

NORTHWESTERN UNIVERSITY LEGAL CLINIC

NEWS & NOTES

Draft
file newsletter

SPRING 1989

TWENTIETH YEAR

The Clinic opened its doors 20 years ago in the Spring of 1969. The doors led to the basement of the old Thorne Hall where, before the Clinic arrived, there was a kitchen used primarily to prepare dinners for a drama club which used the small stage in the basement. The kitchen was removed and small offices were created to house the two lawyers - Gary Laser and George Berns - who were the Clinic's original staff, and Seymour Mansfield and Tom Humphries who later joined them. The Clinic remained in that basement for ten years before moving to the first floor of Wieblodt and then to its present home on the third floor of McCormick Hall. We've moved up in the world. From a basement, to an out-building, and finally into the Law School itself. It has been a challenging and rewarding journey.

The Clinic was born of two forces which coalesced in the late 1960's and early 1970's: the involvement of students and faculty in political and social issues, specifically the civil rights movement and opposition to the Vietnam War, and questions within the legal community concerning the relevance of legal education to real world problems. Law schools had knowledge of or cared about perceived social injustices to the very basic issue of whether law schools were producing "competent" lawyers. Primarily as a response to the latter concern, in 1970 the Ford Foundation funded the Council on Legal Education For Professional Responsibility (C.L.E.P.R.). C.L.E.P.R. was given 10 years and \$10,000,000 to see to it that law schools better prepared their students for practice. Northwestern was one of C.L.E.P.R.'s first grantees. C.L.E.P.R.'s grant opened the Thorne Hall basement to students who were motivated to learn what the practice of law entailed and who were anxious while in law school to do something to support the social and political causes in which they believed. In its early days, the Clinic, in addition to being a teaching law office, served as a highly constructive outlet for intense political feelings. In the Clinic, students and faculty could test the law's and the lawyer's ability to effect social and political change through lawyering. Students and faculty "struggled" together to test the limits of the lawyer's role in the political and social process. Thus the Clinic was active both in the representation of individuals in need of legal services as well as on behalf of organizations which advocated social change.

There is no doubt that the "political" orientation of many of the Clinic students and faculty must have alienated law school faculty and students who thought that the Clinic ought to confine itself to education. Again, history stepped in and balanced the Clinic's objectives. The end of the Vietnam War and disillusionment with "movement" politics, left faculty and students to concentrate on the development of a teaching law office. While the Clinic continues to provide an opportunity for students to use their developing professional skills to pursue "public interest" objectives, the clinical faculty are committed to the primacy of the Clinic's educational mission. This educational mission includes as perhaps its most important feature the critical examination of the lawyer's role on behalf of clients, as actors in our system of justice, and as citizens. The clinical program's

agenda during the last 15 years has been to develop an educational program that will produce competent and ethical lawyers who are aware of the many problems which need to be addressed in order to make our system of justice more efficient and more fair.

When the Clinic opened its doors, supervised casework was the only teaching methodology. A classroom component - Clinical Trial Advocacy - was added in 1973. Since 1973 the clinical program has made great strides in improving the casework and classroom components. Unlike many law schools where casework and simulation advocates fight for dominance, Northwestern's faculty has encouraged the development of both teaching methodologies. Thus, the clinical curriculum at Northwestern is designed to give students maximum flexibility in choosing course offerings. The clinical program now offers an exciting sequence of simulation based courses in the second year, Clinical Trial Advocacy and Pre-Trial Litigation, and case-based instruction in the second (3 hours per semester) and third years (4 hours per semester). Students may enroll in one or in all of these courses. Because each of these components of the clinical program deserve full time pedagogical and administrative attention, Steve Lubet has been given the responsibility of overseeing the simulation courses. Steve's commitment to this work has produced a stimulating, instructive, and carefully sequenced series of learning experiences covering all aspects of the litigation process. Steve's creation of the Program on Professionalism, described at the end of this newsletter, is further attempt to make the clinical program more coherent, efficient, and effective.

Another exciting development is Bob Burns' development of a clinically-based evidence course. Bob developed this course after becoming convinced that students would understand principles of evidence better if those principles were presented in the context of simulated cases. Bob has developed materials which allow students to see how the rules of evidence function in trials. He has also developed a NITA-styye casefile for use in Clinical Trial Advocacy. The file is designed to present case theory, evidentiary and ethical issues in a sequenced fashion. This new file is being used this semester in Clinical Trial Advocacy.

The casework component of the clinical program is alive and well. Synopses of some of the cases handled by the Clinic are set forth at the end of this newsletter. But the case summaries do not tell the entire educational story. Clinical faculty who teach through casework are making greater use of faculty and student teams to prepare and to try cases. On major cases, teams consist of a professor, a clinical fellow, and several students. These teams meet regularly to plan the representation and to share the results of student and faculty efforts on behalf of clients. In this way, cases may become seminars unto themselves in which students and faculty exchange ideas about how clients can best be represented. Students learn a great deal from each other as they work closely together on behalf of clients.

