

1991

Specialized vs. General Clinical Legal Education: Or, Problems with Being a Brain Surgeon after a Family Practice Internship

Karen V. Kole

Prof., Loyola University of Chicago School of Law, Chicago, IL.

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Karen V. Kole *Specialized vs. General Clinical Legal Education: Or, Problems with Being a Brain Surgeon after a Family Practice Internship*, 3 Loy. Consumer L. Rev. 126 (1991).

Available at: <http://lawcommons.luc.edu/lclr/vol3/iss4/3>

This Feature Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

SPECIALIZED VS. GENERAL CLINICAL LEGAL EDUCATION: OR, PROBLEMS WITH BEING A BRAIN SURGEON AFTER A FAMILY PRACTICE INTERNSHIP

Karen V. Kole*

I. Introduction

The clinical model of legal education is not a new one. Even before the clinical legal education "boom" of the late 1960s and 1970s, a number of law school curricula already contained clinical courses that served to apply substantive course work in practice. These programs provided a valuable service to communities whose interests were not otherwise adequately served by the legal community.

A continuing debate exists as to the extent to which law schools should concentrate on the theory rather than the practice of law. However, it is clear that clinical programs are firmly entrenched as a part of nearly every modern law

school's course offerings. It is also clear that general law school clinics do not serve all the students they should, and portions of the community they could. Those of today's law students who do not

Specialized clinics also provide students and practitioners with special interests with outlets for *pro bono* service to the community.

intend to practice law in the areas traditionally covered by the most common civil and criminal practice law school clinics do not typically avail themselves of basic clinical courses. Apparently, these students would rather spend their time in theoretical courses relevant to their specific area of interest than get general clinic experience which they do not view as relevant to their future career plans. As a result, these students fall through the cracks and emerge after three years of law school with little practical experience in their chosen areas of interest. Specialized legal clinics help fill the gap in the educational experience of such students and better prepare these future practitioners for real-life lawyering. Thus, specialized legal clinics are, and must be, a significant part of the future of clinical legal education.

In addition to providing students with special interests the same general skills training that general clinics provide, the specialized legal clinic provides valuable legal representation to communities that otherwise remain unserved. Specialized clinics also provide students and practitioners with special interests with outlets for *pro bono* service to the community. Moreover, specialized clinics provide faculty directors and staff

with important opportunities to put their own practice skills to use.

From the perspective of the law school, specialized legal clinics represent an additional means by which law schools can meet their responsibility to prepare law students for the practice of law. Law schools have a professional obligation to prepare students to practice their profession.¹ This obligation extends to all law students not only the students anticipating a general practice career. Specialized clinics help satisfy this obligation.²

Legal clinics generally are expensive and demand a high degree of energy and commitment to establish and maintain. For these and other reasons, law faculty and administration may be hesitant to provide what may be perceived at first glance as redundant clinical course offerings. These problems are not insurmountable, however, and more law schools are finding the time, expense and trouble of establishing specialized clinics worth the benefits that enure to both the student and the community.

This article first briefly details the history and goals of the clinical educational model.³ Next, the article discusses the current trend toward more specialized clinical course offerings and the need for

Editor's Note

In her Feature article published in the last issue, Professor Karen Kole reported on the positive impact specialized legal clinics have on consumers. As a followup, the Editors present this companion article written by Professor Kole on establishing a specialized legal clinic. In her article, Professor Kole explores the current debate over general versus specialized clinics, and most importantly she provides a framework for establishing such specialized legal clinics.

As illustrated by last issue's Feature, legal clinics have a positive impact on consumers; indeed, clinics are an integral part of the practice of consumer law.

Read the *Reporter*, the only student-run law journal devoted entirely to consumer law, as the premier source for scholarly analysis of legal issues which affect consumers.

**Associate Professor of Law, Loyola University of Chicago School of Law; Director, Loyola Student Federal Tax Clinic. She would like to express her gratitude to fellow colleagues Professor Diane Geraghty and Professor Henry Rose, of Loyola University of Chicago School of Law, Professor John Elson, of Northwestern University School of Law and Dennis J. Fox, Esq., former I.R.S. Regional Counsel, Midwest Region, now in private practice at Lord, Bissell & Brook for constructive comments and suggestions in connection with this article. Also, the author gratefully acknowledges the substantial and significant work of Cathryn Albrecht, Loyola University of Chicago School of Law, Class of 1990 without whose work this paper would not have been possible at this time.*

that trend to continue and expand.⁴ Finally, the article details the start-up and operational processes of new specialized clinics and addresses some practical problems newly established clinics will likely encounter.⁵

II. Background

The term "clinical education" has been used to describe various supervised practice experiences, including on and off-campus, school-run legal clinics; extern-

Specialized legal clinics help fill the gap in the educational experience of such students and better prepare these future practitioners for real-life lawyering. Thus, specialized legal clinics are, and must be, a significant part of the future of clinical legal education.

ships or clerkships with law firms, government agencies and judges; and basic skills courses in areas such as legal writing, trial advocacy and negotiation.⁶ This article is concerned primarily with the on-or off-campus, faculty supervised and directed legal clinic,⁷ although the background information that follows concerns itself with the broader context of clinical education.

