

NORTHWESTERN UNIVERSITY

LEGAL CLINIC

NEWS & NOTES



SPRING 1988

INTRODUCTION: A "THANK YOU" TO JAMES A. RAHL

The spring of 1988 marks the 20th anniversary of the Clinic and the retirement of Jim Rahl after 42 years as a member of the Law School faculty. The clinical program would not have thrived in such a happy and productive state but for Jim Rahl's help. To understand Jim's contribution to clinical education at Northwestern, it is helpful to retrace the history of the Clinic.

In 1968, Jack Beckstrom persuaded the University to meet a matching grant challenge from the Ford Foundation's Council on Legal Education for Professional Responsibility (CLEPR) for the purpose of establishing a legal clinic. In spring of 1969, when Jack Beckstrom and Gary Laser opened the doors to the basement of Thorne Hall, the Clinic's first home. The Clinic enjoyed the financial support of the Legal Aid Bureau, the Field Foundation, and CLEPR. The original staff consisted of Gary Laser, George Berns, Tom Humphries, and Seymour Mansfield.

During its first few years, the Clinic was an outlet for the many law students who believed that social change could be achieved through class actions and through counseling of community organizations. Most of the students who participated in the Clinic during its first five years thought that the University was discharging its social obligation by underwriting a legal services office.

In 1969, academic credit was available only to third year students. First and second year students volunteered to spend long hours working on cases. Because each Clinic attorney could effectively supervise only ten to twelve students, many eager volunteers had to be turned away.

In the early 70's, devoted students spent a considerable portion of their time in the Clinic and in court representing clients. These students played a significant role in governing the Clinic. During the Clinic's first two or three years, students applying to the Clinic were interviewed by resident Clinic students and faculty; selections in this highly competitive process were based upon judgments about the bona fides of the applicants' professed commitment to serving the poor. This questionable selection process was soon replaced by a lottery system. A very positive aspect of the active student participation in the management of the Clinic was the vigorous dialogue that took place between students and faculty about the educational and service goals of the Clinic.

In 1973-1974, the Clinic's political and service orientation began to give way to a more explicit recognition of education as the Clinic's purpose. A second year N.I.T.A.- style trial advocacy course was made available to second year students in addition to case work supervision in the third year. This course was instituted in 1973 after CLEPR made it possible for Clinic faculty to attend the National Institute For Trial Advocacy in Boulder, Colorado. Clinic staff returned from the month long seminar eager to start a similar course here. The experience of teaching this course made us recognize the potential for a model of clinical education that combined case work with role simulation. This form of simulation was something new in legal education. We found that it engaged students almost as much

as casework and that it was an efficient method of teaching basic lawyering skills to relatively large groups of students. Moreover, simulation was an effective means of preparing students for the educational experience of representing clients.

The mid-1970's brought changes in the attitudes of students and faculty towards the clinical program. Most faculty and students began to look to the Clinic for education rather than for an opportunity for legal service work or as an outlet for political expression. But there was considerable debate over just how the Clinic should fit into the Law School's academic mission. At this critical moment in the Clinic's history, Jim Rahl did more than anyone to identify and implement appropriate goals for the clinical program. He did this in three ways.

First, he reminded the young Clinic teachers that the clinical program was a Law School academic program, a reminder that the program participants needed given the activism and independence of the Clinic in its first few years. Jim's insistence upon the primacy of the academic role of the Clinic was communicated with his unique combination of tolerance, forcefulness, grace, and diplomacy. We were grateful for Jim Rahl's wisdom in clarifying the Clinic's role and eager to learn from his participation in the development of a new and educationally valuable program.

Second, Jim convinced the University to provide four "hard money" faculty positions in clinical education. To win such a major commitment from the University clearly required skill, determination, and imagination; Jim used these special talents to secure the place of clinical instruction in the Law School.

Third, Jim Rahl convinced the University to place those faculty positions on the tenure track. I attribute Jim's advocacy for a permanent Clinic program to his decision to make clinical education a true academic endeavor and to his belief that all full-time career faculty at the Law School should have the opportunity for equal status. Put in most basic terms, Jim's efforts to secure tenured positions for clinical faculty was an example of his sense of fairness and of his openness to new approaches to legal education.

In short, Jim Rahl created the necessary consensus among the faculty for the support of a large and innovative clinical program. When, in hopes of emulating our success, clinical teachers from other law schools ask me how the clinical program at Northwestern came to be so well integrated into the life of the Law School, my response invariably disappoints them because our success cannot easily be replicated; it was the result of what Jim and those he led did at a crucial time. We owe our success to Jim Rahl.

Tom Geraghty

FACULTY NEWS

Tom Geraghty continues as vice-president of the Chicago Council of Lawyers and as chairman of its Federal Judicial Evaluation Committee. The Midwest Regional program of the National Institute for Trial Advocacy attracted 90 students this year. Alumni including Robert Howerton, Sam Tenenbaum, Mark Schoenfield, Oliver Spurlock, Sheldon Zenner, Brian Goodwin, Art Hill, and Barry MacNamara participated as faculty. Tom participated in the judicial ethics presentation to the Illinois Judicial Conference. He taught in N.I.T.A.'s advanced trial advocacy courses in Boulder, Colorado and Gainesville, Florida. He is a member of the American Bar Association Section of Litigation's Task Force on Training the Advocate.