All of this suggest that clinical education at Northwestern is fourishing and ever changing. Its purposes and effects remain pretty much the same now as when the Clinic's doors opened in 1969: the active involvement of students in an intensive learning experience which is remembered and which facilitates professional development.

What does the future hold for the clinical program? Before I try to answer that question, let me digress a little bit. I am writing the last part of this piece on a train coming back to Chicago from Menard's Death Row. I have been approached to represent a prisoner under the sentence of death in a post-conviction proceeding. Two students and I have just spent 5 hours with our condemned client. During our trip down to Menard, we poured over the trial transcript and court documents planning today's interview. As one might expect in a case like this, our attention was focused on the trial performances of trial counsel, the judge, and the prosecutor. We analyzed the functioning of the "lawyer component" of what should be our justice system's most carefully managed and competently "staffed" proceeding. Today, we interviewed our client in anticipation of the preparation of an

amended post-conviction petition. Lessons about the weakness and strengths of our system emerged over and over again as we talked. The students were engaged, they were learning. We have all seen and experienced this trend of learning on cases and in class. The challenge of the future will be to continue to refine the model and to make it available to more students.

STUDENT REPORTS: 1975, 1977, 1989

From 1975:

When I applied to law school, I had never attended a trial; had never taken a pre-law course; and, did not know any lawyers. Accordingly, I applied to schools with clinical programs so that I could be exposed to lawyers and the judicial system as soon as possible. I believed that such exposure would help me decide if I actually wanted to be a lawyer.

I joined the Clinic in my first month at Northwestern and was assigned to some criminal matters with Tom Geraghty and some civil matters with Jon Hyman. The cases ranged from a robbery and assault to a tenant dispute with a HUD program. The cases took me from the criminal courts at 26th and California to the federal courthouse to the gangways of Cabrini Green. I learned quickly that I wanted to be a trial lawyer and in a courtroom.

In my third year, I took Trial Advocacy under the guidance of Tom and Diane Geraghty, Jon Hyman, Mark Schoenfield, and Barbara Caulfield. The course was one of the best that I took at Northwestern since I received training in all of the fundamental aspects of a trial that were not covered in other law school classes. I should even note that I still have Jon Hyman's January 3, 1975 eight page memo critiquing my mock jury trial. I still read the memo a few times each year to remind myself of one of the primary points that Jon pressed home during Trial Advocacy - develop a theme and stick to it from voir dire to closing argument. After graduation, I returned to the clinic and assisted Tom Geraghty and Mark Schoenfield with their Trial Advocacy classes. I enjoyed the experience since it helped me to repay some of the debts that I owed the Legal Clinic for what it taught me.

From 1977:

I recall my Legal Clinic experience as one of the most important elements of my legal education. It provided a practical introduction to basic legal skills, as well as role models for professional development which combined the highest standards both personally and professionally. It also confirmed that community service is a rewarding and necessary aspect of membership in the legal profession and something which can and should be integrated with other work.

While the experiences offered by the Legal Clinic can perhaps be attained later in practice, one of the most significant aspects of the Legal Clinic experience was that it came early in my professional training. As a result, it helped form and shape my thinking in a way that could not be easily duplicated later. There can be no serious dispute that if the profession hopes to secure commitment to pro bono and community service on the part of its members, it is extremely important to provide such experiences to law students, when they are beginning to formulate their professional aspirations and goals.

THANKS . . . A MILLION!

Although these words may not provide particularly strong inspiration when viewed on a shelf at a Hallmark store, I was deeply moved after discovering a card with this inscription in my Clinic mailbox shortly before final examinations last semester. The card, along with a check made out in my name for one hundred dollars, was from my first client, a forty-five year old woman with congestive heart failure, who was previously living off general assistance and the generosity of her family. With the able advice and training of my Clinic advisor, Cynthia Bowman, Joan and I convinced the Administrative Law Judge at my client's Social Security Disability Hearing that she had been unjustly denied disability payments on her two previous applications. After over a year and a half of dealing with a bureaucracy calloused from its day-to-day exposure to peoples' tragedies, my client received what was due her from the start. She walked away with a small stipend every month and an opportunity to live the next few years of her life without worrying whether she will be able to buy groceries or pay the heating bill. I declined to accept the check she so generously offered, so she instead donated the money to the Clinic to aid it in helping represent clients who are in a similar position as was she.

I wish I could say that all of my experiences at the Clinic were as pleasurable as my first. Nevertheless, all of my experiences have proven just as invaluable. For instance, it was not pleasurable to see a client indicted for murder sleeping on a cold floor in a small concrete cell packed with others while waiting to appear before a judge already an hour late for his scheduled call. I learned a valuable lesson about how we treat those who are presumed innocent until proven guilty. Nor was it pleasurable to hear witnesses in this same case tell tales of being shot at or having police pull up and shove them against the police car as if it was an everyday occurrence. Nor did I gain any pleasure when I visited the neighborhood where our client grew up and the murder occurred. After seeing a look of hopelessness and apathy in so many faces, I learned a valuable lesson about "the land of opportunity." Although these lessons weren't pleasurable, I am glad I learned them before embarking on my legal career.