Since the 1930s, the clinical educational model has been viewed as a valuable addition to the standard law school curriculum.⁸ In fact, some law schools had clinical programs in place in the 1920s.⁹ These clinics afforded law students an opportunity for supervised practical experience and provided valuable and affordable legal aid service to individuals who might not otherwise be represented.¹⁰ However, beginning in the late 1960s and continuing through the 1970s, legal clinics experienced an intense period of growth in law school curricula.¹¹ By 1979, an estimated 90% of all ABA accredited law schools had some form of clinical educational program included in their curricula.¹² Moreover, during that same year, an estimated 95% of these same law schools offered more than one clinical program.¹³

The goals of practice-oriented, supervised clinical course offerings are defined broadly. The most commonly cited goals are to train and sensitize students to: (1) fundamental professional skills such as legal writing, negotiation, trial advocacy and client and witness interviewing;¹⁴ (2) formulating legal issues and strategies from unfamiliar factual scenarios;¹⁵ (3) the need to reinforce and place in actual settings other substantive course work;¹⁶ (4) real-life professional responsibility issues;¹⁷ (5) the interplay of legal practice with basic social science principles;¹⁸ and (6) developing a concern for, and sensitivity to, the needs of low or middle income individuals who might not otherwise receive legal representation or counseling.¹⁹ Perhaps the best overall view of what these programs offer was given by Professor Conrad, describing his brief experience teaching in a clinical program:

I saw and talked with scores of accused persons, and learned from their mouths what they experience, or think that they experience, at the hands of complainants, police and prosecutors. I refreshed and updated my observation of the usual behavior and reactions of judges, bailiffs, clerks, jurors, prosecutors, private attorneys, clients and witnesses. What...[these experiences] enhance is my competence to evaluate the quality of justice in American society, and the possible ways of ameliorating its quality. The clinic provides a worm's eye view of justice which is very different from that of the usual "real world" exposures of law professors.²⁰

It has long been debated whether law schools should offer professional skills training of the type afforded by clinical educational course offerings. According to critics of clinical education, a law school's foremost emphasis should be to provide broad theory-based course offerings and leave the skills training to future employers.²¹ Although the debate on this front continues,²² it is clear that practice oriented, clinical education is firm-

ly entrenched as part of standard curriculum,²³ albeit a "modest" part of most law schools' programs.²⁴ In fact, the American Bar Association Standards for Approval of Law Schools have advised since 1974 that law schools should include professional skills instruction in their curricula.²⁵ Moreover, judges,²⁶ bar associations,²⁷ legal employers²⁸ and recent law school graduates themselves²⁹ have expressed an increased concern with the competence of practicing professionals.

It has long been debated whether law schools should offer professional skills training of the type afforded by clinical educational course offerings. Although the debate on this front continues, it is clear that practice oriented, clinical education is firmly entrenched as part of standard curriculum, albeit a "modest" part of most law schools' programs.

III. Current Trend Toward Specialization

A. The Trend.

In addition to the increasing number of clinical course offerings,³⁰ the types of subject matter covered by law school clinical programs have also increased in number. According to a study of ABA accredited law schools, in the 1970s the number of fields of law covered by clinical educational programs increased by over 300%, from fourteen distinct areas of practice to fifty-nine.³¹ In the years since that time, the clinical programs have continued to follow the trend toward diversity. Once the mainstay of clinical course offerings, basic administrative and civil practice clinics and criminal practice clinics are now supplemented by clinics specializing in a wide variety of subject areas.³² Law schools have added clinical programs in diverse specialties such as

(continued on page 128)

Specialized Clinics

(continued from page 127)

AIDS Law, Farm Law, Legal Problems of the Homeless, and University Law.

As a result, most clinical programs fail adequately to offer to students with interests in other more specialized areas of law the benefits of the clinical experience. These students are thus unable to develop relevant practice skills.

B. The Value of Specialized Clinics in Today's Curriculum.

Specialized clinics have had a tremendous impact on the students who participate in them and on the communities the clinics serve. Moreover, future employers as well as the faculty clinic directors also benefit. The majority of law school clinical offerings are in the areas of general civil or criminal practice.³³ As a result, most clinical programs fail adequately to offer to students with interests in other more specialized areas of law the benefits of the clinical experience.³⁴ These students are thus unable to develop relevant practice skills. Although many larger law firms provide in-house training, smaller firms are ill-equipped to handle such a financial burden.³⁵ As a result, students themselves are concerned that their lack of practical training makes them less marketable than if they had been afforded a practical, supervised clinical experience in law school.³⁶

Specialized legal clinics allow law schools to provide a broader range of services to low or middle class individuals who might not otherwise benefit from law school clinic resources.³⁷ Through a legal clinic, the law school may expand its services to needy communities.

Likewise, those students who do not intend to practice in areas of law related to general civil or criminal practice will become more acclimated to the needs of otherwise unserved communities and

more attuned to the type of services they may in the future provide³⁸ (or be required to provide)³⁹ on a *pro bono* basis. Moreover, these new lawyers may be a valuable resource to help staff specialized clinics in satisfaction of *pro bono* obligations.⁴⁰ In this way, the student, the law school, the employer and the community may benefit.

Specialized legal clinics will also provide an expanded opportunity for law school faculty to obtain practical experience in their own areas of expertise.⁴¹ Too often, educators are removed from the practical considerations of the theories of law and as a result lose a necessary perspective.

IV. Process of Instituting Specialized Clinical Programs

Although the need for more specialized clinical programs is apparent, new programs must address and solve a number of practical problems to be successful. What follows is an overview of some of the necessary considerations and suggestions for resolving some of the more typical problems which arise in establishing specialized legal clinics.⁴²

A. Start-Up Concerns

New clinical programs necessarily require a willing faculty director; administrative and relevant committee approvals; approval from necessary external sources; funding for clinic personnel, facilities and supplies; and start-up op-

Specialized legal clinics allow law schools to provide a broader range of services to low or middle class individuals who might not otherwise benefit from law school clinic resources. Through a legal clinic, the law school may expand its services to needy communities.

erational plans and client/case criteria.

