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175 CONSTRUCTING A CLINIC

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Twenty-five years ago, I was appointed to the faculty of Columbia Law School and asked to start a clinical program. [FN1] In retrospect, I can see that I knew very little about how to construct a clinic, or even about what questions to ask myself or others about clinic design. I therefore began by doing what most people do in new or unfamiliar situations: I tried to replicate what I knew best from my prior experience. I had worked as a lawyer on the staff of the NAACP Legal Defense Fund, so I tried to work with students, as I had at the Fund, on a variety of large-scale federal court test cases. That effort was only somewhat successful in the law school context, and I flailed around for about five years, trying out one clinic design after another before finding a structure that was even moderately stable. [FN2]

A generation later, we have a wealth of literature on law school clinics, including several grand symposia and even this wonderful law review devoted to clinical legal education. But most of the articles, and most of the clinicians' conference programs, focus primarily on the theories of advocacy or methods of teaching. New clinical teachers constantly enter the field, new clinics are still being designed, and older clinics are frequently restructured. But even in the mid-1990s I ***176** could not find any manual for designing--or restructuring--a clinical program. Once again I needed one, because for the sixth time, I had to design (or more accurately in this instance, redesign) a clinical program. [FN3]

The reason I had to redesign a clinic in the mid-1990s was not that the Center for Applied Legal Studies (CALS), the clinic that Professor David Koplow and I had been directing at Georgetown since 1981, was structurally flawed, but that we had been working on Social Security disability and consumer protection cases for fifteen years, and we were ready for a change in the nature of our work. For reasons more fully described below, [FN4] after canvassing some possibilities we chose to reconfigure CALS as an asylum law clinic. We knew that changing the type of cases we were handling would necessitate rethinking and reworking other aspects of the clinic, and that this process could be nearly as arduous and complex as starting an entirely new clinic.

It occurred to me, halfway through the year-long phase of planning our new program and preparing to open its doors to clients, that the next time I participate in building a clinic, I would like to have on my bookshelf an article systematically addressing issues and considerations in clinic design, although of course my future choices about design issues would be a function of financial resources, student demand, current local practice rules, and other factors. I found no such article in print, [FN5] so I decided to write one. Most teachers find it easier to teach from their own class notes than from those of a colleague, so I might be the only clinician who finds these scratchings useful. But perhaps other teachers, after being invited to start new clinics, or to become field work supervisors in existing clinics where they will have some influence over clinic design, may have some use for ruminations of this sort. Veteran clinicians who are thinking about changing their programs also might want to draw on some of this thinking. [FN6] Some ***177** law deans or non-clinical faculty members might want a systematic road map to clinic development, either to help shape and support the clinics at their schools or at least better to appreciate some of the pedagogical problems with which their clinical teachers struggle. And perhaps of greatest importance, our colleagues in other countries, where law school clinics are a coming wave of reform in legal education, might be able to transpose

some portion of our experience with clinic administration into their own institutional contexts.

This article is organized into three sections; the issues are also summarized in checklist form in an Appendix. First, I address some basic structural questions that the clinic's supervisor or supervisors [FN7] might think about when beginning to design or renovate a program. These include the goals of the proposed clinic; the number and qualifications of its teaching and support staff; the desired relationships among staff members; the subject matter of the clinic's cases; [FN8] the duration of the clinic, the amount of course credit that students should receive for taking it, and the caseload per student; the grading system; the relationships between the students and the tribunals or other fora in which they will be practicing; how the clinic will deal with client needs during summer and other academic vacations; the clinic's relationships with non-clinical faculty; and systems for recruiting and selecting clinic students. [FN9]

***178** The second section pertains to systems for case handling. In it, I focus on decisions about how the teachers and students in a clinic will acquire knowledge of the doctrine and practice in the areas of law in which the clinic will work; what methods teachers will use for supervising students; whether students will work individually or collaboratively; why a clinic might need to generate its own practice and administrative manuals, and what such manuals might contain; and how to think about acquiring a specialized physical and virtual library. This section also discusses planning for a clinic's physical space, equipment, and support services; locating and using experts; generating forms; building systems through which the clinic will acquire institutional memory; developing a standardized filing system; establishing intake sources, guidelines, forms, and systems; building institutional relationships with judges and court administrators; developing systems for closing cases and for the inter-semester transfer of cases from some students to others, when necessary; and creating systems for referring cases and appeals that the law school clinic cannot handle.

In the third section, I turn to the classroom component of the clinic. I consider the use of early orientation sessions for new students, so that they can quickly start to handle cases. I share some thoughts about developing syllabi, class assignments, and lesson plans that make some use of simulation exercises and rely heavily on group discussions of students' actual cases.

In the conclusion I will state my view that working through questions like these before starting or reorganizing a clinic can help to save much wasted effort and to spare the clinic from strained relationships with students, clients, courts, and community groups. However, planning a clinic cannot be static. Like a plan for handling a case, a plan for starting a clinic must respond to experience and to changed circumstances. Therefore, two further devices that will prove useful for clinic supervisors are an arrangement for periodic evaluation of the clinic by the teachers and students (and perhaps by clients as well), and a structure that encourages annual alterations and evolution of the clinic's structure and design.

In most sections of the article and in the conclusion, I give examples from my experience at CALS. However, the particular outcomes that CALS chose with respect to each structural issue are not "right answers." [FN10] They indicate only the decisions that my colleagues and I ***179** made, applying the framework of this article to our educational goals and to the financial and other resources available to us. [FN11] I offer these examples to illustrate how we addressed the central clinic design issues in our effort to create an institution to meet our students' and clients' needs. The reader's objectives and resources will be different from those at CALS, but the issues of clinic design and the process of resolving those issues may be fairly similar.

I: BASIC STRUCTURAL ISSUES

Goals

I begin with goals, partly because rational planning generally begins with goals [FN12] and partly because, after teaching clinic students for 25 years to start any project by defining their goals, I find it nearly impossible to do anything else. Over the years, my CALS colleagues and I have identified more than a dozen plausible teaching goals for a law school clinic, and we try to do at least some work on all of them with each student. With one exception, [FN13] these goals do not seem to be inconsistent with each other, but of course the limited time available in a semester or even a year necessitates emphasis on some of the goals over others with any particular group of students.

Other clinic supervisors will have different priorities, and they may also have goals that do not appear on our list. In addition to teaching goals, all clinical teachers have some non-teaching goals that influence clinic design, such as leaving enough time in the week for non-clinical courses, scholarship, public service, and family life. [FN14]

***180** Responsibility. One possible goal is to teach students to accept and assume responsibility for matters of great importance to real clients. Emphasizing student responsibility need not be a goal of every clinic; for example, some clinics may place greater weight on teaching research and writing skills, leaving relatively more decision-making to the teachers. As noted below, [FN15] it is important for clinical teachers to decide consciously how significant this goal is, because decisions about supervisory methodology will be affected by this question. At CALS, this goal is primary. While representing a client, students must struggle with questions such as which decisions to make themselves and which to leave to the client; how closely to keep a client informed; what the student should do if the client seems not to be revealing the whole truth; how to advise a client when every possible course of action involves some degree of risk; and how to balance the demands of clients' cases against all the other demands on the student's time. We have found that the more responsibility we give to students, the more apt they are to perform at a level worthy of that responsibility. [FN16]

Doctrine and institutions. A second goal of many clinics is to teach students about a new area of law. Some clinics are general practice civil or criminal clinics, but many clinics specialize in one or two areas of substantive law and, among other goals, hope to familiarize students with the doctrines, institutions, procedures, conflicts, folkways, and ethical problems unique to that area.

Service. A third goal of nearly all clinics is to provide free service to people in need. Pursuing this goal in certain ways may conflict with other important goals. For example, a clinic in which students worked on appeals in capital cases or on civil rights class actions might serve needs that seem most compelling or affect the largest numbers of people, but because so much is at stake, students might not be able to take as much responsibility for those cases as they could in some other types of cases. [FN17]

Problem-solving. Most clinics also want to try to improve students' problem-solving abilities, a fourth possible goal. How much the clinic emphasizes this goal (as opposed, for example, to the goal of ***181** serving as much community need as possible) will affect structural decisions such as the caseload per student. At CALS, we have always chosen to make the students' case load very low so that they could examine with great care every one of their decisions and actions. [FN18] We have thought that by taking an hour to make a decision that a busy practicing attorney would make in a minute, students not only make better decisions but also learn a decision- making process that can later be applied to more complex problems. Of course, in any particular year and for any particular subject matter of clinic practice, even the idea of a "low" case load has to be translated in practice into a precise number, a problem of no small difficulty. [FN19]

Clinic supervisors are more likely to adopt as a goal the enhancement of problem-solving skills if they have a model of good decision-making. Since attorneys differ among themselves about the relative roles of deliberation and intuition in good legal practice (particularly trial practice), not all clinicians may emphasize this skill. But CALS does try to offer students a model of planning and decision-making, and it encourages students to experiment with that model, though some of them may eventually reject it. We suggest to them the familiar cognitive model that emphasizes deliberate planning rather than working from hunches; identification of all possible options (including less conventional ones); assessment of the relative advantages and risks of each; identification of what further research can be done to reduce the risks; appreciation of the effects on the decision-making process of time pressure, interpersonal factors, and emotions; and constant re-evaluation of decisions as facts change. [FN20]

Collaboration. A fifth possible goal is to teach collaboration. Most law school work is done individually and usually competitively, but real legal work is usually done cooperatively in small groups (e.g., three or four lawyers working together on a case, or a small task force) within larger organizations (e.g., a law firm, a corporation, or an agency). The reason for this constant collaboration is that joint effort usually produces better results (albeit with the expenditure of more time) than individual work. Learning to work with a partner and with the other members of a larger work group is a critical skill, yet it is one that is not usually taught in law schools, except through extracurricular settings such as journals and through clinics that choose to emphasize cooperative work. This, too, is not a necessary goal of a clinic. Some clinic supervisors prefer to emphasize other skills and might find collaboration a distraction. But at CALS and its ***182** Columbia University precursor, [FN21] learning by working together has always been on the

agenda.

Cross-cultural awareness. Many clinicians are interested in helping law students to learn by interacting closely with people from other cultures, because although most law schools teach abstractly about diversity, only small numbers of law students live in abject poverty or come to law school from other countries. Clinic supervisors who make inter-cultural experience one of their goals tend to make structural decisions to facilitate it. For example, they might decide that the clinic will represent only poor people, or they might encourage students to meet clients in the clients' homes rather than at the law school.

The role of emotions. A seventh possible goal involves the emotional aspects of being a lawyer, although this is a side of practice that not all clinicians want to address as part of a law school course. The transition from the role of student to the role of lawyer is a period of rapid emotional as well as intellectual change. Most law school courses do not give explicit attention to the emotional aspects of becoming a lawyer. But practicing law with real clients and before real judges often generates very strong feelings, and a clinic can help students to become more aware of those feelings and better able to make feelings work for them rather than prevent them from achieving their work goals. For example, anxiety about confronting an older, more experienced adverse attorney may prevent a law student from discussing a case with that attorney before trial. But when a student realizes that anxiety has distorted strategic decision-making, the student can address the anxiety directly, better serving the client's immediate needs and the student's long-term development as an advocate. In CALS we have long explored the entire spectrum of emotions that lawyers inevitably experience while working on cases, including anger, competitiveness, frustration, and elation.

Coping with facts. The tendency in most law school courses to take facts as given and study only law and policy suggests an eighth possible goal for clinics, because in clinical practice it quickly becomes clear that developing a legal theory is only one step, and usually not the most important one. Most litigators spend relatively little time developing theory, and far more time discovering facts and then figuring out how to turn those facts into admissible evidence. One objective of CALS is to help students understand the practical relationship between these three concepts; working on cases inevitably requires the appropriate linkages to be made. Furthermore, cases involve not ***183** only conflicting versions of complicated events, but often the perceptions of experts who speak in the specialized jargon of another discipline (e.g., history or psychology or medicine) which must be mastered to present a case properly. Learning to cope with complexity--including learning to translate the language of specialists to laypersons--is one of the things many students learn best in clinics.

Values. A ninth objective, for many clinics, is to create opportunities for students to think about their own social values. In the United States, lawyers have a great deal of power to affect not only individual clients, but also society as a whole. Yet many lawyers do not realize how much power they have to achieve their vision of a just society, and others have not allowed themselves the luxury of asking what kind of a society they would like to help produce.

Some clinicians not only ask their students to think about social values but also encourage their students to consider a broader range of professional choices than they may have thought about before enrolling in the clinic. Coming to clinical teaching from legal services or public defender work or some other type of public interest practice, they desire to expose some of their students, who have never imagined anything but corporate law careers, to the possibility of spending part or all of their post-graduate years representing poor people or other under-represented groups or communities. Most clinics represent primarily or exclusively indigent people, and clinics are places where law students sometimes meet poor people for the first time in their lives. These encounters cause some students to appreciate how much privilege they enjoy. Some clinicians urge students to think very hard about class differences and about whether the students' relative wealth and education imposes on them an obligation for public service, and for continuing reform of the laws and the legal profession itself, after the clinic experience ends. [FN22] Also, clinical teachers, who often come to know their students well, can encourage them to think deeply about what they want to accomplish after graduation, rather than drifting into traditional career paths for lack of anything better to do. [FN23]

***184** A decision to work on values has structural implications. For example, a clinic that will focus on helping students to think about their future roles in social life must create some classroom time for it, and the clinic must strive for an atmosphere so open that students will feel free to talk about and then begin to make conscious choices about the settings in which they will later work. The clinic might also teach techniques (which can be analogized from advocacy on behalf of clients) for asserting authority in the students' future work settings (e.g. by organizing fellow law firm associates to insist that pro bono work be credited as billable hours).

Ethics. Early in the development of law school clinics, it became clear that students' cases often presented challenging ethical issues, and that clinicians could encourage students to struggle with those issues while working on cases. [FN24] Exploring ethical dilemmas before they are resolved, and while students and teachers must make agonizing decisions and then live with the consequences, makes this aspect of clinic work lively. Students' ethical struggles in the clinic can also enrich their subsequent classroom courses in professional responsibility.