John Elson was appointed to the American Association of Law Schools' Professional Development Committee, which decides what workshops and conferences the A.A.L.S. will hold. He was also recently appointed to the newly formed Curriculum Study Committee of the American Bar Association's Section of Legal Education and Admission to the Bar. In addition, John was elected at the A.A.L.S. annual meeting in Miami to the Executive Committee of the A.A.L.S. Section on Clinical Legal Education. In his work for the Clinical Section, John continues to co-chair the Committee on the Future of the In-House Clinic; he organized a workshop at the 1988 A.A.L.S. annual meeting on the review of law schools' professional skills programs by A.B.A. site inspection teams. John gave a talk

at that workshop on the subject of the inspection of law school externship programs. He is scheduled to give a talk on teaching ethics in negotiation at the A.A.L.S. Clinical Section's conference in May, 1988. In January, 1988, he served on an A.B.A. - A.A.L.S. site inspection team for the Law School of the Inter American University in San Juan, Puerto Rico, and in March, 1988, he served on an A.A.L.S. site inspection team for the Nova University Law School in Fort Lauderdale, Florida. In December, 1987, John spoke at Northwestern Law School faculty colloquium on the subject of an article in progress entitled: "If the Professor must Publish, Must the Profession Perish? On the Case for Making Education for Professional Competence, Rather than Scholarship Production, the Paramount Mission of Law Schools." John is scheduled to speak on the same subject at a colloquium at Columbia Law School in April, 1988.

Robert Burns recently tried and won two murder cases, discussed below on pages 11-13.

Bob currently is in charge of teaching Counseling, Negotiation, and Introduction to Litigation which this semester involves students in the pre-trial preparation and trial of a mock case. During the last month, Clinic students have been taking the depositions of the parties and of witnesses in this case. The transcripts of these depositions will be typed and used as in a real case. Bob has authored a critical essay on Roberto Unger's legal theory which will appear soon in a collection of essays edited by Michael Perry. He spoke at the Law School's Constitutional Bi-Centennial on "Centralism and the Truth of Theory". Bob also made presentations to the Northwestern University Center on Aging where he spoke on the ethics of involving aged patients in experimental medical trials and to the American Political Science Association on the subject of Administration and the Constitution. Next year, Bob will occupy the Law School's Perkins-Bauer Professorship and will develop materials for a clinically based evidence course.

Steven Lubet is on leave this year teaching at Emory University School of Law, where he was able to participate in its innovative and extensive litigation program. In addition to teaching negotiation and trial practice, he taught the Advanced Litigation course in Emory's LLM program. Steve will adapt this course for use in a J. D. program and will bring it back to Northwestern next year.

In the last year Steve has completed or published seven law review articles. Additionally, his 1978 article entitled "Trial Preparation - A Systematic Approach", co-authored with former Clinic Professor Mark Schoenfield, was honored and reprinted as one of the decade's best by the American Journal of Trial Advocacy.

Steve has given workshops and symposia this year at Emory University, Florida State University, The University of Connecticut and Boston College. He has consulted with the Judicial Commissions of Wisconsin, Pennsylvania and Hawaii, and he has given educational programs for judges in Minnesota and Georgia.

Since returning to the Clinic in January, 1988, after the birth of her first child, Benjamin, Leslie Jones has undertaken and continued a number of interesting projects, including:

- Representing Citizens for a Better Environment with the Environmental Defense Fund in a suit against the City of Chicago for improperly disposing of the ash from the City's main incinerator. The City faces fines up to \$25,000 per day for the violations.
- Continuing the Clinic's work with citizens of Southeast Chicago and Citizens for a Better Environment, Leslie has worked to develop a legal strategy to combat air pollution near the Altgeld Gardens housing project.
- Acting as co-counsel in a case with the Legal Assistance Foundation of Chicago in a case to stop the conversion of a 109 unit building from low and moderate income federally-subsidized housing to market rate apartments in the Uptown neighborhood of Chicago.
- Continuing the work that the Clinic began last year in an effort to secure benefits for coal miners suffering from black lung disease.

Eddie Feldman is finishing the second year of his two-year fellowship with the Legal Clinic. He has worked on cases from the Uptown People's Law Center, which are described below including two murder cases. He also is co-counsel with Leslie Jones and the Legal Assistance Foundation in a

suit to preserve federal subsidization and control of a low and moderate income housing development in Uptown. Eddie and John Elson are now on trial on a police brutality case before Judge Duff in the Federal District Court. Eddie attended a teacher training program for the National Institute for Trial Advocacy, and in December was Assistant Team Leader for the Midwest Regional program of N.I.T.A. When not working on his cases, Eddie has been taking care of his first child, Benjamin Feldman Jacobson. When his fellowship ends in August, Eddie will join the firm of Miller, Shakman, Nathan and Hamilton.

Nancy Gibson began a two-year fellowship with the Legal Clinic in August after spending two years with the Boston law firm of Palmer and Dodge. She has been active in juvenile court on behalf of children and families. Under Nancy's leadership, the Clinic's Juvenile Advocacy Project has handled several delinquency and neglect cases in juvenile court. She has also defended attempted murder and armed robbery cases in criminal court and supervised students handling eviction cases and uncontested adoption proceedings. Nancy completed the first part of the Midwest Regional Program of N.I.T.A. last December and attended the National Conference on Juvenile Justice in March.