Faculty directors for specialized clinics should have significant experience and background in the area of law that will be covered by the new clinic.⁴³ The clinic director

also must have a high degree of energy and a dedication to the necessity for the services a specialized clinic will provide. Because of the substantial time commitment involved in running a law school clinic, the director should also be

One of the largest hurdles a new specialized clinic may face involves convincing faculty and administration that another costly, labor intensive clinical program is necessary and worthwhile . . . that may involve anything from persuading wary faculty that skills training is an appropriate focus for legal education to convincing them that the current general practice clinic is insufficient to meet the clinical educational needs of a particular group of students.

prepared to forego substantial consulting fees she might otherwise obtain outside of the law school setting.⁴⁴ It has been observed that "[o]n the average, clinical teachers report working fifty to sixty hours weekly. This work schedule does not include time for scholarship, consulting or other activities normally undertaken by faculty members in addition to their conventional teaching responsibilities."⁴⁵ The director also must be capable of interacting closely with students, administrators, outside attorneys, the courts and other organizations with whom the director will necessarily work at various stages of the planning process and subsequent operations.

One of the largest hurdles a new specialized clinic may face involves convincing faculty and administration that another costly, labor intensive clinical program is necessary and worthwhile. Depending on the particular school, that may involve anything from persuading wary faculty that skills training is an appropriate focus for legal education to convincing them that the current general practice clinic is insufficient to meet the

clinical educational needs of a particular group of students.⁴⁶ In this regard, the organizer is advised to avoid the "flavor-of-the-month" approach to selecting the type of specialized clinics. Care should be taken to ensure that the new clinic secures Malpractice Insurance Committee approval and, in con-

The most serious stumbling block to starting a specialized clinic is likely to be obtaining adequate funding. Any clinical program will be expensive.

nection with this approval, malpractice insurance for all attorneys involved with the clinic. The coverage should be broad enough to allow volunteer attorneys to be covered without relying on their individual coverage or their employer's coverage.

The course description must be tailored to maximize opportunities for classroom skills simulation, supervision of student client contact and feedback to the student from the clinic director or supervisory staff.⁴⁷ The academic credit for students must also be considered and approved at a level commensurate with the time commitment and responsibility that new clinic students must necessarily assume.⁴⁸ This is imperative not only to provide an effective learning experience for the student, but also to ensure effective representation of the clinic's clients. Awarding adequate academic credit will persuade students to participate. Likewise, the director must receive adequate tenure credit for her activities and must be assured that the directorship will be taken into account in light of scholarship and course load requirements.⁴⁹

The most serious stumbling block to starting a specialized clinic is likely to be obtaining adequate funding. Any clinical program will be expensive.⁵⁰ However, several alternatives are available to the creative law school to help lessen the economic blow. A new specialized clinic may be able to share office space, telephones and support staff with currently existing general clinics. Staffing the clinic with licensed attorneys, although

expensive if all staff are paid, may be handled by obtaining attorneys practicing in the particular area who could fulfill their *pro bono* obligations by participating in the law school clinics on a volunteer basis. Staffing problems may also be addressed by having students who have already completed a given clinical program participate in supervisory responsibilities as "senior associates."⁵¹ Specialized clinics may actually have a better chance of receiving outside funding than the more generalized poverty law clinics, from sources such as corporate foundations set-up by business, interest groups or other similar groups. In the case of a tax clinic, prominent tax practitioners and tax departments of large law firms are potential sources for donations.

Other start up concerns involve contact with outside organizations. The first area of inquiry should be the jurisdiction's student practice rules. For example, in order for a tax clinic student to practice before the Internal Revenue Service ("I.R.S."), the clinic itself must be approved by the local I.R.S. District Director, and the I.R.S. National Director of Practice. Each student must individually be certified to practice as well.⁵² Additionally, special approval must be given by the United States Tax Court if the clinic intends students to represent taxpayers in that forum.⁵³

Specialized clinics may actually have a better chance of receiving outside funding than the more generalized poverty law clinics, from sources such as corporate foundations set-up by business, interest groups or other similar groups.

B. Operational Concerns

Although criteria for clinic students and clients must be considered before a clinic begins operation, once the clinic is approved, the director must recruit well-qualified students and must arrange mechanisms for obtaining and se-

lecting clients. Because the reputation and quality of any clinic will depend on the calibre of student practitioners, students should be selected for their maturity and basic understanding of the area of law handled by the new clinic.⁵⁴ The students who often benefit the most are the ones who have less

In the interest of public service, the clinic should attempt to locate and choose those clients who are most likely to benefit from free or low cost student representation. It is imperative that the new specialized clinic make itself known to the community it will serve.

maturity and pre-understanding of the law. Therefore, the choice of participants must balance these concerns with the amount and quality of the supervision.

Another important operational consideration is the client base that the clinic will service. The client base should be selected to maximize the student's educational experience and also to maximize service to the neediest communities. In some cases, these goals may be contradictory. "Typical" client problems may frequently involve novel legal issues or present a range of skills training outlets.⁵⁵

The specialized clinic must above all choose its clients for the variety of practice skills the case will present. The best client cases involve aspects of interviewing techniques, negotiation and advocacy skills as well as novel legal issues. In this regard, the new clinic must be selective.