In addition to the murder trial, I am working with Cynthia Bowman and two of my classmates on a federal habeas case currently before the Seventh Circuit. I am also helping Professor Ian Ayres with a post-conviction petition before a state trial court for a prisoner currently on death row. The Clinic has taken us and our case under its wing.

As you can imagine, the cases in Clinic may be some of the most interesting cases on which I will have had an opportunity to work. Even more important, the supervision I receive is unparalleled. Clinic has instilled in me a sense of responsibility to my clients and the confidence that I can represent their interests thoroughly. The Clinic's atmosphere is so foreign to many of the alienating encounters I have experienced in law school. I watch in awe as I see Tom Geraghty juggle his burgeoning case load, yet still have time to explain to students their assignments and ask for their input before making a decision. I marvel at the ability of Cynthia Bowman to make scant edits and turn my briefs into some of my best writing. I feel a deep sense of pride when those at the Clinic treat me with the same respect that I feel for them. There is a sense of unity and a striving toward a common purpose in the Clinic. In my estimation, the Clinic practices law as it should be practiced.

In a few short months my Clinic experience will be over. I will take with me the training that I received in the past year. I will also take with me the card I received from my first client and a photocopy of the check that was enclosed. Although I will take with me the card, I will leave the Clinic the following words:

THANKS . . . A MILLION!

Vince DeGarlais
Class of '89

SOME REFLECTIONS ON THE LEGAL CLINIC

I spent most of this year working on a case involving the violation of a prisoner's civil rights. My work on the case gave me the opportunity to experience many different aspects of the litigation process, including writing briefs for and presenting an oral argument in the United States Court of Appeals for the Seventh Circuit. I also had the opportunity to work closely with a member of the faculty, Tom Geraghty, and another student, Terry Miller. This type of hands-on experience was the main reason I originally enrolled in the clinic program last year.

Looking back to first year legal writing class, the assignments we received then seemed hopelessly complicated, and intentionally designed to confuse and frustrate students. Even so, I always felt safe in assuming that the topic would not have been chosen unless it was possible to solve the issues presented, as long as I spent enough time researching them.

Not so in the real world. The Clinic case on which I worked most of this year, *Greene v Meese*, involved an issue of first impression in the Seventh Circuit, regarding exhaustion of administrative remedies in federal prisons. While it seemed to exhibit the same signs of intractability as did my legal writing assignments, for a long time I found no evidence of a solution that could be grasped, even while I spent hours in front of the West Law terminals.

The main reason that the case seemed so unfathomable for so long was simply because none of us on the team - Tom Geraghty, Terry Miller and I - had expertise in administrative law. It took weeks of research before I understood even the most basic legal concepts. To compound this humbling process, it seemed that the one person who did have some knowledge about the law on this issue was our client, a federal prisoner who had free access to lexis at the prison and sent us installments of the research he did.

Our brief was due just when I felt like I was getting a grasp on the issues involved. It was a scramble to pull the brief together. I remember brainstorming in the Clinic conference room with Terry and Tom the night before the brief was due, hashing out new ideas over coffee, more coffee and that awful microwave popcorn from the vending machines downstairs. The only people who dared to enter that war zone were Paulette Van Zant, who patiently solved all our word-processing problems, and Eric Holmberg, who equally patiently waited for us to finish up at the eleventh hour so that he could make numerous copies of the brief for filing in court (we were too late to have the print shop do the copying).

Working with other students, faculty and staff was an important educational experience in its own right. As the deadline approached, each of us experienced a type of panic, which struck at unpredictable moments. One source of the panic was the frustration of not being able to grasp fully the essence of the case. Some of the principles were so complex, any comprehension seemed to be elusive at best. One moment I understood an argument, the next moment I didn't. And when comprehension eluded me, tension rose, not making it any easier to work well as part of the team.

In some ways, the interpersonal relations were the greatest challenge of the project. Beyond simply working alongside each other during rough moments, we had to place an enormous amount of trust in each other. The case was too complicated for one person to do all the work by herself. And time was too short for us to check thoroughly each other's work. At one point, four hours before our brief was due, Tom sent me to the library to write an entirely new, but critical, section of the brief, and said that there would not be time to check what I wrote so I had to be certain that my analysis was correct. That was a point at which I began to question whether "responsibility" was really something I should aspire to have.

I wish I could report that in the end, all signs of the last-minute rush were not apparent, but that wasn't the case. Weeks later, after a painful rereading of the brief, it was very apparent that we had not yet done all we could to present the issues most effectively. We vowed never to leave things to the last minute again, a promise that lasted for at least four months - until we wrote the reply brief.