Creativity. An eleventh possible goal is to enhance students' creativity. One of the hallmarks of an effective lawyer is that he or she can (1) recognize those occasions when doing a task by the book is not likely to achieve satisfactory results, (2) figure out a creative alternative, and (3) find the courage to deviate from the accepted norm of practice. A clinic can encourage professional creativity, and clinic students are sometimes startled by how successful they can be by allowing themselves to be imaginative. For example, a student in our clinic, seeking to distinguish himself from the teeming throng in a law firm interview for post-graduate employment, succeeded by handing ***185** the interviewer a written agenda of what he wanted to talk about. Clinics use many techniques to encourage creativity, including discussions of alternative ways of working, consideration of emotional factors that inhibit creativity, and the use of acting and role-playing. Indeed, even after a generation in which they have become part of the landscape of American legal education, clinics themselves are typically among the most creative institutions within their respective law schools.

Authority. Some clinics might set as an objective another amorphous but important interpersonal skill: teaching students to exercise authority. If the clinic supervisors so choose, the clinic can enable students rather than teachers to make and execute virtually all the case-related decisions, and even to make certain educational decisions such as what subjects will be the primary issues for supervisory meetings and what kind of feedback they want from teachers at various stages of the cases. After all, what distinguishes clinics from classroom instruction is that in clinics, students must take actions, and learning about decision-making under the weight of responsibility can be an important part of the experience.

Learning to learn. Another goal, one that acknowledges the limitations of any kind of educational experience, including clinics, is to help students to study their own learning processes so that they can continue to use the insights they have gained long after the brief clinical experience has ended. For example, if a student discovers that he or she learns well by brainstorming with a partner, or by arguing with an authority figure, or by role-playing an upcoming event on videotape, the student gains an asset that can be used repeatedly in new settings.

Traditional skills. A final goal, listed last here because it is so obvious, and so widely shared by clinics, is to give students experience, guidance, and detailed personal feedback as they execute such standard legal activities as interviewing, case planning, investigating facts, counseling, legal writing, witness examination, and oral argument. This is the goal that non-clinical faculty most often attribute to clinics, sometimes not realizing how many more subtle skills clinics can teach along with traditional skills.

Students' goals. In addition to institutional teaching goals like these, and any personal goals of the instructors, clinics will inevitably also work on goals that the students identify before or during the clinical experience. Many of those goals will be similar to the goals listed above (such as client service or the development of traditional or non-traditional skills). But some may be surprising; for example, a student may choose a clinic because taking the course will apparently ***186** help him or her to become more (or less) serious about the law, to become less defensive in response to criticism, or to become more (or less) assertive when dealing with colleagues or adversaries.

Staff

A clinic's goals are in fact determined as much by resources as by the instructors' predilections or philosophies, and probably no resource is as critical as the teaching and support staff. Clinics can be taught by a single instructor, responsible for supervising ten or more students, but many of the goals listed above are probably beyond the reach of an instructor burdened by too many students or cases, and even instruction in basic skills may become problematic when a teacher is responsible for supervising as many as ten students. Of course, in some law schools the teaching resources available to a clinic may simply be dictated by the dean or by a faculty committee, but in most law schools, as in most bureaucracies, the people on the front lines usually have at least a voice and often considerable bargaining

power in determining resource allocations that most particularly affect them, at least over any long period of time.

Accordingly, at the moment of creating a clinic (when bargaining power may be higher than usual) and after several years (during which good relationships with faculty members and deans may enhance bargaining power) the clinic's instructor or instructors should consider how many teachers the clinic should have. My own view, which has not changed over the decades, is that a clinic should have at least two instructors, because clinical teaching involves so many novel teaching problems, and is so stressful, that a clinical teacher needs at least one colleague with whom to share problems on virtually a daily basis. [FN25] The need for collegiality could be satisfied by having two or more professors co-direct the clinic, but it can also be met in various other ways, such as having several different clinics in the same law school, each with its own teacher, clustered in close physical proximity; having adjunct faculty members or graduate students co-teach with the clinic supervisors; or recruiting non-clinical teachers to participate with the faculty member in the supervision of a small number of cases. [FN26]

***187** How many teachers should a clinic have? This depends not only on the law school's willingness or ability to provide resources but also on the goals of the clinic. Any particular teacher can supervise a relatively larger number of students if he or she is mainly teaching traditional research and advocacy skills. To the extent that the clinic's ambitions include teaching more complex skills such as leadership and creativity, the instructor's relationship with each student will become more time-intensive and the clinic will experience a need to lower the student-teacher ratio. The Georgetown clinics ambitiously attempt to work with each student not merely on several but on most or all of the goals described above. The student/teacher ratios vary from clinic to clinic but the average is 7:1. [FN27]

Clinic supervisors and deans must also consider the skills and experience to be required of these teachers. When clinical education mushroomed in the United States during the early 1970s, most new clinical teachers were recruited from legal aid offices rather than from the ranks of existing faculty. The new teachers brought with them a wealth of knowledge about clinical practice and about the subject matters of the cases their students would handle, but like their non-clinical colleagues, most of them had to learn how to teach by trial and error. By contrast, today the United States has hundreds of clinical teachers with both knowledge of clinical practice and extensive teaching experience (many of whom obtained that experience as non-tenure-track clinical supervisors under the guidance of other clinical teachers who were faculty members). If a new clinic will include more than one teacher, it might consider seeking to recruit at least one person with clinical teaching experience to be part of the instructional staff, because the process of teaching litigation (or other skills) is rather different from handling cases. If it is not possible to recruit even one experienced clinical teacher, it might be possible to shorten the learning curve by sending one or more of the clinic's teachers to visit for one semester at another school's clinical program, or at least to attend the week-long clinical teacher training conference organized every other summer by the Association of American Law Schools.

A new clinic also should address, at a very early stage, the authority relationships it desires to encourage among the members of its ***188** teaching and support staff. In some clinical programs, these relationships may be largely dictated by the faculty or dean. For example, the faculty may hire two co-equal supervisors for a clinic, or it might simultaneously select an experienced senior faculty member to direct the clinic and a non-faculty teaching assistant with a one year contract to assist her. However, a faculty or dean might be wise to begin by selecting one clinic supervisor and giving that person considerable voice, and perhaps authority, in determining other clinic personnel. [FN28] In that case, the clinic supervisor would also want to consider various models for structuring the clinical law office in which that teacher will work.

Two possible competing models for relations among clinic staff are the hierarchical model and the collaborative model. In the former, a single clinic director has decision-making authority with respect to clinic policy, and other teachers (e.g., non-faculty supervisors) help students to learn from their cases but do not make managerial decisions. Depending on school policy and the preferences of the director, the director alone might teach the classroom component of the clinic. Thus only the clinic director would decide certain issues such as how to apportion the clinic's budget; how much money to request from the school in each new budget cycle; whom to hire as support staff; what types of cases to handle; what procedures to follow in recruiting students; what supervisory methodology to follow; what the clinic's classroom component should cover; and many of the other issues addressed in this article. At the opposite end of the spectrum is the collaborative model in which all such decisions could be made by the consensus of the clinic's staff; this collaborative process could include the clinic's support staff as well as its instructors. [FN29] Despite the prevalence of hierarchical organization in American social institutions, these options may be available within clinics to a surprising degree. Even if a law school imposes differential titles on the clinic's teachers, and even

if it expects that a hierarchical organization will flow from the title differentiation, most law school deans will not prohibit clinic "directors" from sharing their authority with others or reaching decisions collaboratively.

Of course a clinic can be established between these polar models. For example, a person denominated as a clinic director could reserve ***189** to herself the classroom teaching and budgetary decisions (or a law school could insist that the director assume these or other particular functions) while all other clinic administration is done collaboratively.

Many new clinic directors may be drawn instinctively toward a relatively hierarchical model because it is so familiar and because of fear of losing control of a new enterprise. Nevertheless, collaborative clinic management has much to recommend it. Collegial consideration of most problems may result in superior (if more time-consuming) decision-making, because new voices often add new perspectives to problems. All of the teachers may be more satisfied carrying out policies that they had an opportunity to help formulate. Engaging less senior teachers in clinic administration and classroom teaching advances their professional development. And because law students experience hierarchy in most bureaucratic institutions, particularly law firms and government agencies in which they have term-time and summer jobs, enabling them to observe a smoothly functioning collaborative institution may provide them with an alternative model to consider as they gradually assume leadership roles and the authority to structure new institutions themselves.

When my colleagues and I began to redesign our clinic in the 1990s, we made many changes. But we did not spend much time on the issues of how many teachers to employ, what their formal titles should be, or how hierarchical a decision-making process we should have. The first two issues were largely beyond our control, and we were fully satisfied with the management process we had used for nearly fifteen years. When Georgetown asked me to join its faculty in 1981, I had requested the opportunity to direct one of its twelve clinics, and I had asked that I not be the sole faculty member responsible for the clinic. At that time, the Law Center assigned me to run an existing administrative law clinic whose previous supervisor had just decided to move to another city. It also hired another teacher to work with me. [FN30] (My colleagues and I later converted this program to a clinic for civil and administrative cases and renamed it the Center for Applied Legal Studies). The administrative law clinic already had assigned to it positions for an office manager and two graduate Fellows. [FN31] I certainly didn't quarrel with having additional staff. Over the years, we did not ask for additional teachers (and given the student/teacher ratio, we probably would not have received them if we had asked), though during one bad budget crunch in the mid 1980s, ***190** my colleagues and I successfully resisted a proposal to delete one of the Fellows' positions from the budget.

>From the beginning, we have used a process of decision-making and administration that comes very close to the non-hierarchical model I have described. Formally, the clinic consists of two faculty members, two two-year Fellows, and an office manager. In practice, the distinctions among them are virtually obliterated for clinic management, and the distinctions between faculty and Fellows is virtually non-existent for clinical supervision and classroom teaching. [FN32] For example, all five members of what we call the "management team" have equal roles in the annual selection of candidates to interview for the incoming CALS Fellow. All of us participate in a group interview of each of those candidates, and we make the final selection by consensus. Similarly, all of us (including the incoming Fellow) select the clinic students. [FN33] Each week, all of us [FN34] hold two "management team meetings" to make management decisions such as case intake determinations, choices affecting reading or writing assignments, responses to requests from courts or community groups, budget decisions, and many other routine matters. About half of these meetings involve sharing problems that we are having with regard to the supervision of particular students, and those meetings are held behind closed doors to preserve student privacy. The other half are open to observation by our students so that they may, if they wish, watch (or if they wish, contribute to) a collaborative management activity. Before a semester starts, the group holds about a dozen half-day "semester planning meetings" to make major decisions about the syllabus, case intake criteria, student case load, the use of class time, divisions of responsibility for developing new classroom exercises, the development of new supervisory norms, office routines or forms, and the like. Similarly, at the end of each semester, we hold a half-day or whole day retreat to review the entire semester and think about long term changes we might want to make. The decision to convert ourselves into an asylum law clinic, the move that inspired this article, emerged from one such retreat.

***191** Areas of clinic practice

One of the most important decisions that a law school or clinical program must make is whether a particular clinic

should specialize in one or two areas of law and, if so, which area or areas to adopt. [FN35] Both the educational goals of the clinic and extrinsic constraints affect this decision.

A clinic's educational goals could point it in either direction with respect to the question of whether to specialize at all. For example, a dean or faculty, or the clinic supervisors, could want to expose students to as many areas of law as possible, or give students the experience of having constantly to deal with new areas. Operating a general service law office can help to replicate for students what new lawyers deal with in the first year of a legal services practice. Teachers might also accept many kinds of cases to help students draw connections, recognize common strands, or make distinctions among several types of legal practice. [FN36]

Alternatively, teachers might choose depth over breadth. They might choose to specialize because of a desire to enable students to learn one or two areas of law or practice very well. Specialization also enables most teachers to offer better supervision, because they themselves don't have to spread their knowledge over several fields. Perhaps most important, specialization promotes clinic cohesion and educational sharing by enabling students to comment with some degree of expertise on each other's cases, and by making each student's case work potentially useful to every other student.

A significant extrinsic factor affecting the choice to specialize is the nature of the community in which a clinic is located. In a small city, for example, the paucity of cases of one or two particular types may preclude clinic specialization. Or community leaders may have a strong preference that a local law school offer services across the board rather than in a limited number of areas.

If a clinic is going to specialize, internal goals and external factors also influence the area or areas of specialization. To begin with, some modes of "public law" practice, such as class actions or injunctive suits on behalf of minorities, prisoners, or people claiming violations of constitutional rights, may better enable students to learn that lawyers ***192** can have a major impact on society. [FN37] They may also enable students to observe the legal system in its most complex form, and to learn how tenaciously litigation is fought when a lot is at stake. Criminal cases in federal courts of appeals, where students are sometimes permitted to argue, give students a chance to apply the full range of research and writing skills they have learned in other courses.

On the other hand, smaller cases of any type may better enable teachers to devolve case handling responsibility to students. Therefore, if teaching students to assume responsibility for clients is a principal goal of the clinic, it may be best to choose cases in which teachers will feel less need to intervene in student decision-making or to take over the writing or argument. [FN38] In addition, cases in which the interests of large numbers of people are at stake tend to last longer than those affecting single individuals. Therefore, to the extent that the stewards of a clinic want students to learn about a legal process by seeing a case through from beginning to end (rather than, for example, handling part of the discovery in a multi- year case), smaller cases seem better suited to the goal. Also, if a student is able to see a winning case through to its end, the opportunity to celebrate that success with a client reinforces all of the educational lessons of the clinical experience. [FN39]

After resolving issues involving the magnitude of desired cases, a clinic that decides to specialize must focus on particular subject areas of law. The instructors may have the goal of teaching a particular subject matter (such as social welfare law, housing law, or criminal procedure) by using clinical methodology, or the teachers may have a background in a particular subject area that they want to draw on in clinical teaching. However, other teaching goals, and other extrinsic factors, may also influence the choice of case types.