In the interest of public service, the clinic should attempt to locate and choose those clients who are most likely to benefit from free or low cost student representation. It is imperative that the new specialized clinic make itself known to the community it will service. This may be difficult in the initial phase of clinic operations. In conjunction with the law school public relations

(continued on page 130)

Specialized Clinics

(continued from page 129)

department, the clinic should issue press releases to the media to secure newspaper, radio and television promotional news stories.⁵⁶ Depending on the area of law covered by the clinic, more targeted advertising, mail campaigns and the like may be undertaken. Additionally, the specialized clinic should advise other area *pro bono* organizations of its activities and the types of clients the clinic accepts, so that these organizations may provide referrals of appropriate cases. Moreover, local bar associations may provide a fertile resource for referrals from practicing members who are themselves unable to handle appropriate cases on a *pro bono* basis.

C. Concerns for the Future

Once the new specialized clinic begins operations, it can begin to meet the needs of both the students and the otherwise unrepresented clients in the clinic's community. As more specialized clinics continue to emerge, however, new problems will continue to arise. For instance, since 1979,⁵⁷ there has been no comprehensive, readily available directory of United States specialized clinical programs, although comprehensive lists of general clinical programs are available.⁵⁸ As a result, law schools and other public interest clinics may not be aware of the range of more specialized clinical legal services available, even in their own metropolitan areas.⁵⁹ In the future, it is important that clinical program offerings be centrally available, perhaps by means of a nationwide computer database, so that law school legal clinics and other legal services clinics may become aware of the range of services available nationwide, for both informational and referral purposes.

Additionally, even with more law schools offering specialized legal clinics, individual law schools will be unable to provide practical training for all of their students with specialized interests. In larger metropolitan areas with more than one law school, it may be possible

to coordinate specialized clinics so that each school would offer different specialized legal clinics and allow students from other schools to participate in specialized programs as visiting students, with transferable academic credit.

V. Conclusion

Given the fact that general clinical programs exist as a part of almost every law school's curriculum, specialized clinical education must be given serious consideration. Specialized clinical programs have distinct advantages over the more general clinical programs: (1) they provide needed services to segments of the commu-

Once established, the benefits afforded to students, law firms, academics and the general public will far outweigh the cost of establishing and operating these clinical programs.

nity that are currently ignored or underrepresented; (2) they provide students with special or technical interests the same education that is afforded to students with general practice interests who are currently enrolled in general clinical programs; (3) they provide attorneys practicing in specialized areas, such as tax, an outlet for *pro bono* services to satisfy their obligation and responsibility to the general public;⁶⁰ and, (4) they provide academics in specialized areas of law the opportunity to interact in "real life" situations.

Although it has been argued that legal clinics and clinical courses are by their very nature too expensive to maintain and operate, specialized legal clinics may not be incrementally more expensive than general clinics. Existing general legal clinics can be drawn upon to minimize the cost of implementing specialized programs. Once established, the benefits afforded to students, law firms, academics and the general public will far outweigh the cost of establishing and operating these clinical programs.⁶¹

ENDNOTES

1 Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish,*

Must the Profession Perish?, 39 J. LEGAL EDUC. 343 (1989).

2 *Id.*; see also Binder, *Bergman and Price, Lawyers as Crusaders: A Client Centered Approach*, 35 NEW YORK LAW SCHOOL REVIEW 29 (1990).

3 See *infra* notes 6-29 and accompanying text.

4 See *infra* notes 30-41 and accompanying text.

5 See *infra* notes 42-59 and accompanying text.

6 Bodensteiner, *An Explanation of Clinical Education*, 12 STETSON L. REV. 719 (1983).

7 Commentators have suggested that "real life involvement and responsibility" in the school-run clinical setting is preferable to simulation courses or clinical programs outside the law school that involve little or no law school supervision. See Pincus, *Prefatory Remarks, Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 348, 349 (1980). See also Wizner & Curtis, *"Here's What We Do": Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 681-82 (1980) (in-house clinics preferable because it is difficult to find outside placements where supervisors are also good teachers; students often relegated to "para-legal" tasks because focus of outside office on delivery of service to client rather than education of student; and, with multiple out-placement programs it is difficult for law schools to determine calibre of supervision).

8 See Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907 (1933); Bloch, *The Andrological Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 321 note 1 (1982) and articles cited therein.

9 See Bloch, *supra* note 8, at 321 note 1 and articles cited therein.

10 See Bradley, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252, 252 (1929).

11 According to the Council on Legal Education for Professional Responsibility, Inc. ("CLEPR"), the number of clinical course offerings by ABA accredited law schools increased 185% in the eight years between 1970-71 and 1978-79. CLEPR, *Survey and Directory of Clinical Legal Education*, 1978-79, at xxi (1979). For a discussion of statistics on the growth (or decline) of certain specialized clinical programs between 1984-1986, see McDiarmid, *What's Going On Down There In The Basement: In House Clinics Expand Their Beachhead*, 35 NEW YORK LAW SCHOOL LAW REVIEW 239, 283 (1990).

12 *Id.* at v-vi.

13 *Id.* at vi.