After filing the reply brief, it was hard to imagine that five months of work would culminate in a fifteen-minute oral argument. But this is the amount of time the Seventh Circuit allotted for us. Other than that, all we knew about the argument was that it was set for February 13, that I would do the opening argument and Terry would do the rebuttal, with Tom guiding us through it all. We did not know exactly what time the argument would start (we simply had to show up first thing in the morning), nor did we know who the members of the panel would be. Nor did we know why the government (opposing counsel) was sending an attorney from Washington, D.C. rather than from Chicago. We tried not to think about it.

In preparation for the argument, we had an incredible amount of support. Many professors took a great deal of time to run us through moot arguments, causing us to reorganize, rethink, and rewrite and vastly improve the argument on an almost daily basis. Many friends also took the time to read our briefs and grill me on our arguments. I was really impressed by the amount of support we received from the law school community. The result, in the end, was that we were probably overly prepared for, though perhaps not over-confident of, the argument.

If you have never seen the Seventh Circuit courtroom, go down and take a look. It seemed palatial at 9:00 in the morning, as I made my way down to the clerk's office to find out which judges were on my panel. I discovered that our judges were Posner, Wood and Coffey, and that our case was slated third on the docket. Then, with nothing else to do, at about 9:10, I walked into the "visiting attorney's room" at the court, and found opposing counsel sitting at a small, round table, hurriedly reading photocopied cases. Things were looking up.

At 9:25 we took our seats in the courtroom and watched arguments for the two cases before ours. Watching those arguments helped to calm me down because it was helpful to observe the mechanics of the arguments, and after listening to the arguments and watching the attorneys' demeanor, it became clear to me that I would be able to do what those attorneys did.

But nothing could have prepared me for my first question from the bench. When it was my turn to argue, after speaking for all of about 45 seconds, Judge Posner interrupted and asked me a question about our brief. He noticed that in it I referred to my client as "Mr. Greene," but referred to the defendants only by their last names, without any courtesy titles. "Was that a tactical decision?" he asked. After pointing to my personal connection to my client - whom I have never met - as the reason for the difference in appellation, Judge Posner allowed me to move on to more substantive questions. Twelve and a half minutes later, I was done.

It seems impossible to convey the essence of my experience with the Greene case. That I had the opportunity to prepare two Seventh Circuit briefs - let alone the oral argument - with much autonomy and responsibility, is incredible. That the clinic offers such experiences to students at all is incredible. The experience of one-on-one guidance from a talented attorney, such as Tom, was incredible. The support from other clinic faculty and staff, as well as other professors, was also incredible. So I guess I have found at least one adjective to describe my experience this year in the clinic. You guessed it.

Lorri Staal
Class of '89

FACULTY NEWS

Tom Geraghty continues as Director of the Clinic and full-time supervisor of 12 students working seriously on serious criminal cases. During the last year, Tom and his students tried four jury cases and represented several other clients in bench trials and appeals. Tom just completed the thirteenth annual midwest regional session of the National Institute for Trial Advocacy. During the last year he taught in N.I.T.A.'s advanced and teacher training programs. He is currently the Reporter for the A.B.A. Section of Litigation's Effective Arguments to the Court Program which will be held in Washington, D.C., May 4-6, 1989. Future projects include the organization of a conference on teaching trial advocacy, sponsored by the Law School by the A.B.A.'s Section of Litigation, and by the National Institute for Trial Advocacy.

In addition to his responsibilities as Principal Investigator of the Special Education Project **John Elson** has been busy with American Association of Law School (AALS) activities. At the AALS Annual Meeting in New Orleans in January, 1989, he presented a paper for the AALS Executive Committee Program on "Legal Scholarship: Between the Scylla of the Profession and the Charybdis of the Academy." As a member of two AALS workshop planning committees, John helped plan the clinical education workshop to be held in Washington D.C. in May, 1989, and the professional responsibility mini-workshop to be held in San Francisco in January, 1990. As a member of the AALS Professional Development Committee, he met in Washington in October and in New Orleans in January to help determine what AALS workshops and conferences would be scheduled next year. In November, 1988, John also served on the site inspection team for the ABA sabbatical reinspection of the University of Washington School of Law in Seattle.

Steven Lubet was Director of a NITA Midwest Deposition Program, held in August, 1988. His monograph, "Vending Operator, Inc. v. NITA Department of Transportation: Advanced Materials in Business Litigation will appear in 1989; NITA has produced an 8 hour series of videotapes based on this casefile. Steve's articles that were written or appeared this year include "Some Early Observations on an Experiment with Mandatory Mediation," Ohio State Journal of Dispute Resolution, (forthcoming); "Professor Polonius Advises Judge Laertes: Rules, Good Taste, and the Scope of Public Comment," 2 Georgetown Journal of Legal Ethics (forthcoming); "International Criminal Law and the Ice Nine Error: A Discourse on the Fallacy of Universal Solutions," 28 Virginia Journal of International Law 963; "Extradition Unbound: A Reply to Professors Bassiouni and Blakesley," 24 Texas International Law Journal (forthcoming); "Financial Disclosure by Judges: Functional Analysis and Critique," 40 University of Florida Law Review 241 1988 (with Judith Rosenbaum); "Regulation of Judges' Business and Financial Activities," 37 Emory Law Journal 1 (1988); "Judicial Impropriety and Reversible Error," 3 Criminal Justice 26 (1988).