In August, 1987, Barbara Shulman joined the Clinic staff for a two-year fellowship following a three-year clerkship with the Seventh Circuit. During her first semester, she has worked on a variety of criminal cases, ranging from murder to trespass. Early this year, Barbara and students Tim Wiltsie and Randi Roberts convinced a juvenile criminal judge to suppress evidence allegedly found in their client's possession. The court determined that, contrary to the police reports, the police had not found the gun on the person of the defendant, but had recovered it during an earlier illegal search of the defendant's bedroom. Barbara's practice during her first semester with the Clinic has also included a social security case in the Northern District of Illinois, mental health advocacy, and representing interested family members in custody actions in Juvenile Court.

In August, 1987, Mark Heyrman joined the Legal Clinic as Visiting Associate Professor. A member of the faculty of the University of Chicago Law School's Mandel Clinic, Mark brings to Northwestern his expertise in mental health law. His students in CTA-CNL and Legal Clinic have received first-hand experience with the legal problems that persons afflicted with mental and emotional disorders often confront.

Mark's one year tenure with us has been lengthened by his recent appointment as Executive Director of Governor Thompson's Commission to Review and Revise the Illinois Mental Health code. He assumed this title on January 1, 1988 and will work part-time on the project until May 1, 1988. He will then devote his full-time efforts to the project through December 31, 1988. To accommodate Mark during his extended stay, the Law School is building two new offices in the Clinic's work/study area.

CURRICULUM RE-STRUCTURED

I. The New Clinical Curriculum

The Faculty has approved a restructuring of the Clinic's second year curriculum. The new curriculum "decouples" the second year simulated courses from the second year "live client" experiences. The proposal approved by the Faculty is as follows:

- A. The first semester course of the second year sequence, now entitled "Counseling, Negotiation and Introduction to Litigation," (CNL), will be renamed "Pre-Trial Litigation" (PTL). The course will simulate the pre-trial stages of a case. Students will be divided into teams and will "litigate" against each other under the supervision of faculty who will act as "Senior Partners". There will be weekly lectures, demonstrations, and classroom discussion. Pre-Trial Litigation will be a 3 credit course.
- B. CNL is now a 4 credit course with 3 hours of credit given for participation in classroom simulations and one hour of credit attributable to a casework component. PTL will not have a casework component and will become a 3 credit course.

- C. The second semester portion of the second year sequence, Clinical Trial Advocacy (CTA), will continue as before except that it will become a 3 credit course. The one hour casework component will also be eliminated from CTA.
- D. Clinical Practice, heretofore only open to third year students for a maximum of 8 hours credit, will be open to second year students for a maximum of 3 credits per semester.
- E. Third year Clinical Practice will continue and will award 4 credits per semester.

II. Reasons for the Change in Curriculum

The Clinical Faculty proposed these changes in order to allow us to reach more students with an integrated sequence of courses that will provide a solid introduction to litigation.

The current second year courses are Counseling, Negotiation, and Litigation (CNL) and Clinical Trial Advocacy (CTA). Each course is a four credit course. One of those "credit hours" is devoted to working on cases in the "live client" Clinic. This means that the Clinical faculty can only admit that number of students to the courses for whom they can provide clinical supervision for the live client cases. This severely limits the number of students the Clinic can serve because case work supervision is extremely labor intensive. Drawing on the materials and methods developed by clinicians here and around the country and by the National Institute for Trial Advocacy, the Clinical faculty has developed two simulated courses which provide a carefully sequenced introduction to litigation. The new curriculum will also allow for a progression to a truly "advanced" program in the third year in litigation-related areas.

Under the new system, each of the simulated second year courses will be offered for three credits, rather than for the four credits each of those courses now carry. This reduction recognizes the reduced work load stemming from the removal of the one hour of the "live-case" component.

The current limit on the number of credit hours for case work is 10 credits. Under the new system, a student choosing to take full advantage of the Clinic's casework offerings in the second and third year could receive a total of 14 credits. The second year Clinical Practice course will focus on the development of basic competency in interviewing, fact gathering, counseling, legal research and analysis, and writing. Second year students will appear on behalf of clients in administrative hearings and will act as "co-counsel" to third year students who will try cases and argue appeals. The third year program will focus on preparing students to assume responsibility for the development of a theory of the case and of strategies for implementing that theory, to interact with opposing counsel in negotiations and in depositions, and to appear in the trial and appellate courts.

REFLECTIONS OF A VISITING CLINICAL TEACHER: MARK HEYRMAN

Tom Geraghty has suggested to me that alumni and other supporters of the Northwestern Legal Clinic might find interesting the views of a visiting clinical teacher about the Clinic, particularly in comparison to other law school clinics. In considering these comments you should take into account the fact that I have only been at the Clinic for six months and, therefore, may know less about the Clinic than many of you. Nevertheless, I have gained some strong impressions of the Clinic which you might find interesting.

Clinical legal education in the United States is still a relatively new endeavor. Thus, it has not been fully integrated into legal education generally. One of the strengths of the Northwestern clinical program is that Northwestern has been a leader among the national law schools in making its clinical program and its clinical teachers a part of the central endeavor of the Law School. For example, because Northwestern has chosen to create tenured positions for its clinical teachers, it has been able to attract and retain a core of experienced and talented teachers. By my rough calculations the four senior

teachers at Northwestern have over fifty years of experience as clinical teachers amongst them. I am aware of only two other law schools (U.C.L.A. and Georgetown) which may have as many experienced clinical teachers as Northwestern. (For other reasons neither of these schools can be fairly compared to Northwestern. Georgetown is more than twice the size of Northwestern, so on a per student basis its clinic is not as well endowed with experienced clinical teachers. U.C.L.A. devotes most of its clinical resources to simulation, so that it does not provide the opportunity available here for students to be supervised in actual litigation by experienced clinical teachers.)