To use an obvious example, if the clinic instructors want to teach negotiation, or witness presentation, it is important to select cases that are capable of settlement, or in which more than a few minutes of testimony is routinely permitted. This principle applies, however, to the more subtle teaching goals as well. If those goals include enhancing ***193** creativity, some categories of cases may be more suitable than others; for example, some fora are more flexible than others in permitting advocates to use demonstrative evidence, videotapes, or other unusual evidentiary material. Similarly, clinics that want to teach complex problem-solving may prefer cases that often involve three or four parties. [FN40]

Extrinsic factors affecting this decision will again include otherwise unmet community needs. But they may also include any clinic funding source that requires the handling of certain types of cases; the rules of local tribunals, which

may permit more extensive student participation in certain practice areas; student interest; coordination with the school's non-clinical curriculum; and many other local factors. [FN41]

In the early 1980s and again recently when it desired to alter its focus, CALS went through the careful process of evaluating its areas of practice in the light of its teaching goals and our local external circumstances. A strikingly important external circumstance was that the law school mandated that students would take our clinic for only one semester, not a full year. We never challenged this decision, because although it limited what we might accomplish with our students, it represented a reasonable choice on the part of the law center's administration to accommodate in clinics as many students as possible. The Law Center does have a few year-long clinics, [FN42] and many one-semester clinics, and even though more than 280 students enroll in these clinics each year, about 50 to 75 students graduate each year who wanted to take a clinic but were unable to do so. We respect the dean's preference to serve as many students as possible, even at a cost of offering a somewhat less intensive experience to each student.

***194** Our educational goals, however, included devolving as much responsibility to students as possible, and having the students handle cases from beginning to end, allowing them to experience, at the end of a case, the results of their decision-making and other work. This limited the areas of practice in which we could work, because very few types of cases can move, in just three and a half months, from client intake to final decision.

Fortunately, some types of cases do move that quickly. Also, cases in a few other categories require only the most minimal client intake more than three and a half months before decision; that is, all that may be needed earlier is a pro forma intake without an extensive interview, if the tribunal will at that point set and hold a calendar slot for the case during the last month of the semester. [FN43] In the early 1980s the areas of possible practice included eviction cases, Social Security disability cases, small claims cases, and unemployment insurance claims. Our other educational goals could be served by work in any of these areas. The law students seemed to care much more about learning various skills than about a particular area of law. And the Washington community needed more pro bono resources in all of these areas. We chose Social Security disability cases because the clinic we'd inherited had experience and some community and institutional relationships in this field, and consumer protection small claims cases because I had some experience there, although not in the courts of Washington, D.C. Working on either of these cases alone might have presented some educational challenges, but every student worked on at least one case of each type. Therefore, although the Social Security cases were very fact specific and presented only occasional opportunities for creative legal research, the consumer protection cases offered endless legal complexity. And, while the consumer cases only rarely brought the students into contact with experts and required them to learn the vocabulary of another profession, virtually all of the Social Security cases made it necessary for them to find and work with medical experts.

After fifteen years of working on these two areas, three things changed. First, Professor Koplow and I wanted to develop expertise in some new area. Second, a few new areas of potential one-semester practice (in addition to evictions and unemployment compensation) had emerged. These included domestic violence cases; [FN44] asylum cases; ***195** and federal administrative small claims against foreign assets frozen in the United States. Third, and most important, students were no longer neutral about what they wanted to learn. At Georgetown, many students were interested in international affairs, and hundreds of them had signed a petition urging the school to start a human rights clinic.

I spent the summer of 1994 making a careful survey of clinical practice opportunities in human rights. I interviewed experts in many human rights organizations, and I found that although human rights lawyers spend much of their time writing reports about various countries or working on treaties or legislation, there were several types of recognizable "proceedings" in this field. They included complaints to the United Nations Commission on Human Rights; participation in war crimes tribunals; formal cases in regional human rights courts in Europe and Central America; U.S. federal court cases under the Alien Tort Claims Act and the Torture Victims Protection Act; proceedings against the United States or Latin American governments in the Inter-American Commission; and asylum cases, in which lawyers represent refugees from religious or political persecution who are trying to avoid being deported by the United States Immigration and Naturalization Service (INS). Of these possibilities, however, only asylum cases could meet our need to enable students to handle complete cases within a semester.

Even this possibility was a very new development. We had considered handling asylum cases in the early 1980s, but at that time, those cases lingered on the agency's calendar for years, and it was in most clients' interest to delay cases as long as possible, because they were allowed to remain and work in the United States until their cases were resolved

against them. We had rejected the idea of putting our students into a situation where they could best serve their clients by delaying, or where their own needs for education (e.g., having a hearing) might conflict with their clients' best interests.

But in the 1990s, INS beefed up its adjudication staff and in 1994, it promulgated a new regulation that put all new asylum cases on a "fast track." [FN45] Starting in January, 1995, INS asylum officers began holding oral interviews with asylum applicants and their representatives approximately 45 days after an application was filed. If the officer did not grant the application, an immigration judge would hold a deportation hearing no later than four months thereafter, at which asylum could be a defense to deportation. The new regulation provided ***196** us with not one but two new one-semester opportunities for clinical work. Students might interview clients, develop supporting evidence, file the application materials (often 150 pages or more), and assist the client at an interview with an asylum officer. Or students might start to work with previously pro se clients who had been referred to judges for deportation hearings, file a defensive pleading with an improved asylum claim, develop corroborating documentary evidence including expert witnesses, write a brief, and represent the client at a 2-4 hour hearing. Delay was no longer a viable strategy because the Immigration and Naturalization Service no longer tolerated it, and the agency had given applicants an incentive to move promptly through the process by granting work permits only to those who won asylum, rather than those who applied for it.

The more we looked at asylum cases, the more they seemed ideal for clinical practice. The agency had written a student practice rule permitting student representation. [FN46] An office with asylum interviewers and two regional immigration courts (Baltimore and Arlington, VA) were located nearby. I observed a deportation hearing and was satisfied that the judge was intelligent and of good temperament, and that hearings were unhurried. Each case involved high stakes, because a client could be deported to torture and death in her own country, but the universe of relevant facts and law could easily be mastered by a student within the clinic's semester. An extensive body of case law and a constant supply of novel issues (such as persecution of homosexuals and the treatment in asylum law of female genital mutilation) would give the students considerable legal texture with which to work. Clients came from different countries and cultures, presenting students with the challenges of cross- cultural empathy and communication. Factual research would include not only multiple interviews with each client, [FN47] but also analyses of constantly changing governmental and non-governmental reports on human rights conditions; contacts with local doctors and mental health experts who had examined or could examine our clients; contacts by telephone with overseas witnesses; and high- tech research on Lexis and the World Wide Web. In deportation hearings, the U.S. government always assigned a lawyer to oppose asylum, so the students would work against ***197** a well-trained adversary. On the other hand, the students would spend more time on each case than the government lawyer, which would tend to level the playing field. The government lawyers had authority to consent to asylum in strong cases, and to stipulate with respect to factual and evidentiary issues, so opportunities for negotiation were present. The judges were open to hearing expert testimony and even had speakerphones in their court rooms for the receipt of telephonic testimony from occurrence or expert witnesses in other states or countries. [FN48] Finally, the immigration judges usually announced their decision and delivered an extensive oral opinion from the bench, minutes after the hearing ended. Thus students would get instant feedback (and, we hoped, reason for satisfaction) immediately following what would be, for most of them, the first hearing of their professional lives. As we learned about these aspects of the practice, we knew that we had a good fit between the students' interests and the learning that was possible through asylum cases. [FN49] Of course we still had to make sure of other essential details, such as making sure that enough clients would be available to fill our docket [FN50] and finding out whether the immigration court would accommodate our academic calendar.

Duration, credit, and case load

As I have just described, our clinic's duration was a given, and we needed to select an area of practice to fit it. However, I do not mean to skip over the fact that someone--be it a faculty, dean or the clinic supervisors--must determine the duration of a clinic. Indeed, when Professor Lisa Lerman [FN51] and I spent a visiting year at West Virginia University in 1984-85 to help establish a clinical program there, Dean Carl Selinger asked us for a full set of clinic design recommendations, and with his concurrence we transposed CALS's one-semester consumer ***198** and social security practice onto a year-long clinic framework there. The result, predictably, was very satisfying to us and to our students, and entirely unsatisfactory to those on our waiting list. We served fewer students over the course of the year than CALS would have served, but each student handled more than one case of each type, and students could

learn from experience (including mistakes) and observe their own improvement from one semester to the next. The tradeoff between teaching a larger number of students and enabling a smaller number of students to have a deeper experience is a real one, worthy of serious consideration in the light of conditions (including the level of student demand) at any particular law school. [FN52]

How much academic credit should a clinic student receive over the course of the semester or year? There is no objectively correct answer to this question. In American law schools, and even at my own law school, credits for clinical offerings vary enormously. Some clinics offer only a small fraction of a semester's credit, while others provide a student's full academic credit for an entire semester, or half credit for an entire year. Often, a clinic's credits are fairly arbitrary, reflecting outdated history, suspicion about the value of clinics from teachers who have never taught in them, or political bargaining within a faculty. But where an attempt is made to bring rational judgments to the credit issue, two different perspectives come into play. From the point of view of a law school administrator or faculty curriculum committee, the credit question involves the trade-off between the learning value of the clinical offering and the learning value of classroom courses and seminars. The proper balance is very hard to judge, because the people doing the judging have never been students in the clinic or in the full range of alternative courses that are competing for credit. The second perspective is that of the clinician, who, somewhat like a classroom teacher recommending a particular number of credits for a traditional course, is likely to think of the proper credit in terms of the number of hours per week necessary to perform well, which in a clinic means the time required for a student to learn the relevant skills and do an excellent job of representing clients. The difference between the clinician and the contracts teacher who wants, say, five credits rather than four for his course, is that unless students are freed up from other courses for a certain minimum numbers of hours per week (the number depends on the type of case and the number of ***199** cases each student is handling), clients cannot competently be served. Accordingly, clinicians are more likely than curriculum committees to think that a substantial number of academic credits should be assigned, and that any reduction will not merely make the course less rich, but will put clients in jeopardy. [FN53]

Credit allocation and student case loads are strongly linked. If clinicians have some control over the credit allocation, they might think first about the number of cases each student (or student team) should ideally handle. Taking account also of the classroom component of the clinic, the clinician could then factor that caseload into a recommendation for a credit allocation. However, to the extent that credit allocation is outside of the clinicians' control, the determination of a proper caseload per student (or per student team) will be dictated to a considerable degree by the student work hours made available by the credit limitation.

In either event, a clinical teacher must decide on a proper case load. Clinics are highly motivating, and (at least in my experience) students generally don't mind putting somewhat more time per credit into clinical work than into classroom courses. [FN54] Nevertheless, there are some real limits on the amount of work that a clinic offering a finite number of credits can expect from students. As a rule of thumb, a clinic providing a student with full credit for a semester might expect about 40 to 50 hours per week of work, and the case load should be set accordingly. A clinic providing half credit for a semester might reasonably expect only half this level of time commitment, and half the associated case load.

At CALS, we goofed. Before I joined the faculty, it had allocated ***200** six credits for CALS work, and it was always clear that increasing the credit allocation would be a horrendously difficult undertaking, involving reams of written justifications and approval by two committees and the full faculty. When we began to do Social Security and consumer protection work, we asked each team of two students to handle three cases during the semester. We had underestimated the amount of work this would involve, or overestimated students' eagerness to spend time. In any event, when students found themselves spending nearly 40 hours per week to handle the three cases competently, they rebelled angrily, and in subsequent semesters we assigned only two cases per team.

When we switched to asylum work, we goofed again. We tried hard to anticipate, based on how experienced practitioners handled asylum cases, how much time students would need, and we guessed that we could reasonably assign each pair of students one affirmative asylum case (culminating in an interview with an asylum officer) and one defensive case leading to a full trial before an Immigration Judge. This seemed ideal educationally, because in the former type of case the students would begin with a clean slate, taking a client who had never before told her story to anyone and turning it into a legal case, while in the latter type of proceeding, a student would handle a full adversary proceeding. In our first semester, however, we found our students loving the work but groaning under the load. After receiving several complaints, we surveyed the students on an anonymous basis and found that for half a semester's

credit, the average student was spending 52 hours a week on our course, and some students were spending 70 hours a week, at times spending the night in the clinic workroom. Clearly, students needed more time to handle these cases, in which life itself was at stake, than they had spent on disability and consumer cases. And they needed much more time to handle the cases than experienced practitioners did.

The following semester, with some regret, we assigned each pair of students only a deportation hearing. The exhaustion and complaining ended, and students were much happier in their work. But we also knew that neither the practice component nor the classroom component were as rich with half as many active cases in the clinic, and we worried that if any case suddenly disappeared from the docket (e.g., if a client died or suddenly left the country, or if the government conceded the case), that client's student representatives would suddenly be left without any clinic work to do. That scenario hasn't yet come to pass, but because it will surely happen sooner or later, we are not at ease about the resolution we have reached.

***201** A grading system

Grading is an immense problem for clinics. For many reasons, grading clinical students seems impossible. [FN55]

First, it seems absurd to judge students on how well they exercise skills that they are learning for the first time and demonstrate only once during a course. The ordinary (non-clinical) course in law school (or college) involves two sequential components: first learning, and then testing. The examination at the end of the course tests learning that has preceded it. But students in a clinic have neither an examination nor a final paper, and the work they do (such as writing one brief) really constitutes the learning phase, not the testing phase. Of course there are clinics where students do the same work repetitively; e.g., where they write five briefs in successive small cases. It might then be fair to judge them on how well they did the last two of them. But in many clinics, every day brings rather new challenges, and while students learn from all of it, they never have a fair chance to master a skill before being graded on their performance.

Second, clinicians have a special problem of grading because there is little consensus about the variables on which grades should be based. Indeed, clinicians teach that most serious problems lack a single "correct" answer--and that excellent lawyers often disagree among themselves not only about how to structure an opening argument or how to examine a difficult witness but more generally about how the strategy of any particular case should be approached. It might be possible to grade "effort" or "improvement" instead of second- guessing judgment. But effort is sometimes very difficult for teachers to measure, because many students work at home or late into the night, and such a system seems unfair to those students who naturally perform at a very high level with very little effort.

Third, even if it is fair to judge performance, it is very difficult to compare students to each other to produce a meaningful curve, because different cases demand very different kinds of work. One student may spend most of a semester counseling a client who reasonably decides, as a result, not to pursue a case. Another may spend weeks ***202** writing a brief on a particularly difficult, cutting-edge issue. Still another pair may follow a tangent that is particularly important to the client (e.g., obtaining public benefits) but that is not what the clinic usually does.