14 See generally Frank, *supra* note 8, at 918-19. Compare Feldman, *On the Margin of Legal Education*, 12 N.Y.U. L. REV. L. & SOC. CHANGE 607, 627 (quoting Anthony G. Amsterdam, Opening Statement, American Bar Association, Section of Legal Education and Admission to the Bar, Deans' Workshop 2-4 (Chicago, IL) (January 23, 1982) (law

- schools unlikely to turn out fully accomplished practitioners, but will at least afford students the chance to commit "first-level" errors in law school and to learn from their initial mistakes).
- 15 See generally Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 UNIV. CHI. L.R. 469, 473-74 (1934). See also Feldman, *supra* note 14, at 618 (placing students in passive learning roles may not produce lawyers competent to tolerate "conflict and uncertainty or to make judgments under stress").
- 16 One commentator has suggested that, although clinical courses may teach substantive law in greater depth than traditional course work, the clinical method is more expensive and less efficient. Pepe, *Clinical Legal Education: Is Taking Rites Seriously a Fantasy, Folly or Failure?*, 18 J.L. REFORM 307, 326 (1985). The value of the clinical experience in teaching substantive law may be undermined by the fact that, especially in code-based clinic courses, the substantive law often changes with amendments to the particular codes involved. However, the same argument may also be made with respect to more traditional, substantive course offerings that also teach code-based law. Like courses grounded in case law, substantive code courses and clinic code courses teach and reinforce a method of legal analysis that will allow a student thoughtfully to approach research into new developments in any area of law.
- 17 Frank, *supra* note 8, at 922 ("[p]rofessional ethics can be effectively taught only if the students while learning the canons of ethics have available some first hand observation of the ways in which the ethical problems of the lawyer arise and of the actual habits (the 'mores') of the bar"). See Weinstein, *Educating Ethical Lawyers*, 47 N.Y. ST. B.J. 260, 262 (1975) (clinical education best vehicle for teaching professional responsibility). But see Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 392-93 (1980) (clinics "not ready to become primary method for teaching ethics. The law schools have not yet provided enough clinical courses for those students interested in taking them.").
- 18 See Frank, *supra* note 8, at 921-22 ("law student should be taught to see the interaction of the conduct of society and the whole of courts and lawyers"). See also Nat'l L.J., Dec. 25, 1989 at 4, col. 2 (students participating in Syracuse University College of Law's homeless clinic "benefit from experience in providing a wide range of services, even those that non-lawyers could provide").
- 19 According to United States Supreme Court Justice Sandra Day O'Connor: Law schools can help to develop a sense of civic and professional responsibility that recognizes that lawyers must assure the availability of legal assistance. Classes in clinical practice, coupled with opportunities to provide services to people who are unable to pay for them, can be enjoyable and interesting, indeed at times, inspirational to students. Such a program can lead new lawyers to develop a habit of *pro bono* service.
- O'Connor, *Legal Education and Social Responsibility*, 53 FORDHAM L. REV. 659, 661 (1985). See also Press Service Release to Education Editors, *Business Wire*, Sept. 25, 1989 (LEXIS, Nexis library, Omni file) (university law clinic "instills in students a sense of responsibility to the community, particularly to represent those who are not able to afford lawyers").
- 20 Bainhijer, *The University Ideal and Clinical Legal Education*, 35 NEW YORK LAW SCHOOL LAW REVIEW 87, 89 (1990); Conrad, Letter From The Law Clinic, quoted in *CLEPR: Third Biennial Report 1973-1974*, p. 181 (1974).
- 21 See generally Devitt, *Why Don't Law Schools Teach Law Students How to Try Law Suits?*, 29 CLEV. ST. L. REV. 631, 634-39 (1980). Judge Devitt suggests, ironically, that the historical basis for theory bias by some legal educators was initially grounded in a concern for lawyer competency in the early 1800s, when legal education was obtained primarily through apprenticeships and reading the law without formal instruction. *Id.* at 634. As a reaction to public criticism, and beginning in the 1870s, institutionalized legal education emerged as a means to elevate legal education to a highly intellectual and academic pursuit. *Id.* at 635. As a result, lawyers emerged more highly educated and competent to practice than they had been previously, but at the same time legal education became more elitist and began to view skills training as a second-class educational goal. *Id.* at 635-36.
- 22 Sitomer, "Tug-of-War in the Law Schools: Theory v. Practice," *Christian Science Monitor*, Oct. 26, 1984, Pullout Section, at B1, col. 1. According to one recent commentator, clinical training advocates are often perceived as anti-intellectual. *Supra* note 1, Professor Elson posits to the contrary, that clinical training is not incompatible with scholarship and is "best performed in an environment in which the ideals of scholarship are paramount." *Id.* at 343 note 3 and accompanying text. See also Kay, President's Message, "Lawyers and Law Teachers: Are We in the Same Profession?", No. 89-5, Assoc. of Amer. Law Schools Newsletter 1 (Dec. 1989). The American Bar Association Section of Legal Education and Admissions to the Bar recently established a two year task force, the "National Task Force on Law Schools and the Profession: Narrowing the Gap," to address problems of professional skills development programs in law school curricula. *Id.* at 3.
- 23 McKay, *What Law Schools Can and Should Do (And Sometimes Do)*, 30 N.Y.L.S. L. REV. 491, 510-11 (1985); Sitomer, *supra* note 22, at B1, col. 1.
- 24 Lehrer, "America's Topsy-Turvy Legal System", *Chicago Tribune*, Nov. 18, 1988, Perspective Section, at 27, col. 2. See "The Only Way?", *Nat'l Law Journal*, May 2, 1988, at 10, col. 1 (law schools "have increased the use of 'clinical' programs to give students on-the-job experience. The schools have come a long way in a short time, but those programs still usually take second place to classroom exercises."). See also Feldman, *supra* note 14, at 621 (although "an overwhelming number of American law schools have established clinical programs," the programs are usually poorly integrated into the law school curriculum).
- 25 See Report of Association of American Law Schools-American Bar Association Committee on Guidelines for Clinical Legal Education at p. 8, (1980); Am. Bar Ass'n Standards for the Approval of Law Schools and Interpretations, § 302(a)(iii) (Nov. 1988).
- 26 See McKay, *supra* note 23 at 499-500 notes 21-23 (former U.S. Supreme Court Chief Justice Warren E. Burger, then Chief Judge Irving Kaufman and Judge David Bazelon all expressed concern that trial advocacy skills of some practicing attorneys are deficient).
- 27 The American Bar Association has asserted that problems of lawyer competency should be addressed by the law schools. Am. Bar Ass'n Section of Legal Education and Admissions to the Bar, Task Force on Lawyer Competency: The Role of the Law Schools, Report and Recommendations (1979) (hereinafter "Task Force on Lawyer Competency"). According to this report:
- [L]aw schools can do a better job than they presently do in: (a) developing some of the fundamental skills underemphasized by traditional legal education; (b) shaping attitudes, values and work habits critical to the individual's ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fields of lawyer practice, including, but not limited to, trial practice.
- Id.* at 14.
- 28 See Levin, "Experience, Not Education", *Nat'l L.J.*, Feb. 6, 1989, at 13, col. 1 (bar has "strong interest" in practical training); *Legal Times*, June 13, 1983, at 12, col. 1 (small firms "particularly interested in hiring law school graduates who already have learned the basic lawyering skills").
- 29 See generally Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978). See also Feldman, *supra* note 14, at 617-18 (students also express concerns for "relevance" to law practice in their law school courses); Levin, *supra* note 28, at 13, col. 1 (students interested in practical training).