The Northwestern Clinic also has a highly talented group of clinical fellows. Although these fellows are relatively less experienced, they are each paired with one of the more experienced clinical teachers. This arrangement allows the Clinic to provide intensive supervision of each student and allows the students to work with more than one supervising attorney. Although this is a relatively recent innovation, it holds great promise for improving the collegial nature of the clinical program, for bringing youthful enthusiasm and new ideas into the Clinic, and for giving students an opportunity to work in groups. Additionally, the presence this year of four clinical fellows means that Northwestern's total staff of eight teachers is among the largest in the country in relation to the size of the student body.

The Northwestern Clinic also compares favorably with most other law schools in providing students with a variety and quantity of clinical offerings. Very few schools allow students to earn 20 credit hours for clinical work. Moreover, few schools provide as many credit hours for actual advocacy on behalf of clients (14 hours). Additionally, although I have thus far only observed and participated in the CTA simulation course, I am impressed both with the quality of the many adjunct faculty actively engaged in the teaching and in the total quantity of simulated experiences available for students. Few schools offer such a comprehensive program in trial skills.

Nevertheless, despite the excellence of Northwestern's clinical program, there are some areas to which the Clinic should devote its attention in the future. Clinics and clinical teachers have generally had the following goals: teaching those unique skills, particularly skills of oral advocacy, which are used in trials; teaching interpersonal skills related to lawyering such as interviewing, counseling and negotiation; teaching ethics; teaching rules of practice and procedure; teaching analytic skills; reforming legal education by offering an alternative to the Langdellian method; providing a humanistic alternative to traditional norms of legal education and of law practice; teaching methods of planning and preparation; providing legal services to the poor; and reforming the law, particularly working to make the law more favorable to the poor. Of these I think Northwestern has given appropriate and sufficient thoughtful consideration to all, but the last three. Thus, the Clinic should devote more of its energies to teaching methods of planning and preparation and to determining what unique role the Northwestern Clinic can play in providing service to the poor and law reform efforts on behalf of the poor.

First, with regard to teaching methods of planning and preparation, it is my impression that most graduates of Northwestern will not become litigators. Even those who litigate exclusively or as part of their practice, will spend very little time conducting trials. Most cases do not go to trial, and even for those cases that are tried, the vast majority of the work needed to prevail at trial has little to do with traditional trial advocacy skills, such as the ability to control a witness during a cross examination. This tends to be more true of our graduates than perhaps it is for graduates of other schools because our alumni will, for the most part, work in large law firms and the litigation they conduct will tend to be more complex. However, all of our graduates will need to know how to plan for complex endeavors, which may include major litigation, and how to prepare for tasks that they have never performed before. For these reasons, I think the Clinic should focus more of its attention on teaching preparation and planning.

The Clinic might also benefit by examining more closely the question of whether and to what extent the Clinic has a service obligation. My view is that, for ethical, pedagogical and symbolic reasons, law schools have an obligation to provide legal services to the poor. Given the number of other providers of legal services to the poor in Chicago, the Clinic needs to determine how it can most effectively contribute to the joint effort to meet the overwhelming demand for legal services by the

indigent. In my view, the nature of that contribution should take into account the unique resources available to the Clinic. These include the fact that, unlike general legal service providers, the Clinic does not have any pressure to perform a high volume of routine cases; that we have a group of bright and dedicated students and faculty; and that we have the resources of a great law school and university at our disposal, including experts from other schools, an excellent library and many non-clinical faculty who have relevant expertise. The Clinic is also favorably situated to the extent that it does not primarily rely on government funding and thus is not subjected to the restrictions that such funding has historically entailed. Thus, in whatever area we tackle we should be handling those cases which the other providers cannot handle as effectively. These may include the toughest and most controversial cases. Additionally, because the volume of cases that we handle is substantially limited by our teaching obligations, we must choose those cases which will be most effective and efficient in helping to solve the problems of the poor. In light of these concerns, I think the Clinic needs to be somewhat more systematic in its case selection priorities.

Since the Clinic is comprised of a faculty that is bright, dynamic and diverse, I am confident that it will not only continue to improve in those areas where it is already strong, but will also make strides in those few areas that I perceive it to be not as strong and that its future is bright indeed.

STUDENT REPORTS

I was at a party last night, celebrating the completion of half of law school, and someone asked me what was the most interesting thing I did this semester. My reply was easy - Clinical Trial Advocacy. I made CTA a high priority when I registered this term. Why? I wanted to ground the theory I was learning in "academic" classes in reality and to try on a litigator's "persona" and see if it fit. Probably most important, I needed to experience the adversarial system to see if I could work in it. These reflections focus on the classroom component of the course, but the opportunity to work with real clients was a plus as well.