Clinics, like ours, that pair students to teach collaboration skills face a fourth grading problem. It is usually impossible for the teacher to know that any aspect of the work, such as a brief or a good relationship with a client, is attributable to a particular student as opposed to the partnership.

A fifth problem is that grading often interferes with clinical learning. In clinics an important part of the education takes place in very personal tutorials, which are most successful when students are able to be completely open with the teachers--when they can share and seek advice about all of their errors, doubts and problems. But when teachers are grading them in a heavily credited course, they have an understandable tendency to conceal otherwise undetectable blunders or self-doubts. In addition, some clinicians encourage personal experimentation with various styles of legal practice. Such experimentation involves risk-taking (e.g., for a relatively introverted student to experiment with being assertive at a hearing when a more taciturn posture might be equally effective), but risk-taking is less likely when the student believes that a poorer grade might result from an unsuccessful experiment.

Clinics hoping to teach students about the affective element of the practice of law have still another problem with

grading. A nonjudgmental environment is most likely to encourage students to probe their values, goals, motivations and feelings. It is desirable, pedagogically, for a clinic with this goal to become a "safe" place in which fears and other emotions--even anger at a supervisor, which is far from unknown in post-graduate legal practice--can be expressed, analyzed, and dealt with, free from many of the customary inhibitions. Grading interferes profoundly with the clinic's ability to create a nonjudgmental atmosphere.

These drawbacks might suggest that clinics should use a pass/fail approach rather than letter, adjectival or number grades. Nevertheless, there are countervailing reasons why deans, faculties and clinicians might apply, in clinics, the same grading system that is used in other courses. Pass/fail grading is often not popular with students, and it might even result in reduced applications to clinical courses. In favor of ordinary grading, many students argue that they work harder in a clinic than in other courses, and they shouldn't be denied many credit hours of a grade reflecting that work. Also, a move away from letter grading, even if initiated by clinicians, might hurt a school's ***203** clinic by causing it to be perceived by students as a course disfavored by the faculty--as insufficiently intellectual and serious to warrant the award of letter grades.

In addition to a grading system, clinicians must devise a fair method for applying that system to individual students. Some clinic supervisors have developed lengthy forms on which to record many aspects of each student's performance in interviews, negotiations, hearings, classes, and other clinic events. Using such forms helps to remind teachers to assign grades based on the qualities they thought important, rather than relying on overall impressions of students' work, and it helps to guard against failures of memory, since the forms are completed throughout the semester rather than just before grades are assigned. Other supervisors believe that such extensive attention to grading, before the course is over, excessively conveys to students that they are in the clinic to be judged rather than taught, thereby interfering with their learning. Another issue arises in clinics that are taught collaboratively; should all of the teachers participate in grading, or should a grade be assigned only or primarily by the teacher who had the most supervisory contact with the student? That teacher has the most data with which to work, but assigning that teacher exclusive control over the student's grade may lead to competition among the clinic teachers to give their own supervisees the highest grades, particularly in schools that impose grading curves on their clinics.

The clinics at Georgetown, including CALS, award letter grades as in other courses, and the law school strongly recommends a particular grading curve. The curve is somewhat higher than in large courses and a bit higher than in seminars, however, with approximately half the clinic students receiving an "A" or "A-" each semester. Despite the difficulty that my colleagues and I have in awarding grades that we confidently believe are fair, virtually none of our students have asked us to request faculty permission to terminate letter grading in the clinic, and we have not done so. At CALS, we have developed and we publish to students a long list of skills on which grades are based, but we do not usually keep track of students' progress on grading forms as the semester unfolds. [FN56] At the end of the semester, the CALS faculty and Fellows meet to reach consensus on grades for the clinic students. These meetings are usually unpleasant, because most of our students will have been working very hard all semester, but because of the school's curve, half of them will have to receive the grade of B+ or ***204** lower. The office manager attends these meetings and sometimes comments on particular facets of student work (particularly their professional relationships with her, and aspects of student-client relationships that only she has observed), but unlike the clinic's teachers, she does not propose or contribute to the consensus on any letter grades.

Students and tribunals

Clinics also need some ground rules to regulate the relationship between their students and the tribunals in which they will practice. These ground rules will be determined by the student practice rules of the tribunal or tribunals in which the clinic will operate, [FN57] the complexity of the cases that the clinic will handle, and the educational goals of the clinic. In most jurisdictions in the United States, student practice rules are not a major constraint; they generally permit clinic students to undertake full representation of clients before trial and appellate courts, provided that the client understands that the representative is a law student, and that the student is supervised by a lawyer connected to the clinic. [FN58] In other countries, however, student practice rules may not yet have been promulgated, and only licensed lawyers may be permitted in judicial, and perhaps administrative, settings. In those countries, it may be necessary for clinics, as a first order of business, to petition the courts or legislatures to permit student practice, at least experimentally, for the purposes of education and community service (particularly for poor clients who cannot afford lawyers). [FN59]

***205** Some clinics, particularly those handling cases that can be mastered by students in a short time, take full advantage of the opportunities afforded by liberal student practice rules. Based on the goal of teaching students to shoulder responsibility and the theory that students will best learn to assume responsibility by doing work rather than watching others do it, they put students in charge as much as possible. Not only do the students work extensively with clients and witnesses outside of the presence of the teachers, but when matters come to a head in court, the students sign the papers, sit at counsel table, present the witnesses, and make the arguments. In some clinics (CALS among them), the teachers avoid sitting at the counsel table with the students unless a judge insists on it or the teachers believe that a particular student is not well enough prepared to serve the client independently. The premise behind this practice is that if students know (from the beginning of the course) that they will be on the line, and that it will be difficult if not impossible for their teachers even to pass them notes during the most important hour or two of their case handling, they will prepare more strenuously for court appearances, and they will look more effectively to their own resources, rather than whispering for help from supervisors when problems occur during a hearing. But even if court or agency rules permit the teacher merely to observe a hearing and be prepared to intervene in an emergency, taking such a distanced stance from litigation is not the only legitimate model of education or practice. [FN60]

Sometimes, a clinician will have decided on a model for the role students should assume in a tribunal, but the role will not be either clearly permitted or prohibited by the student practice rule, or the clinician may have some reason to think that although the rule literally permits the practice (e.g., a physical separation between the teacher and the student in court), one or more of the judges may not be comfortable with it. To avoid putting students in the awkward position of having an extraneous problem erupt when they arrive in court for a case, the teacher might consider trying to work out appropriate arrangements in advance, either through correspondence or meetings with the relevant judge or judges. For example, as my colleagues and I prepared to have our clinic handle immigration cases, we determined that to convey to our students their ultimate responsibility to clients, they alone should sign the court's formal entry of appearance ***206** form. The Immigration and Naturalization Service's student practice rule appeared to permit this procedure, and the federal administrative law judges of the Social Security administration had always permitted our students to sign papers without an instructor's counter-signature. But we knew that the instructor in another Washington, D.C., area immigration clinic always signed the appearance form himself. We weren't sure that all of the judges would be willing to depart from the practice to which they had grown accustomed, so we set up a meeting with most of them to explain our pedagogical ideas and ascertain their sentiments. It turned out that some of the judges were willing to permit the students to sign the papers by themselves, and others wanted us to co-sign. We have subsequently been able to tailor our procedures to their individual requirements.

Academic interruptions

Courts and agencies do business throughout the year. Law schools and their clinics, except for a few that operate during summer quarters, do not have students in attendance during a four-month summer break, or during a winter break that, including examination period, may last for a month. The disjunction between the judicial and academic calendars presents a major structural issue for clinic design.

Some clinical teachers do not perceive a problem here. They simply work all winter and all summer, either because they think that year-round practice is inevitable or because they enjoy the opportunity to litigate cases on their own when students are not present. But deans and clinic supervisors should recognize some issues and choices with respect to the academic breaks, particularly the summer.

The clinic's goals inform these choices. If serving as many clients as possible is a major goal of the clinic, it may be desirable to operate on a year-round basis, even if it were possible to suspend most clinic activities during the summer. On the other hand, if education of J.D. candidates is the principal mission of the clinic, and the clinic does not have a summer session, the educational mission cannot be accomplished while the students are gone. Then the clinic might seek ways to reduce if not eliminate the burden of handling cases during the summer. In approaching this question, clinicians should consider the personal alternatives to summer litigation, including the opportunity to write (usually a requirement for tenure and promotion, but often an impossibility during the hurly-burly of litigation) and to take vacations. [FN61]

***207** The most common alternatives to summer operations are to make the cases terminate, to make them

"hibernate," to find someone else to handle them, or to employ some combination of these methods. If the clinic has selected cases that generally are completed during the semester or year, so that most students have the opportunity to begin and end a case, the summer case load should be minimal. Of course, a few cases may not end when predicted. For example, if most final hearings are scheduled during the last month of the semester, [FN62] a small number of them might be continued into the winter break, the summer, or a subsequent semester because, at the last minute, opposing counsel or the judge is unavailable on the hearing date and the case could not be promptly restored to the calendar. Furthermore, even when cases "end" they may require such mopping-up as collection of damage awards or court-awarded counsel fees, filling out forms for ancillary relief, and filing notices of appeal.

I use the term "hibernation" to refer to suspending an otherwise active case until new students are available to work on it. Thus motions that the clinic might make can often be deferred from December to January, or even from May to September. Motions made by an adversary can often be continued by consent, even for months. If a hearing must be continued for weeks, it can sometimes be continued, instead, for months. Of course such delays may postpone justice for a client who is seeking judicial or administrative relief. Accordingly, a hibernation contingency must be anticipated well in advance, and it can only be put into effect with the consent of the client. In order to minimize the risk that a client will feel pressured into consenting, a clinic that may delay action or request postponements to suit the needs of the academic calendar should adopt a policy of making written and oral disclosures of its postponement practices, and their possible effects on clients' cases, before the lawyer-client relationship is established. [FN63]

Finding someone else to handle cases during vacations, particularly the summer break, isn't easy, but it may not be impossible, particularly if the issue is addressed when the clinic is first being created. ***208** It may be possible to build into the budget enough funds for an experienced lawyer to handle any work that cannot be dealt with through termination or hibernation, and to answer inquiries from clients that cannot be postponed until the clinic resumes. Such a person could be another clinical teacher, [FN64] a law school employee whose summer duties left some time available (e.g., an assistant dean), a non-faculty clinical supervisor, or an outside attorney. When Professor Lerman and I completed our clinical visit at West Virginia University's College of Law in the late spring of 1985, the law school paid a local practitioner a fixed fee to handle any summer work that our cases might entail. Of course our clients knew about this arrangement, and we left detailed files and instructions sufficient to manage this transition.

At CALS, we have built all of these devices into our structure. We are able to terminate completely more than 90% of our cases before the end of each semester. Most of the others hibernate. Some December or summer work remains. Much of that work is of an administrative nature (e.g., filing forms, rather than appearing in court), and we assign most of that work to a former clinic student whom we hire as a summer research assistant. Still, there remains some supervisory and occasional court-related work (including intake work at the end of the summer) that can only be done by a lawyer. The written "job description" of our Fellowship includes the responsibility, during the Fellow's second summer, of being on stand-by duty with respect to lingering cases, although in fact very little case-related work has been needed, and the Fellow has always been able to spend most of that summer working on the law review article that he or she must write for the LL. M. degree. The result has been that I spent a substantial part of one summer writing an appellate brief in a case that I particularly wanted to work on myself, but Professor Koplow and I have spent most summers in the same combination of scholarship, vacation time, and community service that our non-clinical colleagues undertake.

Relationships with non-clinical faculty

At many law schools, the relationship between clinicians and other faculty members has sometimes been less than collegial. Non-clinical faculty have occasionally believed that the education offered in clinics was less rigorous intellectually than in more traditional courses, or that clinicians were not real scholars. Clinicians have sometimes seen non-clinical faculty as people hermetically sealed in a ***209** world of theory, aloof from much of the suffering they train their students to alleviate. In the 1970s, some law schools treated their clinical minorities as second class citizens, prompting the American Bar Association, in the early 1980s, to promulgate a new accreditation standard specifying that schools should offer clinicians, at a minimum, long-term employment contracts, salary parity and roles in law school governance. [FN65] Even after the new standard entered into force, clinicians at some schools continued to feel that many non-clinical faculty members did not understand or respect their work.

In designing a clinic, deans and clinic supervisors might want to build in some devices that in the long run could help

to integrate clinicians with other faculty members. First, if it is feasible, the law school should go beyond the minimum requirements of the American Bar Association Standard and hire its clinical teachers on the same tenure track as other law teachers, as many schools have done. Second, it might be helpful to conceive of a clinical teacher, particularly a clinic supervisor, not as a full-time clinician, but rather as a teacher who happens to spend half to two-thirds of the time teaching with a clinical methodology. The clinician might also teach at least one classroom course each year. Third, faculty members who do not ordinarily teach clinically should be encouraged to teach in the clinic at least occasionally, either co-teaching with experienced clinicians or (particularly after a period of co-teaching) running the clinic themselves during a sabbatical or other leave for one of the regular clinic supervisors. Fourth, the law school should recognize that clinical teaching involves much more student contact time than other teaching, making it nearly impossible for clinicians to write for publication in the same semester that they are supervising cases. Accordingly, law schools should make special efforts to provide research leaves and writing grants for clinicians, so that they will be able to write books or publish in academic journals. All of these structural devices may help to avoid any apparent dichotomy between clinicians and other teachers. [FN66]

***210** Recruiting students

Any clinic needs a plan for recruiting students. The plan could be as simple as posting a sign-up sheet and holding a lottery if the clinic is oversubscribed. However, clinicians might want to consider a more elaborate plan to advertise the clinic widely and disclose to prospective students what they can expect, to select applicants according to criteria that the clinic establishes, and to respond efficiently to any changes in students' plans after they agree to take the clinic. In addition, clinicians must pay attention to timing. They often select students before registration opens for other courses, so that students can take clinic acceptance into account in making other choices about courses and part time jobs, and so that the clinic can accept clients knowing that students will be on board to represent them.