(continued on page 132)

Specialized Clinics

(continued from page 131)

30 See *supra* notes 11-13 and accompanying text.

31 CLEPR, *supra* note 11, at xxi-xxii.

32 The 1978-79 CLEPR Survey listed among the then-current, in-house clinical offerings the following special clinic types:

Veterans Law (American University, Washington College of Law); **Family Law** (University of California at Davis School of Law; Columbia University School of Law; University of Pittsburgh School of Law; Seton Hall University School of Law); **Elderly Legal Issues** (Brooklyn Law School; George Washington University National Law Center); **Child Abuse and Neglect Law** (Georgetown University Law Center; University of Michigan Law School); **Immigration Law** (George Washington University National Law Center; University of Southern California Law Center); **Tax Law** (Hofstra University School of Law; University of Michigan Law School); **Wills, Probate and/or Real Estate** (Illinois Institute of Technology, Chicago-Kent College of Law; University of Pittsburgh School of Law); **Bankruptcy** (University of the Pacific School of Law); **Crime Victims Law** (University of the Pacific School of Law); **Developmental Disability Law** (University of Pittsburgh School of Law); **Mental Health Law** (University of Richmond, T. C. Williams School of Law; University of Texas School of Law; Valparaiso University School of Law); **Civil Rights and/or Employment Discrimination Law** (Rutgers, The State University of New Jersey, S. I. Newhouse Center for Law & Justice; Texas Southern University Law School; Howard University School of Law); **Women's Rights Law** (Rutgers, The State University of New Jersey, S. I. Newhouse Center for Law & Justice; New York University School of Law); **Indian Law** (University of Wisconsin Law School).

CLEPR, *supra* note 11, Table 1, at 1-20.

Among the more recent, increasingly more diverse clinical course offerings are:

Environmental Law (University of Oregon School of Law, see *Nat'l. L.J.* May 22, 1989, at 27, col. 1; University of San Diego School of Law, see *L.A. Times*, San Diego Edition, Nov. 13, 1989, (LEXIS, Nexis library, Omni file)); **Employment Discrimination Law** (University of California at Berkeley School of Law, see Press Service Release, U.P.I., July 1, 1986 (LEXIS, Nexis library, Omni file)); **Farm Law** (University of Iowa College of Law, see Press Service Release, U.P.I., Sept. 9, 1989 (LEXIS, Nexis library, Omni file)); **Mental Health Law** (Tuoro College School of Law, see *Newsday*, May 31, 1989, (LEXIS, Nexis library,

Omni file)); **Legislative Drafting** (jointly Tulane University School of Law and Loyola University School of Law, New Orleans, see *Nat'l. L.J.*, Dec. 5, 1988, at 4, col. 3); **Tax Law** (University of Akron School of Law; Boston University School of Law; University of Bridgeport School of Law; Chicago-Kent School of Law; University of Denver College of Law; Indiana University School of Law; Loyola University-New Orleans School of Law; Loyola University of Chicago School of Law; University of Minnesota Law School; University of New Mexico School of Law; Southern Methodist University School of Law; University of Texas at Austin School of Law; Widener University School of Law; William Mitchell College of Law; Yeshiva University School of Law; see *Legal Times*, Oct. 17, 1983, at 3, col. 1); **AIDS Law** (University of Maryland School of Law; Columbia University School of Law, see *Nat'l. L.J.*, Sept. 26, 1988, at 4, col. 2; St. Louis University School of Law, see Press Service Release, U.P.I., Sept. 11, 1989) (LEXIS, Nexis library, Omni file)); **Media Law** (New York Law School, see *N.Y. Times*, March 26, 1988, 1, at 58, col. 3); **Legal Problems of the Homeless** (Syracuse University College of Law, see *Nat'l. L.J.*, Dec. 25, 1989, at 4, col. 2 (Patricia M. Hanrahan, director of the American Bar Association's Representation for the Homeless project, estimates that there are six such law school clinics in the United States); St. Louis University School of Law, see Press Service Release, U.P.I., Sept. 11, 1989, (LEXIS, Nexis library, Omni file)); **Legal Problems of the Elderly** (Drake University Law School, see Press Service Release, U.P.I., Nov. 8, 1984 (LEXIS, Nexis library, Omni file); St. Louis University School of Law, see Press Service Release, U.P.I., Sept. 11, 1989, (LEXIS, Nexis library, Omni file)); University of California at Los Angeles School of Law, see *Legal Times*, June 13, 1983, at 12, col. 1); **University Law** (Stetson University College of Law, see Press Service Release to Education Editors, Business Wire, Sept. 25, 1989 (LEXIS, Nexis library, Omni file)).