While made-up cases are always a bit unreal and arbitrary, CTA does provide a reality context for the legal theories we work so diligently to ingest. An evidence course provides a necessary opportunity to understand the rules of evidence, but actually arguing for the admission of particular evidence in a CTA problem made those rules much more alive in my mind. Another aspect of grounding theory in reality for me was the opportunity to talk out legal theories and their applications with the CTA faculty. There's nothing like the immediate and direct feedback you get with small group and one-on-one discussions about legal problems. CTA's student-faculty ratio of three to one greatly enhances the value of the course.

I can't imagine waiting much longer than second year to test out whether the litigator's role is one that suits me. This information is critical in shaping my life after law school. I can't say I enjoyed the anxiety of having to "perform" every week. I was glad when Tuesdays were over and I had made it through another CTA problem. On the other hand, there was tremendous satisfaction in learning that I can do litigation if that is what I choose. I learned that litigation is not so mysterious once you know some ground rules, and that the process has its moments of exhilaration as well as anxiety. I also realized that developing these skills is a lifetime's work.

As a feminist (who prefers non-hierarchical and non-manipulative systems) and as a person planning to practice public interest law, exposure to the realities of the adversarial system was an important reason to take CTA. By learning litigation skills and through class discussions, I now know better the power in the system and the tensions in winning, losing and doing justice. I need much more time and experience to make any real judgments, but at least, I think I can work within the system, imperfect as it is. One of the reasons I can do this is that I know there are others who share my concerns and questions about the potential of the system to do justice and effect systemic change.

This leads me to a last remark about trial advocacy as taught by the Clinic staff. Maybe this happens in other trial practice courses as well, but I know that this staff deliberately put an ethical

overlay on the course and encouraged us to examine the adversarial system critically. For me, this combination of skills and reflection was valuable. The legal system is well served by educating lawyers to be critical and reflective in their use of adversarial power. CTA had high and low moments, stresses and exhilaration, but definitely stands out as a vital component of my education in law.

Susan Coler '89

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One of the most invaluable lessons I've learned in Clinic is that very few issues are black or white. I have always pictured myself as a prosecutor rather than a criminal defense attorney. But as it happens, my first Clinic assignment was a criminal case that Mark Heyrman brought with him from Mandel. I represented my client in his eighth parole hearing to secure his release from prison after eighteen years.

In 1968 my client was convicted of murder after an unsuccessful plea of "not guilty by reason of insanity". He had murdered his fiance just one week before their scheduled wedding. My client was sentenced to death. His sentence was commuted, however, to 100-150 years after the death penalty was found unconstitutional in Illinois.

I remember trying to enlist the help of a social work student at the University of Chicago to work on my client's parole plan. It seemed so ironic that I, a conservative, had to convince a self-described bleeding heart that everyone has a right to representation and that my client had served enough time already. Mark agreed to take this case because continued incarceration of my client served no purpose other than punishment. We both felt that eighteen years was punishment enough. My client was active in prison educational, vocational, and recreational programs. He had earned two associate degrees and was working on his third during my representation. He was also on many of the prison sport teams and actively counseled fellow inmates and tried to help them when they were down.

Before I met my client for the first time, Mark described the prison where he was as one of the nicer ones in Illinois - that it wouldn't be as bad as I expected. Mark was wrong. The prison was so cold, surrounded by four guard towers, one on each corner. I went through various hallways and several large automatic metal doors to reach the visiting room. I thought I had entered a nuclear weapons depository rather than a medium-security prison. I nervously waited for my client. I pictured him being searched and led by chains to reach me. I expected him to be some sort of monster; anyone who could do such a heinous act must have been a wild, non-human mass of tissue. I was caught off guard by his sense of humor and jovial personality. He had been an elementary school teacher prior to committing the crime; he had even been in a national fraternity in a well-known college! I couldn't believe that he was so normal! His normalcy definitely jarred my equilibrium.

After my visit, driving home through the endless expanse of barren flatland that grey October day, I cried. I pictured my client as a 23 year old man, filled with vigor and anticipation of the life that awaited him. Now he was 42. He has spent the last nineteen years of his life wasting away - the best years. The outside world would seem so different to him now were he released than it must have been in 1968. I wondered what he had looked like at 23; now he was balding. In prison, he lived in a sub-culture composed of a network of friends, many of whom were released during his incarceration; others of whom died behind bars. I wondered if spending eighteen years in prison wasn't sufficient repayment for what he had done. And yes, I am vice-president of the Northwestern Chapter of the Federalist Society.

The parole hearing went extremely well. I had Department of Corrections' statistics revealing that my client had been incarcerated far longer than the average murderer. I had reams of facts proving my client's rehabilitation. The Board seemed receptive. They asked my client many questions. He told me later that this was the first time the Board had ever been so active in his parole hearing. We all left the hearing optimistic in anticipation of our success.

Two weeks later I received notice that my client's application for parole had been denied. To release him at this time "would deprecate the seriousness of the offense."

To sum up this lengthy discourse, Clinic has taught me to be more open-minded, perhaps more compassionate. It has also shown me that being an attorney is hard work, especially when I realize that I am responsible for someone's liberty and happiness. But I'm glad to have had the opportunity to learn this now, and to have the opportunity to reflect critically upon the issues raised by representing our client.

Nicole Klimisch '88

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As with most things in life, my experience with the Legal Clinic mattered most to me because of the people I met, and the things I learned from them. When I signed up for Clinic, I knew I'd learn a lot about trying cases, drafting motions, and writing briefs. I didn't realize that I'd learn so much about poverty, alcoholism, mental illness, and hopelessness.