For most law school courses, the only advertising is a catalogue description of the course. Sometimes students are given the opportunity to "shop" for courses, adding or dropping them during the first week or two of the semester, but that system does not work well in a clinical setting, where an early commitment is necessary because the clinic must know in advance that it will have enough students to meet pre-existing commitments to clients. For clinics, more elaborate advertising may be warranted, both to recruit a large pool of potential applicants and to apprise those potential applicants about what to expect. The advertising could include posters and leaflets, but for maximum disclosure (e.g., of the types of cases and the hours of work that they typically involve), clinicians might want to consider holding a pre- registration meeting at which they and some of their current and former students describe the clinic in depth.

Clinicians vary considerably with respect to how much they want to know about their applicants and how they choose among them. Some clinics use a lottery system. Some select students based on short papers the applicants write about themselves and the reasons they want to take the clinic. Many clinics believe that they can learn from personal interviews whether a student has the maturity, commitment and creativity necessary for good clinic work, but interviewing is a time-consuming process for the instructors if the application pool is large. Some clinics require students to have grade-point averages above a minimum level, to protect the students from receiving poor grades in other courses under the increased work load that the clinic will impose, but beyond this minimum, few if any clinics use prior grades as a criterion.

Clinics and their law schools also need a policy to deal with students who change their minds about enrolling after being accepted for a clinic. Revocations of acceptance are unfair to students who make ***211** other commitments after being rejected. Also, if the clinic does not have a waiting list, or if all those on the waiting list make alternative commitments before being accepted, the consequences can be devastating to the clients that the clinic has accepted for representation in reliance on a particular number of students having registered. Therefore, a law school might want a published policy prohibiting students from revoking acceptance to a clinic, except for health emergencies, and imposing severe consequences on students who nevertheless do not enroll in a clinic which they had previously accepted.

At Georgetown, all twelve clinics begin the recruiting process in March, for enrollment the following August or January. Students are invited to a "town meeting" at which each clinic provides written and oral overviews of its goals and activities. The clinics have different methods and criteria for student selection. CALS holds an additional optional meeting at which instructors and students disclose more about the clinic. A week later, the CALS instructors

and office manager select students on the basis of brief essays the applicants write about why they want to take the clinic and what they can offer to other students who enroll. We also seek through our advertising and our selection process to create groups of students with very diverse backgrounds. Applicants to all of the Georgetown clinics are informed in advance that if they accept admission to a clinic, they may not revoke it after a certain date without the permission of the instructor, which will be given only for emergencies, and that failure to take the clinic after having accepted will result in a grade of "F." Needless to say, this disclosure has forestalled half-hearted acceptances.

II: CASE HANDLING SYSTEMS

The main business of a clinic is enabling students to learn by working on legal projects, usually cases, in the world beyond the law school. In addition to creating a sound institutional structure as described in Section I, a clinician must pay special attention to some very practical issues of case handling.

Teacher training

To begin with, a clinical teacher needs some expertise in the subject matter of the clinic, and particularly in the practice norms in the clinic's region. No clinician wants clients to suffer or students to be embarrassed because the supervisors as well as the student are utter novices in the clinic's area of practice. Sometimes, a clinician will have the necessary expertise from having practiced in the field of law, the local region, or both, before assuming responsibility for the clinic. But often, a clinician is new to both the area of law and the vicinity of ***212** the law school.

Reading helps. Conversations and interviews with experienced local practitioners help. But the premise of clinical education is that hands-on experience is the best way to learn, and this principle applies to teachers as well as to students. One type of experience is court or agency observation; the teacher can simply attend several proceedings of the type which his or her students will soon handle. A second option is a training course. Short courses in the practice of nearly every kind of law are offered frequently by local bar associations, non-profit legal aid and other advocacy organizations, and specialized training groups such as the National Institute of Trial Advocacy. Some of these courses offer registrants the opportunity to participate in simulated interviews or hearings, bringing the clinician a step closer to interactive learning.

Probably the best training, however, is for a clinician new to a field to handle one or two cases, alone or with a more experienced practitioner, before starting to supervise students in similar cases. Depending on the duration of the typical case, it may be possible to do this representation on a part time basis in the year or even during the summer before the clinic is first offered. Of course a person does not become an expert by handling a small number of cases, but the learning curve is steepest (as students find out) during the first case of any particular sort, and since many clinicians see their role as helping students to formulate questions, rather than providing definitive answers, direct experience with one or two cases may suffice. [FN67]

Before converting CALS to an asylum law clinic, my colleagues and I did most of these things. We observed deportation hearings, and we took the asylum law training course offered by the D.C. Bar and the Washington Lawyers' Committee for Civil Rights and Urban Affairs. For a year, we also attended monthly meetings that the local non-profit refugee organizations held with the Director of the nearby Asylum Office, which gave us a sense of current practice issues. None of the three of us who had been supervising cases in other fields had time to handle an asylum case of our own before beginning to supervise students in this area, but recognizing that this lack of experience could become a problem in a case raising an issue that we might not ***213** spot, we advertised that our next Fellowship would go to a lawyer with extensive immigration practice experience, and we were fortunate to be able to select Mary Brittingham, who had been practicing immigration law for thirteen years.

A supervisory method

There is more literature on supervisory methodology than on any of the other topics of this article, so I can avoid the temptation to belabor this issue. [FN68] Broadly speaking, all clinics have a supervisory method, by choice or by default, and these methods fall across a spectrum from relatively directive (that is, with the teacher providing detailed

guidance to students, or even doing some of the case-related activities) to relatively non- directive. Some proponents of more directive methods argue that some students need excellent models before they can act responsibly and that students may not learn very much by floundering around, even if eventually they do a good job. [FN69] Others assert that in a world of scarce service resources, the inefficiency involved in letting students find their own way is unethical. [FN70] Advocates ***214** of non-directive education believe that most students learn best by making their own decisions, even decisions about when to ask for help, and by doing virtually everything themselves. [FN71]

Before becoming an asylum clinic, CALS had long used a very non-directive methodology, described at length in an article published more than ten years ago. [FN72] Boiled down to its essence, our method was to require students to conform to a long list of procedural rules regulating their interactions with teachers (and requiring certain minimal acts with respect to cases), but within that framework to leave them free to make their own decisions about how much and what kinds of assistance to obtain from us, and to let them make the case-handling decisions, as long as their decisions were reasonable, even though if we were handling the cases ourselves, we might decide differently.

Pursuant to what we called the "CALS Case Team Method," [FN73] ***215** each pair of students and one or two of the instructors formed a case team. Each team had to meet at least once a week, but the students could request extra case team meetings when necessary. Before each meeting, the two students were required to reach at least tentative decisions on outstanding problems, discuss how they wanted to use the meeting time, and prepare an agenda for the meeting, but they did not have to submit the agenda in writing. Instructors could propose additions to the agenda, but unless clients were imminently threatened by student oversights, the instructors tried to allow the students' agendas to stand. [FN74] Casual conversations about case strategy were forbidden; all out-of-class student-teacher discussions had to take place in these formal, closed door case team meetings.

The instructors' roles in the meeting (particularly during the first half of the semester) [FN75] were limited; they asked hundreds of questions to prod students to think of more options or to evaluate choices or activities more thoroughly. They encouraged self-evaluation of interviews, written work, and the like, and if the students requested it, they offered their evaluations after the students did their own. But they rarely made explicit suggestions of new areas for research or action, and except in the very rare instance in which they could foresee immediate harm to clients, they never directed students to act in a new direction that the students had not initiated. To reinforce careful planning, students were required to write formal "case plans" after their first interviews with clients, and to amend the plans periodically. ***216** To facilitate open communication in the case team meetings, students and then teachers were required to spend the last five minutes of each meeting evaluating the meeting itself and the ongoing teacher- student relationship.

We had to decide whether to keep, modify, or discard these requirements when we changed the types of cases on which we were working. The principal reason for re-evaluation was that in our new case load, even more than a client's public benefits was at stake; a serious error in our representation of a client could lead to the client's deportation to a country where he or she might be tortured or killed. After discussion, we decided on relatively few modifications; indeed, the modifications we made were to tighten up even more the clinic's procedural requisites, while still hewing to a policy of very little intervention in case-related decision-making. [FN76] Thus we initiated a practice of requiring that agendas for any case team meeting be written and distributed to all participants by the beginning of the meeting. We specified that before and during meetings, students needed to decide explicitly which questions of law, procedure and strategy they wanted the teachers to answer informally, and which ones they wanted to leave for their own research. Perhaps most important, we tightened up the clinic's writing and reporting requirements. Students now have to write, within one day, substantial summaries of every interview with a client or other witness. Written case plans must be quite detailed, following a specified outline of issues to be addressed. Students are required to write a brief for every deportation hearing, even if they eventually choose not to submit it to the judge, so that they can use it to make sure they understand their theories of their case, and so that they can evaluate after writing it whether it should be filed.

Our behavior during case team meetings did not change appreciably. It has always been our practice to begin the discussion of virtually any subject with broad questions like, "What other options have you considered?" or "How do you think you could learn more about that?" If students think that they are stuck, we might ask whether ***217** they want some further ideas (usually a welter of conflicting additional possibilities rather than "the right answer") from us, or whether they want to work further on the issue themselves, and we respect their varied approaches to this question. As a hearing or other critical event approaches, our questions may become somewhat more leading (particularly with

the minority of students who aren't handling their cases as well as they might), but the more we shade toward providing direction indirectly through the questions we ask, the more we try to be aware of and not casual about such interventions, and to explain to the students what we are doing. Toward the very end of a semester, and especially when commenting on the supposedly final draft of a brief or critiquing the final moot shortly before an actual hearing, we are much more likely to alter our style a bit, and to offer frank, direct suggestions. All of us have had the great pleasure, however, of working with some students for whom our method has worked so well that we have virtually nothing to add to their own self-critique, even in the final days before a hearing.

Student collaboration

While my descriptions of CALS make it plain that our students work in pairs and have always done so, this structure represents a choice, not an inevitability. David Chavkin has recently reviewed the relevant issues at length in this Review. [FN77] Chavkin argues that pairing students may [FN78] learn more because they will teach and learn from each other, and that clients may be better served because two heads are better than one. [FN79] He summarizes Susan Bryant's claim that by learning to collaborate, and carrying that skill into law firms and other work environments, students will ultimately have greater long-term job satisfaction. Students paired with partners of a different race or gender may learn to change their preconceptions. Students working with partners may be more motivated, because they will be responsible to their partners (who might be more likely to notice their lapses) as well as to clients. Supervisors who do not participate personally in client interviews or negotiations with opposing counsel may be more likely to have accurate reporting of those events because the information will not be filtered through the perceptions of only one student. ***218** Each paired student may have to do less work on a shared case, enabling the students to do more thorough work or to be exposed to a larger number of cases.

On the other hand, Chavkin notes, clients, opposing counsel, or judges may create problems for paired students by relating better to one student than the other; a problem that can be made more complex if the reason for it is that the student getting more respect is the only male, or is the only student of the same race or gender as the person responding differently to the two students. The pair may make poorer ethical decisions because one student may be reluctant to challenge another student's ethical judgment. The partnership may become paralyzed by a deadlock over strategic planning. Work may be slowed by the need to coordinate schedules and share information. Supervisors often have to address the interpersonal conflicts between partnership members, and they may find it difficult to grade students individually because they see only a partnership product. The clinic supervisors also will have to grapple with the thorny problem of whether to allow the clinic students to create their own partnerships (which can be frustrating and difficult for students, particularly if the clinic includes one or two students with whom no one else wants to work) or whether to participate in the students' pairing (which can lead to charges of manipulation).

Clinic supervisors might refer back to goals as a starting point for the decision about whether to have the students work in pairs. If the purpose of the clinic is in part to teach students to be able to collaborate more effectively, then of course students should be paired. If this is not one of the clinic's explicit goals, the various advantages and disadvantages identified by Chavkin should be considered, although in my view, Chavkin somewhat overstates the disadvantages. [FN80] To the extent that interpersonal problems arise within the partnership (whether caused by the partners or by the ways in which outsiders respond differentially to the students), such problems offer opportunities for learning, because the clinic can provide a setting in which they can be examined self-critically and in relative safety. Although interpersonal difficulties will recur in practice, and perhaps even in other law school settings, the clinic can best teach students to improve themselves as lawyers by working to overcome them. Nowhere else will they have time they can set aside for addressing these issues explicitly, ***219** permission and encouragement to do so, and supervisors who over the years have become increasingly skilled at defusing and calmly discussing interpersonal conflict. Ethical issues, in my experience, are identified and resolved at least as well as strategic or other problems by pairs of students; indeed, two students seem twice as likely as one to perceive an ethical problem arising in a case. Strategy deadlocks, like interpersonal or ethical problems, are fine learning opportunities. An instructor does not have to cast a tie-breaking vote in order to help students see additional dimensions of a problem, but can encourage students to work through disagreements, eventually enabling them to make a decision. Work is indeed slowed by problems of sharing and coordination, but in clinics whose goals do not make a priority of handling the maximum possible number of cases, work should be slowed down for educational purposes. Indeed, one of our former students fondly called clinical education "practicing law in slow motion." Grading is more difficult, and pairing is difficult, too, as Chavkin says, but these are relatively minor administrative concerns that should not be weighed as heavily as the other

considerations he identifies.

CALS paired students before becoming an asylum law clinic, and it continues to do so now, but the change in our focus did bring about one major change in our methods in this regard. Formerly, we encouraged students to decide at their first meeting by what method they should form their partnerships, and we required them to reach consensus on a method (any method, from random to very deliberative pairing) before trying to implement it. [FN81] They were required to reach that consensus during the first meeting, which had no end time and very often ran from 1:30 in the afternoon until 10:00 in the evening. Thus students were immediately introduced to the concept of planning before acting and to the idea that interpersonal issues matter. In their efforts to balance the desire to form harmonious partnerships against their wish not to hurt anyone's feelings, they often developed very complex systems, such as exchanging specified categories of information, exchanging code-numbered lists of people they wanted to work with, having someone compare the lists and announce the result, voting by secret ballot whether to accept the result, and then starting all over if the result had not been approved by a pre-designated super-majority. Despite the exhausting length and intensity of the typical initial clinic meeting (which some students and some teachers strongly disliked), many students emerged from this event feeling that they had accomplished a difficult task, that they knew each other well after only one meeting, and that they had learned ***220** some new lessons about group dynamics.