See also, generally Appendices, *Selected Summaries of Law School Clinical Programs*, 29 CLEV. ST. L. REV. 735, 735-815 (1980). For a comprehensive list of elective practice skills courses offered at American Bar Association accredited law schools during 1984-86, see Powers, A STUDY OF CONTEMPORARY LAW SCHOOL CURRICULA, 89-97 (Amer. Bar Ass'n 1987). Although this listing does not list the schools at which the listed courses were offered, and is not limited to in-house, law school legal aid clinics, the range of practical skills courses offered includes a large number of specialized clinical course offerings.

Id.

33 Press Service Release to Education Editors, Business Wire, Sept. 25, 1989 (LEXIS, Nexis library, Omni file).

34 *Id.* (generally, law schools unable to develop means to provide clinical experience in business law practice areas such as corporate, tax, etc.). But see Chambers, "Law School Legal Education Endangered", *Nat'l. L.J.*, Oct. 31, 1988, at 13, col. 4 (clinic students "trained intensively in specialized and sophisticated areas of law . . . do their jobs very well"); *Legal Times*, June 13, 1983, at 12, col. 1 (many law school clinical programs have expanded to include small business matters). Specialized legal clinics may also afford students who have not yet decided the field in which they would like to practice an opportunity to experience in depth a variety of specialized practice. Feldman, *supra* note 14, at 627 (1985). These students would thus have an opportunity to make a more informed choice as to their intended fields of practice. *Id.*

35 *Legal Times*, June 13, 1983, at 12, col. 1 ("academics' new preference for practical training" may reflect economics of practice due to escalating salaries; small firms "particularly interested in hiring law school graduates who have already learned basic lawyering skills"). See Feldman, *supra* note 14, at 608 note 3 (although students may be provided with sufficient basic research and writing skills for a large firm setting, students less prepared for other legal settings requiring earlier exposure to basic practice skills and need for immediate productivity).

36 Stueckemann, *Getting Through Law School: Not by Academics Alone*, 16 STUDENT LAWYER 46, 46-47 (Dec. 1987) (difficult for lower percentile of law school class to get jobs; "biggest problem [is] the lack of practical experience in a supervised setting").

37 Harvard University President, Derek Bok, in his April, 1983 annual report to Harvard's board of overseers, suggested that law schools "emulate their medical brethren and establish 'teaching law firms' that would provide both clinical training for students and legal services for the poor and middle class." *Legal Times*, June 13, 1983, at 12, col. 1. See also *L.A. Times*, San Diego County Edition, Nov. 13, 1989 (LEXIS, Nexis library, Omni file) (San Diego School of Law Environmental Law Clinic selects cases with region-wide significance that outside attorneys cannot afford to undertake).

38 Students who undertake *pro bono* representation in law school may be more willing to engage in *pro bono* representation as attorneys. Bodensteiner, *supra* note 6 at 730.

39 The New England Board of Higher Education recently conducted a study to consider methods to alleviate the spiraling cost of legal representation. *Boston Globe*, Oct. 26, 1989, Metro/Region Section, at 29, col. 2. The Board recommended that the six state New England area should require new attor-