Afternoons spent at the Uptown People's Clinic were especially enlightening. For example, a woman came in one day to discuss some problems she was having with her landlord, and ended up relating that she was a drug addict and alcoholic, that she had lost a child, that her boyfriend beat her up regularly, and that the government was threatening to cut off her social security payments. The truly amazing thing about her litany of horrors was that she was so matter-of-fact about them, as if she never even considered the possibility that her life might have been different.

My several visits to prisons in the Chicago area were also instructive. Along with a couple of others from the Clinic, I drove to Stateville to consult with a client who was seeking post-conviction relief. Although this man had not completed high school, his grasp of the legal issues in his case was good as most first-year law students could claim. He has been at Stateville for eight years, and had combed the reporters carefully for any case that might help him. He had filed a pro se brief in his direct appeal which I found impressive for its attention to detail; his blue-booking was better than mine usually is.

My second prison visit of the semester was to a 60 year-old client awaiting trial in the country jail. He had been indicted for raping a five-year-old girl. As we were driving to see him, I wasn't sure that I'd be able to shake his hand when we got there.

Instead of the Anti-Christ I expected to meet, this man was neatly dressed, timid, and kindly. Our questioning was painful and humiliating for him. An alcoholic blackout prevented him from remembering anything about the day the girl was raped. He clearly despised the act that he was accused of committing, and was desperate about his inability to remember if he had done so. I found myself feeling sorry for this man, and wanting to help him.

These people are memorable to me not because their lives presented interesting legal issues, but because they broadened my understanding of human nature and caused me to have more empathy for those who fall below societal norms. One of my clients sent me a Christmas card; it's the only one I received that I haven't thrown away. I can only hope that I did as much for him as he did for me.

Lisa Bartosic '88

CASE REPORTS

- The Chapman case is news again. The most recent installments are from the Supreme Court and The Seventh Circuit. The United States Supreme Court remanded the case back to the Seventh Circuit for reconsideration of the Government's qualified immunity defense in light of *Anderson v. Creighton* 107 S.Ct. 3034 (1987). The Seventh Circuit then remanded the case to the District Court for a hearing to determine whether Mr. Chapman's right not to be placed in prolonged segregation for refusal to touch pork was clearly established in a particularized sense in 1972-1973.

- Professor Anthony D'Amato, together with Clinic attorneys and students, has been working for the last year on a habeas corpus petition filed by John Branion, a physician convicted in 1968 of murdering his wife. The petition was dismissed in the District Court and an appeal was taken to the Seventh Circuit. The trial judge in this case was Judge Reginald Holzer, recently convicted in an Operation Greylord case. The petition contends that Dr. Branion was not proved guilty beyond a reasonable doubt and that, but for an improper *ex parte* communication between Judge Holzer and the prosecutor, Judge Holzer would have granted Dr. Branion's motion for new trial because of insufficient evidence. The latter portion of the petition is supported by an affidavit from the lawyer who prosecuted the case.

- Third year students Joe Margulies and Mike Antonello assisted Nancy Gibson with a temporary custody hearing held in a neglect and dependency case in juvenile court. The Clinic represented the parents, who had been interviewed by Clinic students at the Uptown People's Law Center. The State sought custody of the couple's one year old son based on a diagnosis of failure to thrive. Interviews with the DCFS investigator, a physician who disputed the State's diagnosis, the parents, and neighbors revealed that the State was not justified in its action. While the hearing was pending, the mother gave birth to a daughter who was taken from her by DCFS when the baby was 3 days old. There was no evidence that the child was neglected or abused or that the mother had not taken proper prenatal care of her. Joe Margulies conducted direct and cross examinations and delivered the closing argument at the hearing. The court ordered the children returned to their parents under a supervision order. Six months later, the children and parents are doing well and are scheduled to return to court for a progress report next month. The son underwent a medical examination at the University of Illinois and the pediatrician's provisional diagnosis was that this is not a case of failure to thrive. The child is currently enrolled in a half-day therapeutic day care program and the parents are attending parenting skills classes.

- Cori Leonard and Nancy Gibson represent a 15 year old boy who is being prosecuted as an adult in an armed robbery case. Because the client has done very well in school and the fact that he had no prior record, we prevailed in getting his bond reduced so that he could enter the Mercy Boys Home Transitional Living Program. The client is currently attending 10th grade at parochial school, working part-time, and participating in group and individual counseling. The minimum sentence for armed robbery is a six year sentence and probation is not available. Because of the Clinic's efforts to find an alternative to incarceration, the State reduced the charge to simple robbery, and our client was placed on probation. This allowed our client to avoid a penitentiary sentence and to remain in The Mercy Boy's Home program.

- Mike Antonello is representing a tenant in eviction court. The tenant, pursuant to our advice, withheld a percentage of her rent due to substandard conditions in her apartment. Her two year old son and eleven year old sister were injured by glass falling out of improperly fitted window frames. The Clinic arranged for a building inspector to inspect the apartment and numerous code violations were found. The tenant will pursue several defenses and counter-claims including retaliatory termination of tenancy, breach of express covenant to repair, and breach of the implied warranty of habitability.

- Cori Leonard, Steve Silverman, and Mike Antonello are preparing defenses in delinquency cases set for trial this spring. The cases involve charges of criminal trespass, residential burglary, and aggravated assault.