Included in Steve's schedule was participation in symposia and workshops at the University of Miami Law School, Georgetown University Law Center, Boston College School of Law, Emory University School of Law, and Florida State University, Center for Dispute Resolution. Steve also presented papers at the American Judicature Society, the National Judicial College, Twenty-Fifth Anniversary Program on Ethics and the Judiciary, and the Section on Immigration Law at the AALS 1989 Annual Meeting.

Bob Burns spent the fall semester as the Perkins-Bauer Professor at the Law School. This professorship allows a faculty member to spend a semester developing innovative teaching materials and methods. Bob developed a set of materials from which both trial advocacy and the law of evidence could be taught. In the spring semester, Bob and Steve Lubet actually taught the coordinated courses for the first time. They expect to teach the courses again in the fall of 1989. Bob also taught a seminar in the philosophy of law and published three articles in legal philosophy.

Visiting Assistant Professor, **Cynthia Bowman**, was appointed the Reporter for the Illinois Task Force on Gender Bias in the Courts. In January, 1989, she served as an Instructor and Assistant Team Leader in The National Institute of Trial Advocacy Midwest Regional Program. Cynthia has had an article accepted for publication in a forthcoming issue of The Urban Lawyer, tentatively titled "The Money Damages Exception to the Administrative Procedure Act and Grant-in-Aid Litigation."

Nancy Gibson will complete her two year fellowship with the Legal Clinic in August. This past year she has continued her work on the Clinic's Juvenile Advocacy Project, concentrating mainly on representation of juveniles in delinquency cases. She has represented clients in criminal and civil cases as well and completed the NITA Midwest Regional course in March. Nancy, along with Barbara Shulman and Laura Miller, conducted a training session for social workers at Neon Street Center, a drop-in center for homeless youth located on the North Side.

Barbara Shulman is completing her second and final year of her fellowship with the Clinic. During the last year she has concentrated on juvenile cases in both delinquency and abuse and neglect, concentrating on the rights of non-parental relatives and foster parents. She has been active in the Juvenile Law Committee of the Council of Lawyers and published an article on custodial rights in the Council's Juvenile Law Bulletin.

Laura Miller joined the Legal Clinic staff in August 1988, after spending four years in the juvenile and criminal divisions of The Legal Aid Society of New York City and two years at the New York law firm of Rosenman and Colin. She is working with John Elson on the Special Education Project. She is a member of the Attorney General's Disabled Persons Advocacy Division Advisory Council. Laura attended the Midwest Conference on Clinical Education at Drake University in November and will be attending the 10th National Institute on Legal Problems of Educating the Handicapped in San Diego, California, May, 1989.

CLINIC ADDS TO TEACHING STAFF

The Law School has added a fifth tenure-track position to the Clinic faculty this year. Cynthia Bowman, who was a Visiting Assistant Professor in the clinic during 1988-1989, has been appointed to the Clinic faculty, joining Professors Geraghty, Elson, Lubet and Burns. Professor Bowman, a 1982 graduate of the Law School -- and of its Clinic -- clerked for the Honorable Richard D. Cudahy of the United States Court of Appeals for the Seventh Circuit during 1982-1983. She comes to the Clinic from five years of practice in the litigation department at Jenner & Block. Cynthia also has extensive experience teaching. She earned a Ph.D. from Columbia University in 1972, taught political science both at Columbia and at Illinois Institute of Technology for six years before entering law school, and has published both in the field of political theory and of law. Cynthia's case load at the Clinic is varied, with particular emphases upon public benefits, criminal law, and legal issues affecting the elderly.

CLINICAL LEGAL EDUCATION

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

The Northwestern University School of Law is deeply committed to the concept of clinical legal education. Northwestern's clinical program consists of both a "live client" legal clinic in which students engage in the representation of clients in actual cases, and a series of simulation courses in which students explore various aspects of litigation through the method of exercise and critique. Together these two aspects of clinical education combine to form one of the broadest and most comprehensive clinical programs in the United States.

THE NORTHWESTERN UNIVERSITY LEGAL CLINIC

The casework component of the clinical program involves students in the representation of clients under the close supervision of clinical faculty. The courses which form this component are Clinical Practice I (the second year course) and Clinical Practice II (the third year course). The casework component teaches lawyering skills, legal ethics, and professional responsibility by placing students in the role of lawyers. Exposure to the ways in which lawyers, laws, and institutions operate in the real world gives students valuable perspectives from which to reflect upon their classroom work. The courses offered by the Program on Advocacy and Professionalism which are described below, while not co-requisites or pre-requisites for Clinical Practice, provide instruction that will enable students to participate in Clinical Practice on a more sophisticated level.

