questions for me. Not having been significantly exposed to racial discrimination before coming to law school, I was bothered by some of the questions in the case. It was possible that the bar simply had made a mistake in refusing to admit our client. If that was so, it seemed to me that little net societal good would be accomplished by hauling the bar owners into court and forcing them to spend a lot of money.

Then we decided to conduct a test by sending another black man and a white man back to the bar to compare the admission results. At first this seemed a little dishonest to me. I thought about unfair entrapment and similar issues (most of which weren't legally relevant). On the other hand, the test would resolve my concern that the bar might have made a mistake. After all, the chances that it was a mistake seemed significantly less if the bar's conduct was consistent with what our client alleged. The test results were consistent with our client's initial experience. Since the test, more and more evidence has been uncovered that established that there was no mistake.

The case has provided insight to many areas of the litigation process, practical, strategical, and theoretical. I have gained personally from the experience through a broadening of my views about racial discrimination. I have had contact with several different aspects of litigating a case which law school (absent Clinic) would not otherwise have offered. Although my exposure through this case has been limited to the specific subject matter, I am familiar now with processes which I undoubtedly will confront many times in practice.

Adam Glazer, '88

Yeah I knew it was early in the semester and Tom Geraghty couldn't be expected to know me from Roy Cohn yet, but I needed to bitch. I caught him just as he hung up the receiver.

"Got a minute?" I asked, wanting at least twenty.

"AHHH, sure," he said, suspiciously, ball point pen characteristically dangling from the corner of his mouth.

"Professor Geraghty," I began, "about the assignments I've received so far..." Fortunately, it didn't take long for me to convince him that I was ready for more significant responsibilities.

While, perhaps, not quite ready to have me sub for him at Chicago Council of Lawyers meetings, Geraghty has clearly developed greater confidence in my abilities since that somewhat presumptuous, but necessarily cathartic, visit, and it has been directly reflected in the enhanced caseload to which I now contribute. I can only take so much away from an evidence class, but my involvement, as just a 2-L, in proceedings before civil, criminal, and juvenile courts generates invaluable litigation experience years before most of my classmates can expect to be entrusted with similar responsibilities.

My efforts currently include working for clients charged with obstruction, robbery, child molestation, and murder. Beyond the educational opportunities inherent in such challenging cases, palling around 25th and California with Tom Geraghty and Clinical Fellow, Eddie Feldman, provides numerous thrills and chills that my law school friends are willing to buy beers to hear.

Take the sympathetic fifteen-year-old girl charged with battery on a police officer and obstruction of an officer in the performance of his duties. (Her activity was apparently limited to grabbing the 6'2" officer's nightstick before it could be lowered onto her brother for the umpteenth time.)

Her trial proceeded in segments, our judge being unable to schedule more than two hours of testimony in our case per day. After four juvenile court appearances, the fourth of which featured Jim Peters, '87, arguing and winning a motion for directed finding on the battery count, the young states's attorney attempted to answer not ready for trial on the day that our witnesses were scheduled to testify. Professor Geraghty, who was prepared to scream bloody murder about the delay sought by the state, alertly switched tactics when he saw how irate the judge was about the prosecutor's last minute request for a continuance. As a result, we were afforded the rare privilege of witnessing a judge chew out a state's attorney. I asked Geraghty later why he hadn't raised the roof when the state's attorney asked for a continuance. The judge, Geraghty told me afterwards, had done our work for us. Geraghty also remarked that the spectacle of a prosecutor being upbraided by a judge so mesmerized him that he was unable to speak. But the bottom line was that there was no reason to chime in.

Geraghty's approach? After respectfully removing his trademark, a well-gnawed pen from between his teeth, he strategically waited for the judge's tirade about the disruption in his calendar to subside long enough to interject something appropriate, like this: "I'm sorry about this, your honor, and I might not object to a continuance if it weren't for the fact that my witnesses have taken off work three times already in order to testify." And the trial proceeded.

"Nope," I thought, "not the kind of lesson I could have received if I had gone to Evidence today."

Numerous research projects and court and jail appearances later, when I stop in to see Professor Geraghty, often enough that I worry about being a pest, we talk about the cases I look forward to trying as soon as I'm armed with my 711 card. My Clinic experiences haven't quite shaken me of my occasional interest in being a prosecutor, but, strangely, I find that I have discovered the tastiness of the same ballpoint pens with which I used to just take notes.