However, we made a decision that this long meeting was a luxury that we could not afford with our new caseload. We had to get into the cases very quickly to enable students to complete them in a semester, and we had to use our first hours together to train students on the law and procedures for case handling. But we did not want to become involved in selecting their partners, because when I did that early in my teaching career, students who had conflicts with their partners inevitably accused me of deliberately putting incompatible students together as a social science experiment. Accordingly, on an initially experimental basis, rapidly becoming more permanent, we had the students draw their partners' names from a hat, a process that took only a few minutes of class time. Interestingly enough, after two semesters of random pairing, we have noticed no more interpersonal conflict within partnerships than in the years in which students spent hours locating compatible partners.

Manuals

Virtually all clinics use some sort of practice manual to acquaint students with the substantive law and procedure applicable to a specialized field, so one of the clinic supervisors' administrative tasks must be to survey the manuals available commercially and either adopt one or create a new one. [FN82] However, even if a good manual exists and is a useful resource for the students, the clinic supervisors may want to write a supplemental manual (or two) to account for practice in the particular local tribunal in which the students will work, and to explain the clinic's educational and administrative requirements.

Even the best practice manuals tend to be only of partial use in clinics. They are usually written from a national perspective and do not cover local rules, local forms, or the particular requirements or idiosyncracies of local judges. They tend to be written for the practitioner who knows nothing at all about the field in question, making them most useful at the outset of any case and less valuable as extremely specific legal, procedural, strategic, or ethical problems emerge. Many of them assume that the reader is a harried practitioner with an enormous caseload, so they provide dogmatic and overly broad advice. For example, many of them provide a checklist ***221** of the questions to be asked at every client interview, rather than giving the user the tools to create her own list of questions, a process that is more time- consuming but more likely to fit a particular client's needs. And they go out of date very quickly, usually more quickly than they are revised. Therefore, even a clinician who adopts such a manual may want to issue students a supplement keyed to judges and issues in his or her locality, neutralizing the dogmatism of advice in the commercial manual, and current as of a few weeks, at most, before the semester starts.

In addition, a clinician may want to write into an administrative manual the clinic's goals, its teaching methods, and its formal requirements. This information could be conveyed orally, but many students do not retain for long the oral announcements made at the outset of the semester, [FN83] and writing down the clinic's operating procedures also helps an instructor (and particularly the clinic's several instructors, if there are more than one) to be consistent.

Writing new manuals turned out to be one of the most time-consuming tasks in the process of creating an asylum law clinic, even though fortunately we were also able to adopt a fine practice manual published by a non-profit

immigration advocacy center. [FN84] Our new Asylum Law Manual offers students guidance and local practice tips, and it also states CALS' own minimum practice requirements. After a lengthy overview of asylum law practice, which we assign before the semester starts, it is organized by types of action that students must undertake. Thus it has chapters on interviewing clients, drafting the asylum equivalent of pleadings, writing case plans, conducting fact investigation, undertaking witness preparation, managing hearings, and following up after adjudication. It also includes a thick section of "resources," such as a directory with telephone numbers of all of the government offices with which students might have contact, the relevant student practice rule, the federal regulations they will most often need, local court rules, library tips such as World Wide Web sites for human rights documentation, and internal operating instructions used by the fora in which they will advocate. Finally, it has copies of virtually all the forms they might encounter, including both CALS' own forms and forms issued by the Immigration and Naturalization Service.

In addition, we issue to each student an Office Manual with information about CALS that is not specific to asylum cases. It includes ***222** the chapters on goals and supervisory methods that we have posted on the World Wide Web, as well as our class schedule, our grading standards and methods, our rules of office administration, [FN85] our file maintenance regulations, our system for closing cases, and the District of Columbia's Rules of Professional Conduct. [FN86]

Library

The materials distributed individually to students will meet many but not nearly all of their research needs. For some of those needs, they will use the law school's library and perhaps libraries in other law schools or even other cities. But between the very focused materials of manuals distributed to each student and the vast resources available in general libraries, the clinic supervisors will probably think it useful to collect, in the clinic's own headquarters, a small library of materials particularly relevant to the work of the clinic. These materials might include traditional legal sources, such as treatises and reprints of key articles; relevant empirical studies and reports that might frequently be cited in student briefs; current periodicals; books of advice on the skills on which students are working, such as interviewing, fact investigation, and trial practice; and the clinic's collection of its own closed files, preferably with a subject index compiled cumulatively by students as they complete the cases.

Electronic databases are increasingly central to virtually all legal research. Clinic library resources should therefore also include computers on which the students can use Lexis, Westlaw, and the World Wide Web, [FN87] as well as CD Roms and microfiche equipment with relevant databases that may not be available on line. The law school library or the clinic staff might provide students with training on these systems if that is not done in the first year of law school.

Space, equipment and support

Now we are literally at the level of nuts and bolts. Clinics have ***223** been known to exist in "virtual" space, with students floating to do their research and writing, and participating in supervisory meetings in teachers' offices. This method of operation minimizes the real estate that the clinic occupies, and in law schools that are already overcrowded, it may represent the only way to start a new clinic. However, most clinics have a dedicated work room in which students can read and write, make telephone calls, and exchange advice without having to worry that their confidential conversations will be overheard by students who are not in the clinic. A smaller, private room for client interviews is also a common feature of clinics.

Much of the learning in a clinic occurs out of the sight and earshot of the teacher, as students ask each other for and provide help on pending cases and share their frustrations and elations. If a clinic has a student work room, it can become an even more vital center of education than the supervisory meeting, because students will tend to spend ten or twenty hours in the work room, often during nights and weekends, for each hour of formal supervision. Negotiating for suitable physical space, even if it must be constructed in the law school's basement, may therefore be a high priority for the person who is holding initial conversations with a law school dean about setting up a clinic. [FN88]

If the clinic's student work space is not located near non-clinical faculty members' offices, a significant issue for

deans and clinic supervisors is whether the instructors' offices should be located in the clinic, near where the students are working, or near the offices of faculty colleagues. This question, too, can be resolved by reference to goals. To the extent that the clinic supervisors see their function as collaborating with students on cases, instant availability may be important, whereas teachers who are more distant counselors, available only for regularly scheduled meetings or emergencies, need not be so nearby. Furthermore, the teachers' own needs for professional development may conflict with the students' desire for easy access. McDiarmid found that a "majority of clinicians surveyed rate the attitude of other faculty toward their work as the major challenge posed by their job." [FN89] Physical distance between clinicians and other faculty members can contribute significantly to lack of knowledge and appreciation by those other faculty members regarding what clinicians do, and how they contribute to the law school. A dean who wants a fully integrated ***224** faculty might therefore not only encourage clinicians to publish in the academic literature and to teach non-clinical courses, but also might insist that the clinicians' offices be located with other faculty members.

Besides the teachers' salaries and physical space, the other major cost of a clinic is the salary of its support staff. Students can now do most of their own typing on word processors, but secretarial support remains necessary for the operation of a law office. Someone has to greet clients, answer the phones, sort mail, maintain routine institutional relationships with courts and community agencies, oversee intake, assist in case and other database management, order library materials, and handle dozens of other administrative tasks.

Starting a clinic also requires some budgeting for initial purchases and upkeep of equipment. The office manager or secretary will need furniture and equipment. In addition, a typical student work room may contain computers, printers, telephones, fax machines, copiers, tape recorders, cameras, and other devices to facilitate the students' work. [FN90]

Experts

Clinics practicing in most areas of law need experts to serve as informal advisors and as testifying witnesses. Clinics typically represent indigent clients without charging a fee, and experts often are willing to provide some free services to such clients. Clinic supervisors need to decide, in starting a clinic, whether they themselves will line up a panel of relevant experts before students arrive, or whether students handling a case should find their own experts just as they would locate all the other evidence in their cases. A teacher who lines up experts may obtain better experts, or may be able to accomplish the job more quickly. The teacher, acting on behalf of the school rather than a particular client, may also be able to offer the expert money or a part-time academic title. On the other hand, if the task is left for the students, they will learn something about the skills of evaluating and selecting experts, and they will have to draw on their creativity to persuade the experts to provide free help. [FN91]

***225** Forms

We all live by forms, and much as we might encourage the application of creativity to the individuality of each case, clinics use forms extensively. Of course one of the skills clinics teach is the creative completion of forms to turn even the most routine request for information into an instrument for effective advocacy. [FN92]

It seems likely that in preparing to teach a clinic, the instructors should collect for students a substantial supply of the government and court forms that the students are likely to need; students would learn something, but not very much, by having to locate these forms on their own. Whether the instructors should generate their own clinic forms for various purposes is a more complicated question.

For example, a very typical clinic form is a client retainer agreement. Such a form (possibly with some variants for individual circumstances) could be written by the instructors before the beginning of the clinic's first semester. By writing it, the instructors would free time during which students could be doing research or other activity regarding individual cases. In addition, by drafting the clinic's retainer form, the instructors minimize the risk that students will omit some critical disclosure or understanding and thereby subject the clinic, and the instructors, to possible malpractice litigation or disciplinary charges.

On the other hand, students can learn very rich lessons by struggling with the issues involving a retainer agreement,

[FN93] rather than being***226** given a standard form to use. For example, what are the functions of a retainer agreement in a case in which no fee is being charged? What protections does it offer the client and the representative? Should it be written or oral? What should be the respective roles of the client and the clinic in determining the contents of this agreement? Is it proper for students to use this agreement to restrict the scope of their representation? If part of the goals of the representation are to empower the clients in their relationships with bureaucratic organizations, does initiating the relationship between the clinic and the client by requiring the client to sign a retainer form undercut that goal? [FN94]

Institutional memory

Students, and even teachers, eventually leave their institutions, and new generations take their places. To what extent should a the design of a clinic deliberately include the accumulation of a formal institutional memory?

This is far from a trivial question, because to some extent it presents a conflict between education and client service. Students learn more if they have to reinvent wheels and have less institutional memory on which to rely; to put it another way, some students are powerfully drawn to treating closed case files as their primary research tools for strategic approaches, empirical information, and legal theory. They may even copy legal arguments almost verbatim from prior successful briefs. [FN95] The easy availability of old files may impede current students from learning by thinking hard about their clients' problems, and it may even interfere with their discovery of creative solutions that did not occur to the prior students. It would not be unreasonable for clinic supervisors to seal off past students' work so that it could not be copied in whole or part by current students.

On the other hand, past cases can provide some important research***227** assistance, particularly in very specialized areas of factual or legal research, and they can thereby advance clients' interests. Accordingly, far from sealing off old files, instructors might want to keep those files in the clinic office and construct systems to make it easy for current students to find relevant materials in those files. For example, they might require students, as they complete a case, to fill out clinic forms through which computerized indexes could be built based on key words pertaining to the subject matter and legal issues involved in each case. The students could also be required to describe their case-related encounters with any other people with whom future students might also deal, such as opposing counsel, experts, judges, clerks, and other government officials, and the clinic could build an annotated index of those individuals as well.

CALS has chosen to follow the latter course, though not without some misgivings. [FN96] We attempt to make up for providing easy access to past records by being alert, in supervision, to students' over-reliance on them. For example, if we ask in supervision, "Why do you want to send this letter to opposing counsel?" and the students respond, "Some other students wrote a similar letter last year," we are very likely to inquire probingly about whether the students thought about whether last year's decision was a good one, and if so, whether distinguishing features of this year's case (e.g., a different opposing counsel) might warrant a departure from the precedent. Since our students know that students, not teachers, make virtually all case- related decisions, they realize that the previous students' practice does not necessarily reflect our view of what should ideally be done, so they do not (or at least should not) feel sand-bagged by such questions.

A standardized filing system

File development, like the generation of clinic forms, could be a teaching opportunity or simply a clinic requirement. That is, students could learn a lot by being asked what case records their law office should keep, and how the records should be organized. On the other ***228** hand, clinicians may have other teaching goals that conflict with the time that students might spend thinking about files. More important, leaving decisions about filing up to students is likely to result, in many and perhaps most cases, in files that are incomplete and chaotic. At best, they will be difficult for the students themselves to use as they grow fatter, but the students will not realize that outcome until the hearing is approaching and it is too late to redo the files. At worst, incomplete files will not be useful to future students, and they will be of little help to the clinic supervisors if a disgruntled client ever sues for malpractice.

Accordingly, as part of designing a clinic, its supervisors should probably design a standardized filing system that

students are required scrupulously to follow. [FN97] Standardization of a system from the outset, rather than its gradual evolution over a period of years, best enables students to find materials in closed files, because those materials will have been organized in exactly the way that the searching students have been compiling their own case files. The files should probably include not only every document filed in a court or sent to an opponent, but also all materials that students have collected (including summaries of interviews with clients and witnesses) that might be helpful to the case. The files should be open to all students in the clinic (unless a client has requested greater protection for especially sensitive material), and the students' supervisors should review additions to the file every two or three days, or more frequently if requested by the students.

CALS' filing system is far from the only possible system, but it seems to meet our educational and institutional needs. For their formal records, our students use heavy cardboard files, sometimes two or three to a case, as well as more light-weight manila folders in which they keep copies of reported cases and other replicable legal research. [FN98] Each side of the folder is punched at the top, and pages are affixed with two-prong Accopress clips. On the left side of the first folder in each case is a description of the clinic's file maintenance system (for easy access); the retainer form; a contact sheet listing the names and telephone numbers of everyone with whom they deal; a "docket sheet" listing such major facts about the case as the name of the client, the names of the students, and the hearing date; and a ***229** "Journal of Action." For everything that happens in the case (even an attempted telephone call which no one answered), the Journal of Action includes a either a short signed and dated summary of what transpired or a cross-reference to a longer memorandum to the file. [FN99] This document is the first item that an instructor looks at each time he or she opens the file. On the right side of the file is every significant document of the case (including the memoranda to file cross-referenced by the Journal of Action), each separated by a page with a pre-printed numbered tab. On top of these documents is an index, reprinted by the students each time they add a document, listing the names and dates of each document it covers.