THE PROGRAM ON ADVOCACY AND PROFESSIONALISM

The Program on Advocacy and Professionalism is devoted to the exploration of the lawyer's professional obligations: vigorous and effective representation; candor, honesty, and fair dealing; and public service. To this end, the Program coordinates and provides resources to the Law School's classroom offerings in the areas of professional competency.

The courses served by the Program combine training in the art of advocacy with an appreciation and understanding of the principles that underlie the system of adversary justice and individual representation. Taught principally using the simulation method, each course stresses the development of particular competencies in the context of the lawyer's various responsibilities to client, court, adversary, and public. The simulation method allows issues of legal ethics to be addressed in the context of actual lawyering tasks. Similarly, the programmatic concept of advocacy and professionalism ensures an approach to skills training that transcends technique.

The Program is neither a field of concentration nor a separate "major" within the Law School, but rather a recognition of the importance of professionalism in legal education. Each course included in the Program stands in an individual footing, with its own emphases, prerequisites, and goals. The Program supports the use of a variety of structures on the separate courses.

Courses in the Program on Advocacy and Professionalism include: Clinical Trial Advocacy, Trial Practice I and II, Criminal Evidence Seminar, Advanced Trial Advocacy, Pretrial Litigation, Criminal Appellate Advocacy, Negotiation Workshop, and Legal Ethics.

Dean Robert Bennett has appointed Professor Steven Lubet as Director of the Program on Advocacy and Professionalism.

PROGRAM IN JUVENILE ADVOCACY AND CASES

The Program in Juvenile Advocacy continues to provide valuable learning experiences for Clinic students while also furnishing legal services in cases where private attorneys do not frequently tread.

We encourage students to view their representation of clients as encompassing more than just researching the legal issues involved. A conventional "legal" approach does not always ensure that a client who is acquitted or who received probation instead of being incarcerated will avoid a second brush with the law. Often, the client needs services. This type of representation requires persistence, dedication, and resources. The Program has been able to provide that type of representation in what we hope has been a majority of our cases.

Examples of the types of services we have provided for our clients include placement in a residential program so that a juvenile could be released on bond, enrolling a drop-out student in an alternative school, and securing family counseling for a troubled family. We have developed good working relationships with probation officers, court liaisons, and other social service resources in order to secure needed services for clients.

As our case summaries indicate, the Program has provided many different types of learning experiences. Interviewing, fact investigation, trial preparation, arguing motions and conduction hearings, as well as counseling and advising clients and their families are tasks which students in the Program have performed. Students have also been challenged by the ethical questions present in some cases and have had to confront issues such as what to do when what the client wants is not what the lawyer thinks best. These are experience which will service our students well, regardless of their chosen practice area.

Bernadin C.: We represent a man whose 2 1/2 year old daughter is allegedly neglected and dependent. It is alleged that her mother left her alone for 45 minutes when the child was 6 weeks old and that the parents cannot provide proper care due to mental disabilities. The child has lived at home with her parents since the case was filed 2 1/2 years ago. She also has a baby sister who is not a party to the court proceeding. Clinic students will participate in the trial of this case and they have been involved in the fact investigation. The case is especially challenging because, at this point, the Clinic represents only the father and not the mother although the parents live together and are seeking joint custody.

Delon D.: We were appointed to represent Delon, a 15 year old charged with aggravated assault and battery. Delon was already on probation for another case before this case came to trial. We were able to negotiate with the State's Attorney to drop the aggravated battery charge and reduce the aggravated assault charge to simple assault, a misdemeanor. A third year student handled the dispositional hearing where the prosecutor vigorously argued for Delon's incarceration in the temporary detention center. We prevailed and the judge sentenced Delon to one year's probation without any time in the detention center. Because we suspected that Delon may have a learning disability, arrangements were made with his school to have him screened for an evaluation. A progress report is scheduled for March.

Samuel G.: We represent Mr. G. in a proceeding to establish his paternity of his 7 year old son. The boy's mother lived with Mr. G. and his son until two years ago. The mother has not provided any support to her son for the past two years. The client cannot work as he is disabled. Therefore, he lives on approximately \$154 per month from General Assistance. Because he was not married to the boy's mother and is not listed on the birth certificate, Mr. G. does not receive any public aid benefits for his son. We have been in contact with the mother who has indicated her willingness to consent to the establishment of paternity.

Alfred and Patricia H.: We are continuing to represent this couple in an adoption proceeding. They are the legal guardians of a 2 year old child who has lived with them since her birth and whom they wish to adopt. The natural parents have not appeared to contest the adoption and have been defaulted. The final order is scheduled to be entered in February. All seems to be going well with the court ordered home study except for the fact that the investigator is concerned about Mr. H.'s poor health. The family's source of income is Mr. H.'s \$900 per month social security disability payment. In the course of our representation, we have had to verify the benefits the family will receive in the event of Mr. H.'s death.

Tracy and Theresa J.: In January, we represented two sisters in Juvenile Court, charged with aggravated battery. Second year John Hoellen and third year Martin Hahn prepared the case for trial, interviewing

witnesses and visiting the scene of the alleged battery. Martin Hahn successfully argued the Motion to discuss at the close of the State's case, based on the complainant's inability to adequately identify the respondents.