• Several students are assisting in a case in which the defendant is accused of attempted murder. At a suppression hearing, held last month, the court denied defendant's motion that his statements to police officers be excluded because the police ignored his request for counsel. The court also denied defendant's motion to quash his arrest. The defendant contended that the arrest was illegal because it was made in his home without a warrant and without consent. The issue at the hearing was whether the 14 year old who answered the door consented to the officers' entry and if so, whether the consent was voluntary. The 14 year old testified that the police had their guns drawn when they came to the door. A police detective testified that none of the officers had their guns drawn. The judge believed the police officers and denied our motion to suppress. The case will be tried in May.

• After a two year struggle, Judge Fred Suria decided that our sixteen year old client could not have formed the requisite intent to commit murder and convicted her of involuntary manslaughter. Clinic faculty, Bob Burns, Eddie Feldman, and Barbara Shulman, worked on the trial assisted by many students.

Our client was abandoned by her mother at an early age. Subjected to severe emotional and physical abuse over the years by her various caretakers, she was 16 years old when she pushed a 10 month old child off a bed, causing fatal injuries. After hearing from both an adolescent psychologist and an adolescent psychiatrist, who attested to the severity of her mental illness, the judge agreed that our client did not intend to kill.

Described briefly in the Spring, 1987 "News & Notes", this case was referred to the Clinic by the Adolescent Unit of the Department of Psychiatry of the Northwestern School of Medicine. Clinic faculty is working on finding a residential placement for our client through the Department of Education.

• Lawyers who do pro bono work have experienced the sad situation of clients being deprived of their civil service pension or other government benefits claims because of the operation of Illinois' strict jurisdictional statute of limitations applicable to actions in administrative review in the state courts. This will be a little less likely to occur under a decision won by Clinic lawyers in the Illinois Appellate Court. Our client was a disabled widower in his late 50's. His wife had worked for many years in an Illinois government job, and he was the beneficiary of the survivor's benefits provision in her pension plan. Because of a complicated misunderstanding, the State agency that administers civil service pensions denied his claim for benefits. By the time he was able to file his action in administrative review, the 35-day statute of limitations had run. The notice of denial did not inform him of the existence of the limitations period or of the right to judicial review of the denial. Previous Illinois case law had held the limitations period to be jurisdictional and not subject to waiver by the agency. The State moved to dismiss the widower's claim and the trial court ruled that the State's failure to inform him of the limitations period barred the State from asserting the defense. The Clinic represented the claimant on the interlocutory appeal that then followed. In a decision with broad implications, the Illinois Appellate Court found that the jurisdictional period would not begin to run until the claimant received constitutionally adequate notice. The Illinois Supreme Court denied the State's petition for leave to appeal. The case has been returned to the trial court which recently remanded the matter to the administrative agency for further proceedings.

• Clinic attorneys and students finally won 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 was filed in federal court for the second time after a second denial in the Social Security Administration. The case was complicated by the original dismissal of the child's paternity action some 12 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 federal court. We argued that the Administration had misinterpreted the applicable Illinois laws and that it imposed an impermissibly high burden of proving paternity on the claimant. The magistrate to whom the case had been assigned accepted our legal

statutory 10-day period, and the district court judge accepted our legal argument and entered judgment for the claimant. The government did not file objections within the 10 day period and the district court judge accepted the recommended decision. A failure to file objections waives the government's right to object in the district court or to appeal. Our client was finally entitled to believe that his long struggle to obtain survivor's benefits had ended successfully. After the judgment was entered, however, 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 a very unusual twist on an already unusual case, we obtained an evidentiary hearing on whether the government's failure to file within the 10-day period was excusable. The magistrate issued a report based on the evidentiary proceeding, ruling that the government's negligence was not excusable. Before the district court could rule on the magistrate's recommendation, the Social Security Administration finally relented. Our client has received back benefits of over \$40,000, which should make an education for him possible. The Clinic was awarded attorney's fees under the Equal Access to Justice Act.

Johnson W. → • One of the longest and most complicated criminal cases in which the Clinic has been involved ended successfully last November when Judge Divito, of the Circuit Court of Cook County, acquitted our client of murder. Our client was 14 years old at the time of the alleged offense. The case was, to say the least, made more difficult by the fact that our client, suffering from serious developmental disabilities and mental illnesses, had confessed to the murder after a number of hours of police interrogation. The Clinic first began to represent the defendant in 1984. We soon realized that she was unable coherently to describe the events surrounding the victim's death and was unable to recognize even the simplest and most obvious contradictions. We moved that she be found incompetent to stand trial and, in the Fall of 1985, the judge found, after several days of hearings, that she was in fact incompetent to stand trial.

The hearing revealed that she had been subject to maternal abuse and that the Department of Children and Family Services had not monitored her case after returning her to her mother's home, and several years later had failed to provide her with inpatient psychiatric care which Department of Mental Health psychiatrists said was necessary. She continually ran away from less structured placements and was basically living on the street at the time of her arrest.

After our client was found incompetent to stand trial, she received the first good psychiatric care she had ever received as an inpatient in the Adolescent Unit at the Illinois State Psychiatric Institute, a very well respected adolescent program. After she spent a year there, and after psychiatrists at the Institute had discussed the applicable legal standards with us and sought their own legal advice, they determined that our client would never be competent to stand trial on these charges. We then proceeded to constitutionally and statutorily mandate a "discharge hearing". The hearing was in many respects like a criminal trial save that there is not jury right and that the consequence of being found "guilty" would be a lengthy term in the Illinois Department of Mental Health. Indeed, given our client's mental illness, a "conviction" could have been equivalent to a life's sentence to public mental hospitals.