Intake

A new or revamped clinic will need a source of clients. To the considerable extent that local bar rules permit (particularly with respect to cases for which no fee is charged), it could engage in newspaper and radio advertising. However, if the clinic has a specialized subject matter or limitations with respect to the procedural stage at which it will accept new cases, it is difficult to convey those restrictions in advertising, and the office manager may then need to spend a considerable amount of time responding to and referring would-be clients whose cases are not appropriate for the students. It may be desirable, therefore, to establish relationships with community organizations, courts, or other legal services providers who might refer to the clinic the (often small) number of new clients it needs each semester or each year. If the clinic so desires, non-governmental organizations might also provide some screening; e.g., they might conduct at least a very brief interview with the client before referring the client to the clinic. In such an interview, they would make sure that the case will be of the type the clinic handles and they would try to ascertain that the client's claim is not obviously frivolous. [FN100] Establishing these relationships well before the clinic's first students arrive is highly desirable, because the referral process can be lengthy. It is usually good for all students to have cases assigned during the first week of the clinic so that no students feel that they are losing valuable time while waiting for a client to appear.

Clinic supervisors may want clients to undergo an additional ***230** screening, by themselves or by the clinic office manager, before being assigned to students, so that no students discover, several weeks into the semester, that their client does not have a case of the type the clinic handles. However, every screening interview presents problems for both clients and students. For clients, it is more bureaucratic rigmarole; they may have to tell a traumatic story to several different agencies, and then to a screener at the clinic, before even meeting the students who actually represent them. For students, repeated pre-representational mini-interviews may create a file that so much leads them in their own questioning that they are deprived of the excitement of learning a story for which they are totally unprepared. It may also mislead them in the direction of an error of understanding or recollection by one of the screening interviewers. And the client's story may seem flat or canned after it has been told many times.

When CALS initiated its asylum docket, we decided that we did not have the resources to select clients from the large numbers of applicants who might be attracted by newspaper or radio advertising. We found that community human rights and refugee organizations were happy to help us by providing clients whose cases were of the appropriate types and were at specified, narrowly confined procedural stages that would fit the needs of our academic calendar. We

debated whether to assign these cases to students immediately after referral by the organizations. We reluctantly decided that we would have to ask the clients to submit to still another pre-screening interview by our office manager, at least so that we could disclose the limitations on our representation and the risk of deportation that clients applying for asylum for the first time would incur by filing affirmative applications that might ultimately be denied. [FN101] We have tried to minimize the disruption to students caused by this pre-screening interview by creating a form to limit the questions that our office manager asks; instructing the office manager to stop asking questions about the merits of the claim as soon as she determines that it is at least not frivolous; and providing the students with the completed pre-screening form.

***231** A new clinic will need intake criteria as well as intake procedures. To a large extent, these criteria will flow from the decisions the clinic supervisors have already made regarding the types of cases that the clinic will handle. However, if the community's need for representation with respect to the sorts of cases the clinic handles is greater than clinic resources can fulfill, the clinic will need to adopt either "first-come, first- served" or some other triage policy to determine which clients to represent. At least in the clinic's first year, the supervisors could include clinic students in making decisions on intake policy, as a way of teaching them about client needs and about policy-making in a legal office. [FN102] Including students may have the additional benefit of enabling the students to feel more responsibility for the clinic as an institution. [FN103] On the other hand, sharing decision-making in this way could result in outcomes that the teachers regard as less than ideal from an educational perspective, and it is probably not possible to redesign intake criteria every time new students join the clinic. [FN104]

Whether or not students participate in designing intake policy, the clinic will have to decide, as part of that policy, whether the clients' financial incomes and assets should also be taken into account as part of the intake criteria. A few clinics support themselves by charging fees to clients who can pay, making it desirable for them to seek clients who are not poor. This practice has been criticized, however, on both educational and ethical grounds. [FN105] A much larger number of clinics only represent indigent clients, and some clinics that do not charge fees regard a client's wealth as neither a positive nor a negative factor in the decision to represent that client. Of course, a decision about whether to limit representation to indigent clients (and how to define indigency) may not be left to the clinic supervisors; once the supervisors select the type of case the clinic will accept, student practice rules of the fora in which those cases must be litigated may limit student representation to indigent clients. However, if court rules do not impose such limits, [FN106] clinicians will have to decide whether to decline ***232** to impose a means test; to adopt a means test themselves, or to allow students to take the client's wealth into account in their own case-by-case decisions regarding whether to accept representation of a particular client. [FN107]

Clinicians might reasonably decide to adopt a means test as a clinic standard in order to emphasize to students the lawyer's obligation to serve poor people, but there are some countervailing considerations. First, any means test is somewhat arbitrary; those excluded in certain cases may be in fact as needy of free representation as those who fit within the indigency category. Second, the questions about income and assets must be asked when the client first arrives in the clinic, to avoid requiring the client to tell a difficult personal story and only afterward to be rejected on grounds of wealth; but it seems officiously bureaucratic to begin a representational relationship by asking questions about a client's ability to pay. Finally, if the clinic imposes a means test as a matter of policy, the issue is removed from the educational table, whereas students representing a client who might be able to pay a lawyer may later raise good questions for class discussion about that representation, and about the kind of representation the client would get from a private attorney.

At CALS, we have had a peculiar relationship with means tests. When we handled Social Security disability and small claims consumer cases, the Social Security administration imposed no means test on us (perhaps on the theory, which we certainly shared, that all disability claimants were needy), but the small claims court's student practice ***233** rule limited us to representing indigents. Therefore, half our clients were means-tested, and half were not, and we had to turn away many clients with educationally interesting small claims cases because they were not poor by any poverty standard, even though it was doubtful that any lawyer would agree to represent them in a case involving five hundred or a thousand dollars. When we became an asylum law clinic, we discovered that the Immigration and Naturalization Service's student practice rule did not include a means test, and after considerable internal debate, we decided provisionally not to impose one, a decision we will review in another year or so. Our primary motivation was that we thought that our academic calendar imposed more than enough restrictions on the clients we could represent, because it would limit us to clients whose hearings could be scheduled during the last month of each of our two semesters. We worried that we might have trouble filling up our docket, and we concluded that a means test, even if it were desirable,

would threaten to make our clinic unworkable. Thus we resolved the issue pragmatically and temporarily avoided the ethical question of whether we should means-test our clients if we could do so.

Relationships with judges

A clinic can function without having a special institutional relationship between the law center and the court or administrative agency in which it practices. But such a relationship can enhance the clinic's functioning in several ways. First, if the court or agency has control over its calendar, it may be able and willing to schedule clinic cases in the period which the clinic supervisors think will offer optimal educational advantage to students and the best service to clients. This period will usually occur toward the end of the clinic's term, when students are fully trained and have had sufficient time for full legal and factual research. Second, the court or agency may be willing to grant liberal continuances to prevent cases from being scheduled in the summer, when students are not available to handle or learn from them. Third, judges or clerks may want to enhance educational opportunities. For example, they may offer to meet with students individually or as a group to discuss the court's perspective, or a judge might want to teach a class. A clerk might offer students the opportunity to be "assistant clerk for a day" during the semester, helping to deal with members of the public who have inquiries or want to initiate proceedings with the tribunal. Finally, judges familiar with a clinic might refer to the clinic pro se litigants who might benefit from representation ***234** by law students. [FN108]

Some clinic supervisors may not want to establish an administrative relationship with judges. Some may want students to experience the stresses of scheduling that lawyers face daily, without any ability to ameliorate them through a pre-existing relationship. Others may fear that any such relationship between the teacher and the judge or clerk will interfere with the relationships that the students themselves would create; e.g., the judge might then have a greater tendency to look to the teacher to intervene if a student appears to falter. Still others could worry about expectations that the courts might have about reciprocal accommodation. For example, they might think that a judge who offers favorable scheduling for the clinic would expect the clinic not to bring a mandamus action against the judge even if a case warranted it.

Whether to try to build a relationship with the tribunal is a matter for decision by each clinic, based on the local institutional conditions and assessments of the individual judges and clerks. At CALS, we made the decision to seek such a relationship, in significant part because we wanted very much to have all of our asylum hearings scheduled during the last month of the students' work in the clinic. Months before we began to practice in the immigration court in Arlington, Virginia, we paid a courtesy call on several of the judges, at which we explained our program and our requests about such matters as scheduling and permitting students to sit without us at the counsel table. The judges were very willing to cooperate, and our continuing relationship with the court has been very satisfactory.

Closing and transferring cases

When cases have been finally won or lost, some formal method of closure seems appropriate, particularly because the cases may require additional work. Even after a successful judicial outcome, further papers may need to be filed, and after a losing effort, a case may require a prompt appeal. Students who read appellate cases may have the impression that a case is over when the court issues a decision. Therefore, in the absence of clear guidance from the clinic, the post-decisional work may be overlooked, and the clinic's service to clients and its reputation in the community could suffer.

Supervisors setting up clinic systems may therefore want to include a standardized method, perhaps a checklist, for ensuring that necessary steps are taken by each student who is about to leave the ***235** clinic, or by each student who proposes to close a case file. Depending on the type of case, these steps could include letters to the clients notifying them that representation by the students has come to an end; letters thanking experts or others who have helped with the case; confirmation that the case file is complete; and preparation of indexing information so that future students can use the closed file. For cases on which more work will be needed but will not be performed by future students (e.g., ministerial filings that a secretary or research assistant will handle), the supervisors may want to establish a tickler system so that the work is done at an appropriate time after the student has left the clinic and can no longer monitor the case.

Not all cases are closed when students leave a clinic. In some clinics, cases last for a long time and routinely continue from one semester to the next. In others, the supervisors may hope for both educational and administrative reasons to terminate each case at the end of each semester, but some cases inevitably refuse to cooperate and must be continued. Before starting a new clinic, supervisors might want to put into place a standardized method for the orderly transfer of cases from student to student. This system might require, for example, that a student leaving the clinic must write a memorandum with extensive information orienting his or her successor to the facts, law, and procedural status of the case, and providing personal impressions about the client, the opposing counsel, the judge, and others the new student may encounter as well as suggested lines of future inquiry. Of course the passing of such information will deprive the new advocates of the educational value of making those same discoveries for themselves, but this seems more an argument for choosing cases that need not be transferred than for barring students from sharing their knowledge and impressions. [FN109]

Referrals

A final element of case handling involves the recognition that some problems are not appropriate for the clinic to try to solve. Sometimes prospective clients call (or are referred) who do not meet the clinic's subject matter or income guidelines. They must be referred ***236** to other service organizations or to members of the private bar.

At a minimum, a clinic will find it useful to develop for its office manager an annotated list of legal services providers and perhaps also of lawyers who work for reasonable fees, both in the areas in which the clinic practices, and in other areas of law. In addition, depending on the goals of the clinic, supervisors affirmatively might want to give students experience in fielding the somewhat random calls that often come to lawyers and legal organizations. If so, the supervisors might want to assign students to certain hours or days when they are responsible for answering the telephone and dealing with the public. This experience can help to make students appreciate the demand for low-cost or free legal services and the currently inadequate supply of lawyers to meet that demand. It can also enable students to have contact with more members of the client community than the small number of clients they themselves represent. And it can help acquaint them with the variety of people and organizations providing whatever legal assistance is actually available. If students are going to be assigned responsibility for answering public inquiries, they will need some training on how to obtain enough information to make a referral, and to whom referrals can be made.

Another kind of referral may also be necessary. Some clinics will not want to handle the appeals of cases they lose; e.g., because in a particular jurisdiction students are not allowed to argue appeals, or because most appeals are on paper and the clinic emphasizes oral advocacy, or because the time scale of appeals is greater than the duration of the clinic. In that case, a stand- by referral system might provide representation for any clients who seem to have meritorious cases but who do not prevail. If appeals will not be handled by students, they might be taken by the clinic's academic staff. Alternatively, they could be referred, with the clients' consent, to lawyers outside of the clinic. A particularly good group of people to handle appeals is the corps of clinic alumni, who of course have been given excellent advocacy training. Another advantage to having alumni handle clinic appeals is that current students can be exposed to lawyers carrying out their ethical obligation to serve the public and can simultaneously imagine that it will not be long before they, also, could be working, as a member of the alumni corps, on a clinic appeal.

III: CLASSES

Most clinics include classes. [FN110] Group discussions and exercises ***237** can powerfully enrich the primary learning that emerges from handling particular cases. [FN111] Assuming that supervisors want or are required to have a classroom component to the clinic, they should decide, in light of the clinic's educational goals, whether to teach the classroom portion or recruit other teachers to do so. For example, if supervisors believes that the best possible use of class time in a housing eviction clinic would be to teach substantive landlord-tenant law, the clinic might require students to take the school's housing law course as a co-requisite and omit any special classroom component in the clinic itself. On the other hand, if the clinic's goals emphasize training in traditional or non-traditional skills, the supervisors might want to teach classes oriented primarily around the development of those skills.

Orientation

But first, before skills can be taught systematically, there is often some emergency work to be done, particularly in clinics of short duration. Unless clinics have required a pre-requisite course, most students arrive knowing virtually nothing of the law or institutions pertinent to the clinic's area of work, an area in which they will begin practicing within days, if not hours. They have to be given at least minimal orientation immediately, so that they will not be totally ignorant when they meet their clients. Of course, this is not merely a problem involving the first day or week of the course. Clinicians often feel a need to provide students during the first quarter of the course with all the skills training that they will eventually have; so much is urgent that it becomes difficult to know what can be reserved for the last half of the course. [FN112]

So clinical supervisors must decide whether to require students to participate in some sort of very early orientation, either by returning to school a day or a week before other students begin the semester, or by participating in extra classes during the first week of classes. Either alternative imposes extra burdens on students and teachers, and the second one may even create conflicts with other classes that some students are taking. Nevertheless, early orientation may be the best way to get a clinic off to a fast start. The contents of the orientation may be introducing students to each other; facilitating some sort of ice-breaking exercises to help them feel at ease in a new setting; forming student partnerships in clinics that use them, acquainting students ***238** with the typical progress of a case, the substantive law, and the legal institutions; assigning cases; distributing materials; and creating a sharing atmosphere (perhaps by having a party).