Richard M.: Richard is a 15 year old who served 4 months in the Department of Corrections on a battery charge. We have filed an appeal in this case and the brief is due January 20th. Our main contention on appeal is that he received ineffective assistance of counsel from the public defender who represented him at his trial. Although Richard had been paroled from jail, the appeal is still necessary because, under the law, if Richard is convicted of another crime, he could be reincarcerated until he reaches the age of 21.

Sokheoun P.: This case was referred to us by the Cambodian Association in Uptown. Sokheoun is a 13 year old who was charged with 2 counts of residential burglary. After interviewing the client, his co-defendants and the victims, we negotiated a guilty plea with the State in return for one year's probation. The sentencing hearing is set for February.

Richard R.: We represented this 15 year old in a burglary case where he was charged, along with 3 other teenagers with breaking into a commercial washing machine in an apartment building basement. Clinic students interviewed witnesses at the scene and the arresting police officers. A guilty plea was negotiated where Richard was placed under one year's supervision.

Ms. R.: This case, which has presented some interesting ethical issues, has continued. The client's son is an emotionally disturbed 14 year old who was sentenced to the Department of Corrections. The client has emotional problems as well. The Department of Corrections had revoked Ms. R.'s visitation privileges. We were successful in getting her full visitation rights restored after extensive negotiation with the Department. We also represented the client in the Department's planning for her son's parole hearing. The Department wanted to place him in a residential treatment program instead of returning him immediately to his mother's custody. All of the experts we spoke with, including the son's and the mother's psychiatrists, were against returning him home to the mother. However, because that is what the client wished, we had to argue for the son's parole to her custody. At the same time, we persuaded her of the need to take an active role in locating a residential placement for her son should the parole board decide not to release her son to her custody. Clinic students identified placement alternatives and presented these to the mother. Last month, the Department sent the son home on an authorized leave. If all goes well, he should soon have a parole hearing with a recommendation that he return home. If not, it is expected that the board will look at residential placement. This case has been difficult, but a good learning experience for the students because it has taught them ways of working with clients who have emotional problems.

Carolyn and Lulling S.: Mr. and Mrs. S. are the natural grandparents of an 8 year old girl. Their own daughter's parental rights regarding their granddaughter had been terminated in a juvenile court proceeding. The grandparents wished to adopt their granddaughter and we represented them in both the juvenile court and adoption proceedings. The adoption was finalized in early January and the juvenile court proceeding is expected to be terminated this month as well.

Robert and Evelyn B.: We represented these parents in a petition for guardianship of their disabled 18 year old daughter. The daughter has numerous medical problems which require frequent hospitalization. Without guardianship, the daughter could not receive non-emergency treatment.

SPECIAL EDUCATION PROJECT AND CASES

I. INTRODUCTION

Legal Clinic students are participating in a Special Education Project that began in August, 1988, with a Title IX grant. Supervised by John Elson and Laura Miller, the students are representing handicapped children who are not receiving adequate special education from the Chicago Board of Education.

Clinic students serving in the Project are gaining a broad spectrum of lawyering skills, including client interviewing, case analysis and planning, informal and formal negotiation and trial skills. In addition, students participating in the Project have acquired an excellent understanding of special education law, a challenging area of the law which requires knowledge of statutory construction, constitutional law, administrative law, and federal jurisdiction.

In addition to providing law students with professional training, the Project has provided much-needed legal services to handicapped children. Out clients suffer from a wide variety of disabilities, including mental retardation, emotional disturbances, hearing and vision impairments, cerebral palsy, and learning disabilities. The Special Education Project is the only source of free legal assistance for special education problems in Chicago. While several of the Project's cases have not yet been resolved, favorable results have already been obtained in many cases.

II. CASE REPORTS

One of our first clients, Ricky H., was confined to the Cook County juvenile detention facility on a juvenile delinquency charge. The juvenile court judge repeatedly stated that, if the Board of Education would find Ricky an appropriate educational placement, Ricky would be released from detention. Because of Ricky's emotional problems, he required a structured residential placement. The Board ignored Ricky's need for placement. When Ricky's mother came to the Clinic for help, Ricky had already been in detention for three months. Clinic student, Mike Cronin, successfully litigated a federal action to enjoin the Board to provide Ricky with an immediate residential educational placement.

Clarence J. is a five year old boy who is mentally retarded and has severe cerebral palsy. He also is a carrier of the hepatitis b virus. Although Clarence does not need to be hospitalized, he has been living at La Rabida Childrens' Hospital for the past year because his mother cannot care for him and the Board of Education has failed to find an appropriate placement for him. The Board has failed to provide him even with educational services in the hospital. Clinic students, Carol McElvain and Kerri Howland, recently brought an action in federal court to enjoin the Board of Education to provide a proper educational placement for Clarence. That action is still pending.