- neys, within a few years of graduating from law school, to perform mandatory *pro bono* service to the community. *Id.* The Board also recommended that New England law students should be required to take a practical skills course as a condition of receiving a law license. *Id.* The Maryland Legal Services Corporation recently issued a similar proposal. Cardin, "Justice—For Poor People Too", *Washington Post*, March 15, 1989, at C8, col. 1. *But see* Uelmen, "Mandating *Pro Bono* Work is Not the Route to Justice for Indigents in Civil Cases", *L.A. Times*, Feb. 28, 1989, Metro Section, at 7, col. 1 (mandatory *pro bono* service would cause litigators to take on disproportionate share of *pro bono* cases; fewer lawyers would voluntarily take on *pro bono* cases in excess of their quotas; and, public funding for civil case legal services would be diminished).
- 40 *See infra* page 20.
- 41 Feldman, *supra* note 14, at 637. As early as 1933, it has been noted that "probably . . . a majority of the teachers in some of our university law schools have never met or advised a client, consulted with witnesses, negotiated a settlement, drafted a complicated contract, lease or mortgage, tried a case or assisted in the trial of a case or even written a brief or argued a case in an upper court." Frank, *supra* note 8, at 907-909. *See also*, Feldman, *supra* note 14, at 618 ("few teachers have sufficient practice experience to teach about practicing law").
- 42 As background for the following comments, the author has used her experiences as founder and Director of the Loyola University of Chicago School of Law's Federal Tax Clinic, which explains the leaning toward tax concerns. However, many, if not most, of these guidelines can be tailored to specialized clinics in other areas of law.
- 43 *See* Frank, *supra* note 8 at 914 (all law school instructors should have "not less than five to ten years of varied experience in the practice of law"). Two critics of in-house supervised legal clinics suggest that requiring faculty with significant experience and an interest in continuing to practice law presents an inherent contradiction—an individual who is experienced and interested in continuing to practice law will likely not also be interested in teaching. Tyler & Catz, *The Contradictions of Clinical Legal Education*, 29 CLEV. ST. L. REV. 693, 698-99 (1980).
- 44 *See* Feldman, *supra* note 14, at 623.
- 45 *Id.*; *see also*, McDiarmid, *What's Going On Down There In The Basement: In House Clinics Expand Their Beachhead*, 35 NEW YORK LAW SCHOOL LAW REVIEW 239 (1990).
- 46 Some faculty and administrators may perceive specialized clinical course offerings as redundant. *See*, Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317, 327-28 (1987). Other faculty and administrators may question the utility of a specialized clinic to teach and reinforce substantive course work. *See supra* note 16.
- 47 *See* Feldman, *supra* note 14, at 625 (student must "know if her reactions, interpretations, decisions and conclusions are generally correct" to ensure effective learning).
- 48 Often, faculty distaste for clinical programs is expressed by affording low credit value to time-intensive clinic courses. Pincus, *supra* note 7, at 348 (1980).
- 49 Options for tenure tracking of clinical teachers vary from establishing different criteria for clinical education tenure and normal academic tenure track to treating clinical participation the same as other curricular responsibilities. Feldman, *supra* note 12, at 622-24. Feldman suggests that all law school faculty should participate in clinical course teaching and that faculty involved in clinical projects be given "increased teaching credits above and beyond satisfaction of their entire teaching responsibilities for the period of their clinical involvement." *Id.* at 623. These extra credits would serve to decrease post-clinical teaching requirements to afford more time for satisfying academic and scholarly tenure requirements. *Id.* *See* Pincus, *supra* note 7, at 349. (law schools discourage clinical program development by failing to include clinical faculty members in tenure systems and by offering lower compensation for more working hours). *Compare* comments by Scott, former Chair of the American Association of Law Schools' Clinical Section, in *Panel Discussion, Clinical Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U.L. REV. 337, 361-62 (1987) (clinician should be excused from scholarship requirements for tenure because: there are other ways for law schools to determine the intellectual acumen of clinical professors; clinicians already demonstrate perseverance and good work habits by innovating in their teaching methodologies; and, they already produce volumes of written material in the course of their clinical work), with comments by Philip Schrag, Director of Georgetown University's Center for Applied Legal Studies, *Id.* at 362-63 (clinicians want to publish, but the much larger amount of student contact involved in clinical courses demands that clinicians be given greater credit for semesters spent in clinic and time off for fulfilling scholarly requirements).
- 50 Wizner & Curtis, *supra* note 7, at 682. By one estimate, clinical instruction is "at least three to four times more expensive than conventional large-class instruction." Task Force on Lawyer Competency, *supra* note 27, at 23.
- 51 Wizner & Curtis, *supra* note 7, at 682. These "senior associates" may help edit drafts of legal documents and memoranda and may assist in training entry level students in the day to day operations of the clinic. *Id.* Thus, the senior student has the added benefit of obtaining managerial and supervisory skills. *Id.*
- 52 *See* 26 U.S.C.A. § 7452 (West 1989); General Provisions, Practice Before the Internal Revenue Service, 31 C.F.R. 10.101 (1989); Taxpayer Education Handbook, Internal Revenue Manual, Ch. (17)31.1, 31.2, 32, 45 (1985).
- 53 Law students not yet admitted to practice may be specially authorized to represent taxpayers in U.S. Tax Court with the discretionary permission of the Chief Judge of that court. *See generally* U.S. Tax Ct. R. 24(a)(4). The arrangement between a particular tax clinic and the U.S. Tax Court to allow students to practice is made by agreement between the clinic and the Court on a case by case basis. The agreement may be rescinded at the discretion of the U.S. Tax Court or by the judge hearing a particular Tax Court case. The clinic Director or other supervisory attorney must be present at Tax Court proceedings and must herself file an appearance in the Tax Court case.
- 54 *See* Wizner & Curtis, *supra* note 7, at 683 ("without a background in the law surrounding a particular area of practice, a student cannot begin to understand or deal with a client's problems").
- 55 For instance, in the tax clinic setting, cases involving taxpayer substantiation of claimed income or deductions or routine collection cases do not present the same challenges as more complicated, and more substantive, exclusion from income cases.
- 56 Care should be taken in the amount and extent of media coverage undertaken in the initial phases of clinic operation; the clinic should not be overwhelmed from the start with a large number of clients that the clinic may be unable to service.
- 57 The final biennial report of the Council on Legal Education for Professional Responsibility published its final Survey and Directory of Legal Education in 1979. *See* CLEPR, *supra* note 11.
- 58 Law and Legal Information Directory, Gale Research Inc., Vol 2, Sec. 17-25, p. 1169 (6th Ed.); Directory of Legal Aid and Defender Offices, National Legal Aid & Defender Assoc. (1990).
- 59 Organizations in some major metropolitan areas do publish directories of local legal service entities. *See e.g.* Chicago Council of Lawyers and Fund for Justice of the Chicago Council of Lawyers, 1989 Legal Services Directory (1989). Such a directory, however, seems to be the exception rather than the rule.
- 60 Attorneys in practice may be hesitant to volunteer time for cases outside their areas of expertise and may not have access to specialized *pro bono* cases unless an outlet such as a specialized clinics exist.
- 61 At the time this article was written, the author was in the process of helping J.D. Foster, aid to Senator Armstrong, to help design sorely needed federal legislation to help fund Tax Clinics and possibly set up a National Agency to help administer them. Perhaps federal funding of such programs will enable more law schools to set up such programs.