The discharge hearing took place over several weeks in November of 1987. The facts that emerged showed that the victim had been found stabbed to death on a summer morning in 1984. No one claimed to have seen him killed. There were eight other youths in the house in addition to our client. Two young men in the house were seen leaving the house just as the body was discovered. (One of them was later killed in a gang-related incident, raising interesting issues about the admissibility of our tape-recorded interview with him at our office before his death.) We were able to prove through the cross-examination of the State's witnesses and through the introduction of our own expert witnesses, that other people in the house had greater opportunity, capacity, and motive to kill the victim than did our client. We were able to show through the testimony of a nationally renowned pathologist that the wounds on the victim were inconsistent with the description of the killing given by our client in her confession. We were also able to show through the cross-examination of the detectives that our client had given a series of incoherent and inconsistent statements, and that all the so-called details in her final statement had been known to the police at the time they began the interrogation and seemed to have been communicated to her during the course of the interrogation. Our psychiatric evidence showed that under the circumstances of the interrogation our client would be easily subject to police manipulation and, that under these circumstances, she was likely to have been functioning psychotically.

The facts were enormously complex, and the incompetence of our client made it impossible in preparing for the case to rely on her statements. After listening to all the evidence, Judge Divito ruled that the State had not proven her guilty beyond a reasonable doubt and that therefore a judgment of acquittal should be entered. After the defendant's acquittal, the Clinic persuaded the Department of Children and Family Services to place our client in the Excelsior School in Denver, a nationally recognized school for emotionally disturbed children.

- A case taken by the Clinic from the Uptown People's Law Office produced extremely gratifying results. During one of our interviewing sessions a 60-year-old woman walked into the office. She was in tears, almost hysterical, and had been rummaging through dumpsters for food for the better part of the afternoon. She and her husband lived in a building near the Uptown office which turned out to be infested with roaches and otherwise in severe non-compliance with the Chicago Building Code. Her husband had been bedridden for several months, and she had had to quit her waitressing job in order to take care of him. They had no income. They had, however, received an eviction notice and were afraid of being thrown out on the street within a matter of weeks. We were able to have the eviction action dismissed. The landlord refiled a case, and we negotiated an extremely favorable settlement which allowed our clients to stay in the apartment until they found better housing. We were also able to provide our clients with the advice that enabled them to get the old age pensions and disability pensions to which they were entitled. We also put them in touch with social workers who were able to find them decent low-cost senior citizens housing in the City.

- The Clinic has continued its defense in federal court of a civil rights and libel case in which a white, retired school principal sued ten black parents. The principal claimed that in 1981 the parents tried to drive her out of the school because she was white. The parents won the trial last year, as reported in last year's News and Notes. Since then the Clinic briefed and argued the case on the principal's appeal to the Seventh Circuit. A decision is expected soon.

- Clinic attorneys are now on trial in a 1983 police brutality suit. In 1983, six police officers detained our client for twenty-four hours, beat him, refused him food, and interrogated him at length until he confessed. Our client, a prisoner, sued pro se. Since being appointed, the Clinic has amended the complaint, completed discovery (including several depositions by students), and has survived the City's ritual motion to dismiss. The case is being heard in federal court by a six-person jury.

- A Clinic student has briefed and will argue a habeas corpus case in the Seventh Circuit. Our client sought to prove at his criminal trial that key prosecution witnesses were framing him because he was in a rival gang. The trial judge refused to let him attempt to prove this. The Clinic is arguing that the state court violated his sixth amendment right to call witnesses on his behalf.

COMMUNITY LAW PROJECT AND CASES

The Clinic has continued and expanded its involvement with the Uptown People's Law Center. The Law Center was founded in 1975 and is one of four private community law centers in Chicago which 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 live 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 non-attorney staff. Its case load now includes the defense of serious felony prosecutions, social security disability cases, evictions, and various problems involving governmental benefits programs.

This year about 45 students and five supervisors did interviewing and intake at the Law Center. Clinic students traveled three times a semester to the Law Center, located at 1229 W. Wilson Avenue, a short "L" ride from the Law School. Tom Geraghty, John Elson, Eddie Feldman, Barb Shulman, and Nancy Gibson supervised the interviews. Following their interviews, students met with their supervisors in a "case review" session during which the group decided whether to accept the case or to refer it to another agency.

- Students have worked on dozens of cases from the Law Center this year. Third year student Gary Caplan, along with Eddie Feldman and Tom Geraghty, tried a murder case before a jury in December. We represented one of two defendants, who were tried before a double jury, since our seventeen year-old client had given the police a statement after 38 hours of detention and interrogation. The case was received at the Uptown Law Center when relatives of our client requested assistance for him while he was being questioned by the police. Our students went to the police station but were not permitted to see the client. The Clinic lost the motion to suppress the statement, but has not lost the case: the juries for both defendants were hung, forcing a mistrial. The case will be retried in the early Spring.

- The Clinic has recently represented several Uptown tenants in eviction actions. Some of these tenants withheld rent because of building code violations. In one particularly egregious case, the tenant and her young children had no heat from November through February. The Clinic filed answers and affirmative defenses, as well as jury demands on behalf of these clients.