Clinic students, Jean Anderson and Deborah Shrager, obtained a specialized private school placement for a severely learning disabled and emotionally disturbed 18 year old boy through use of administrative proceedings.

Clinic students, Jim Mutchnik and Susan Glatt, negotiated with the Board to obtain intensive services for a severely emotionally disturbed child. Susan also obtained needed services for a blind, developmentally delayed child through formal mediation.

Clinic students, Susan Coler and Diane Cifuentes, negotiated with the Board to provide education for a

profoundly retarded child with cerebral palsy who had not been receiving services for over a year. Susan also persuaded the Board to pay for a child to have a private educational evaluation.

Clinic students, Adly Pozas and Martha Ertman, obtained private residential school placement for a youngster who was at risk of being sent to the Department of Corrections by the Juvenile Court.

Clinic students, Linda Wickencamp and Michael Castellaneta, obtained private school placement for an emotionally disturbed boy who was unable to function in his elementary school setting.

CASES

CRIMINAL

Leland B. case came to an end last semester. L. G. was accused of aggravated sexual assault against a child. L. B. was a chronic alcoholic at the time and was suffering a blackout during the period of the alleged crime. The district court refused our suggestion that L. B. be considered unfit because he could not aid in his defense. Ultimately, the states attorney agreed to accept a plea for 10 years and L. B. accepted the plea.

Second year Brad Balson assisted in representing a client charged with possession of heroin and cocaine with intent to deliver. Domingo had been illegally stopped and searched and maintained that the drugs found were not his. We interviewed several witnesses who supported the defendant's story and the court dismissed the case after the State rested.

People v. Angel H. After two mistrials, our client was found guilty by a jury of murder. The evidence against A.H. consisted of eye-witness testimony and the fact that a knife, consistent with the victim's wounds, was seen in the possession of our client and was found hidden after the murder in our client's apartment. The knife had small traces of blood on it, but the traces were so small that it was impossible to tell whether the blood was human or animal. Our client came to the scene of the crime shortly after the murder. We are now in the process of preparing post trial motions. Students participated in the trial conducting some of the direct examinations of defense witnesses.

People v. Adrain H. The Clinic represents a young man charged with murder. He is accused of participating in a "drive by" shooting of an eleven year old boy. The shooting was allegedly gang related.

People v. Kent C. After the Clinic successfully represented this petitioner in a federal habeas corpus action, we agreed to represent him in the retrial of his case in state court. The state alleges that our client participated in a 1982 shooting which resulted in the death of an innocent bystander. The Seventh Circuit remanded the case for a new trial because at the client's first trial the state court judge refused to permit defense counsel to examine the state's witnesses concerning their gang affiliations as a possible motive for testifying against our client.

People v. Maurice F. The Clinic represented a 15-year-old boy charged with armed robbery. Our client had never been arrested before and had just arrived in Chicago from Mississippi when the incident occurred. The state's evidence against our client was very strong, and armed robbery carries a mandatory six year prison term. Clinic lawyers asked that the client be evaluated for participating in the Mercy Boy's Home program, a highly structured residential and school program operated by the CATHOLIC Church. The client was accepted by the program. Clinic attorneys negotiated a reduction of the charge which enabled the client to participate in the Mercy Boy's Home program. The client has now been in the program for a year. He ranks near the top of his

which provided for the return of all United States military personnel captured by the North Vietnamese. Vu escaped from his prison in 1980, after having spent 16 years in a North Vietnamese prison camp. He then made his way to his home in the South, from which he and his family escaped to Singapore by boat. After identifying himself to U.S. authorities as a former member of the CIA sabotage operation, Vu and his family were flown from Singapore to the U.S. Now living in Chicago, Vu continues to suffer severe physical disability as a result of his years in the North Vietnamese prison camp.

Vu, with the help of a private attorney in Chicago, sued the federal Government in the Claims Court for breach of contract, seeking both back pay and damages resulting from the Government's failure to try to rescue him. The Claims Court dismissed Vu's complaint on the authority of an 1875 Supreme Court precedent which holds that contracts with the Government to perform secret services are per se unenforceable. On behalf of Vu, the Clinic filed in January, 1989, a petition for certiorari asking the United States Supreme Court to review the Federal Circuit Court of Appeal's affirmance of the Claims Court's dismissal. The Clinic argues, among other things, that the refusal to hear Vu's case because of the supposed secret nature of his contract is both inequitable and contrary to more recent legislative and judicial developments which put the burden on the Government to show that dismissal of a lawsuit is required because it threatens to disclose matters harmful to national security interests. In light of the Government's own documents publicly detailing the nature of the CIA sabotage operation and the passage of over 15 years since the end of the war in Vietnam, Vu's petition also notes how unlikely it is that his lawsuit would pose any threat to national security. Senior law student Michael Cronin and Clinic attorney John Elson prepared Vu's petition for certiorari.

**LEGAL CLINIC 20TH
ANNIVERSARY CELEBRATION
SPRING, 1990
PLAN TO COME**