If there is to be an extensive orientation, and particularly if students will perceive it as a burden, clinical supervisors might make special efforts to make it fun. They might make extensive use of some of the tools characteristically associated with clinical legal education, such as skits, videos, simulation exercises, and small group discussions. [FN113]

The syllabus

Students really like to experience a relationship between the classroom component of the clinic and their case work. A clinic can be confusing because students are exposed to so many new issues and processes in just a few weeks; classes that don't seem clearly relevant to the cases can be perceived as unwanted distractions. Accordingly, to the extent that the classroom component of a clinic is focussed on traditional skills, supervisors might want to consider writing a syllabus that tracks, to the extent possible, students' use of those skills, on average, in the clinic's cases. Therefore interviewing might be the subject of the first class or two, in which students were meeting their clients for the first time. These classes might be followed by a class on case planning, if that is a skill the clinic emphasizes. Other skills, such as legal research, fact investigation, written advocacy, witness examination, negotiation, and formal oral legal argument might be taught in the order in which they are typically needed in the cases the students are handling.

The goals of the supervisors may suggest that some of the classes be devoted to subjects other than traditional skills. For example, if raising consciousness about ethical issues is important to the supervisors, they might want to include a class in which students talk about ethical dilemmas that have arisen in their clinic cases or in part-time or summer jobs they have held. [FN114] If getting students talking about ***239** race, class, and gender is high on the list of objectives, a class could be devoted to exchanging stories about incidents in which the students personally have stereotyped or been stereotyped by others.

Because the essence of clinical education is experiential, clinical classes rarely include lectures. They may require some traditional reading material, but over the generation that I have been doing clinical teaching, I have encountered increasing resistance among clinic students to reading cases, articles, or other conventional materials of the kind they encounter in non- clinical courses. Both traditional and non-traditional skills are usually best taught by involving students in exercises of some kind. Simulations are often useful, and they must often be the backbone of the classroom portion of the clinic early in the term, before students know enough about their own cases to bring problems from those cases into the classroom. But the supervisors must keep in mind the possibility that eventually students may be so busy, and so devoted to their clients, that having to master the facts of a simulation may seem like a diverting waste of energy. The supervisors may therefore choose to build most of the skills-related classes around

exercises that need little preparation [FN115] or around actual tasks that the students are working on in their cases. For example, when the students are beginning to write briefs, they might have a class in which they write, exchange, and then critique outlines of their brief, or a few pages of their argument. When they are developing opening statements for court hearings, they might make short videotapes of those statements, and show them in class to receive suggestions from the group. Before the dress rehearsal of their witness examination, they might practice a portion of that examination in class, with a student acting as the client, and obtain feedback from the other students as well as the teacher. Some classes could consist simply of time in which students bring to the group, for consultation and assistance, the most difficult problems that they are currently facing in their cases.

Clinical teachers, like classroom teachers, must consider whether to re-invent the classroom component of the course each year. Reinvention means developing new exercises and classes for each new group of students. An alternative is to spend a few years refining a ***240** stock of good classes that can be replicated to a large extent, so that at most during a given semester, only a few new exercises would replace some of the older ones. Constant development of new material can best refresh the instructor's creative talents, which may translate into more exciting classes for students. On the other hand, the development of well-designed simulations or other participatory exercises can be very time-consuming. Clinicians may therefore want to preserve and re-use most of their classroom assignments and exercises, allowing them to evolve in response to changing conditions and student responses, rather than writing new material each year. Furthermore, it may be desirable to commit to paper not only the assignments that are distributed to students, but the supervisors' own lesson plan, or outline for the goals and procedures of the class. Formal lesson plans, kept on word processors and edited from year to year, can help make sure that oral agreement among multiple teachers on the goals and procedures for a class does not mask real differences of opinion about what will happen during the class. They can also help to remind the teachers to re-use the features of exercises that work well and to revise those that need additional effort.

Simulations and case-related experience can be combined or sequenced to help build mastery. Joshua Davis, a CALS Fellow in 1994-96 who is now a Visiting Professor at Willamette University College of Law, devised a seven-hour sequence of exercises, spread over the first two weeks of the course, that we use to help teach our students how to interview clients who are seeking asylum. In the first class (after an orientation lasting several hours), one of the teachers first plays a videotape we constructed, with a real former asylum applicant playing himself and a lawyer playing a clinic student. In the tape, the lawyer makes several good moves but also several questionable calls (such as not describing her role carefully, not looking at the documents the client brings with him, using jargon, and changing the subject when the client begins to discuss his homosexuality, though the claimed persecution, and therefore the case, turns on that subject). While playing the tape, we stop it frequently for discussion, and any student can call out at any time to have us stop the tape. The tape lasts 35 minutes, but showing it and discussing it at the several points at which it is stopped, takes two hours.

To prepare for the next two hour segment, students study roles as either interviewer or interviewee; the interviewees not only learn assigned facts (about the threats to them in their native land) but also take on specified personalities. In the first half hour of the segment, the interviews are conducted in small groups, with the interviewees acting the roles they have studied. At the end of the half hour, the ***241** interviewer engages in a self-critique, which is followed by the interviewee's critique of the interviewer, and then by comments from a teacher who has observed the interview. Then the small groups return to the classroom for a plenary discussion in which the students compare notes on their interviewing experiences.

A few days later, students again interview each other; this time, those who were interviewees are interviewers, and the former interviewers study new roles as clients. This interview is a little different from the previous exercise in that the interviewer does not begin cold but has a somewhat confusing case summary that had been written by a screening interviewer.

Between that exercise and the final segment of the series, a few days later, students conduct their first interviews with their actual clients. For the final classroom exercise on interviewing, their assignment is to identify two issues that arose during their interview with the client that are worth talking about with the class, and lead a class discussion about them. They are required to write and distribute a two-sentence description of each issue, and they are encouraged, but not required, to bring to class an extract from the tape of their interview (if they made one) [FN116] so that other students can review the raw data on which the discussion will be based.

Other CALS classes generally follow the pattern described above. Most of them are closely linked to skills that students are about to use in their real cases, are based on those cases, and involve a great deal of student participation and relatively little formal instruction by teachers. One thing that I regret we do not do very much is to have students observe and critique each other's actual hearings. If CALS provided a student's full credit for a semester, this might be feasible, but under present circumstances students would have to cut too many other classes to observe several hearings. Fortunately, students do volunteer to play roles (e.g., as witnesses or opposing counsel) in moots before hearings, and they often find enough time to attend at least one hearing conducted by another pair of students.

CONCLUSION

The extensive planning recommended by this article may seem a bit burdensome. Some deans and clinic supervisors may prefer to open the doors of a new clinic quickly, and financial considerations (such as the terms of donors' grants) may also preclude an extensive planning process. However, to the extent that deans and others are ***242** willing to give clinicians at least half a year for planning a new clinic before opening its doors to students and clients, the quality both of teaching and of representation is likely to improve. In addition, the deliberative planning process advocated here, with explicit attention to goals, the identification of options, and a weighing of costs and benefits, is precisely the model that most clinics try to teach their students, who are often instinctively inclined to "shoot from the hip" rather than to plan actions in advance. Furthermore, paving the way for a new clinic through a series of meetings with judges and community groups may avoid stresses or misunderstandings that could affect relationships between those institutions and the law school for many years.

Planning does not end, however, when the clinic opens for business. Clinics evolve in response to constantly changing circumstances in the law school and in the community. Clinic supervisors, like all other bureaucrats, [FN117] get comfortable with standard operating procedures and may not notice the need to change caseloads or other aspects of clinic administration until adverse consequences (such as declining student enrollment, or the increasing difficulty of locating appropriate clients) are already upon them. However, clinic supervisors can build into their routines two safeguards that could alert them, at an early stage, to changes that may be necessary or desirable.

The first of these safeguards is a formal evaluation mechanism. In most schools, students are required to fill out anonymous evaluation forms on every course, including each clinic. The information provided to supervisors on these forms is useful, but using these forms may be only a first step in finding out what students really think. Standardized forms may not be well designed to elicit information about the special circumstances of clinics. They may be too short to provide in-depth information. By the time students take clinics, they may no longer take standard evaluation forms seriously. Therefore, supervisors might want to supplement the standard forms with more specialized forms they devise. They may want to debrief each clinic student orally and individually. [FN118] They may also want to administer ***243** an interim anonymous questionnaire half way through the clinic, so that they can improve the clinic for the students while they are still in it, rather than having to make changes that are only prospective. Clients can also be given a form on which to evaluate the services they received and the quality of their relationships with students and other clinic personnel. In addition, the supervisors might establish their own formal evaluation routine, independent of the students. For example, they could impose on themselves an obligation to write a few pages annually, evaluating particular aspects of the operation of the clinic. In clinics with more than one supervisor, the supervisors could meet semiannually or annually to discuss the operations of the clinic. At CALS, we have found this method of self-evaluation to be particularly useful. A week after each semester, all of the supervisors and the office manager gather, often at one of their homes, for a retreat to evaluate how the clinic's procedures worked during that semester. [FN119]

The second safeguard is a formal mechanism to encourage annual changes in the design of the clinic. For example, the supervisors could set aside time for brainstorming, or in which teachers could propose and debate particular changes. At CALS, we have long used three such mechanisms. First, we have a "changes file," a simple manila folder into which all the instructors throw handwritten notes, throughout the semester, of any improvements that occur to them. Second, we use the latter portion of each retreat to debate any significant changes that anyone has proposed or that emerges during the evaluation process. Finally, we take some time each summer to revise each of our manuals. Responsibility for the manuals is divided among the instructors. Then, both major decisions from the last retreat and less dramatic proposals from the changes file are distributed to the teacher with responsibility for the particular manual to which the proposal relates. That teacher proposes revisions and circulates them to the other teachers and the office

manager. Disagreements are worked out informally or in one of several inter-semester management team meetings [FN120] before the new manual goes to press.

Despite having already written at excessive length, I have a final ***244** observation that may be particularly pertinent for clinical colleagues in developing countries, Eastern Europe and the republics of the former Soviet Union, though it applies as well to some schools in the United States and other industrialized nations. I realize that many of the options suggested by this article imply resources that are not necessarily available everywhere, such as low student/teacher ratios, multiple faculty members in clinics, and computerized systems for the periodic revision of manuals. When Professor Lerman and I consulted at law schools in Czechoslovakia in 1991, even chalk and paper were in very short supply. In addition, some of these concepts of clinical legal education deviate so far from some countries' models of traditional university education that obtaining permission to experiment with them might be quite difficult. I am by no means suggesting that only gold- plated versions of clinical education are worthwhile. My argument is simply that clinical legal education serves valuable educational objectives, and that by planning carefully to identify goals, obtain resources, and to use them well, clinic supervisors will best help themselves and their students to teach and to learn.

[FNa1]. Professor of Law and co-Director, Center for Applied Legal Studies, Georgetown University. I acknowledge with gratitude the collaboration over 15 years of my clinic co-Director Prof. David A. Koplow, who is responsible for many of the good ideas (and none of the bad ones) in this article. Fifteen clinical graduate Fellows, most of whom have since become law professors at schools other than Georgetown, also contributed to my thinking about clinic design, as did Prof. Michael Meltsner of Northeastern University Law School and Karen G. Bouton, who has served as the clinic's office manager for more than ten years. I appreciate the helpful comments on an earlier draft of this article from Professors Joshua P. Davis, David A. Koplow, Wallace J. Mlyniec, and Lisa G. Lerman (who is also my wife). Prof. Karen Czapanskiy's bibliography of articles about clinical education, posted on the World Wide Web at http://www.law.ab.umd.edu/clinic/clinedu, was very helpful as I worked on this article. The writing of the article was supported by a summer grant from Georgetown University Law Center for which I am most grateful.

[FN1]. Actually, I replaced Harold Rothwax, who had briefly run a criminal law clinic at Columbia before being appointed to the bench. At the time of my appointment, Michael Meltsner had also been teaching a clinic for several months. Columbia gave me a free hand to build my own clinic, however, and did not require me to use the models of my predecessors.

[FN2]. This story is told in detail in Michael Meltsner & Philip G. **Schrag,** Report from a CLEPR Colony, 76 COLUM.L.REV. 581 (1976) and Michael Meltsner & Philip G. **Schrag,** Scenes from a Clinic, 127 U.PA.L.REV. 1 (1978).

[FN3]. At Columbia, with Michael Meltsner, I developed a test case clinic, a clinic based on a semester-long simulation, and a live-client, small case clinic. These programs are described in the articles cited supra note 2. In 1981-83, David Koplow, Lisa Lerman, J.P. Ogilvy and I transformed an administrative advocacy clinic at Georgetown into the Center for Applied Legal Studies, a live-client clinic centered on the use of learning contracts and, like the earlier live-client clinic at Columbia, the study of group dynamics in the practice of law. That clinic is described in Jane H. Aiken, et al., The Learning Contract in Legal Education, 44 MD.L.REV. 1047 (1985). In 1984-85, Professor Lerman and I jump-started the clinic at the West Virginia University College of Law during a joint visit there.

[FN4]. See infra text before and after note 44.

[FN5]. Peter T. Hoffman, Clinical Course Design and the Supervisory Process, 1982 ARIZ.ST.L.J. 277 (1982) addresses some of the structural and supervisory questions but does not attempt to cover the entire range of clinic design issues.

[FN6]. Established clinicians change their program designs, including the types of cases on which they work, for many reasons. Some want to change their work from time to time so that they remain intellectually challenged. Others respond to changing patterns in community needs; the availability of financial and other resources (including grants that sometimes come with strings attached); student, faculty or decanal interests; changed judicial rules or structures; or many other types of extrinsic events.

[FN7]. By "clinic supervisor" I mean any clinic instructor with some degree of authority over clinic policy. In some clinics, this may mean only a single clinic "director"; in others, authority is shared among many people, including not only a director but also other clinic supervisors, and perhaps support staff as well. The issue of sharing authority to make clinic policy is discussed in the text following infra note 27. In this article, I generally use the plural noun when referring to the instructional staff of a clinic, because many clinicians in the United States, including me, work in collaborative settings of some kind. But some clinicians are the sole supervisors in their clinics, and I hope that this article is equally of use to them.

[FN8]. This article is deals primarily with how to think about designing clinics that handle "cases." Most American law school clinics do so, but some clinics work in altogether different ways. For example, some clinics offer tax counseling, comment on proposed federal or state legislation, help to incorporate small businesses or to turn rental housing into cooperatives, or otherwise deviate from the standard "case" model. However, most of the issues in this article, such as questions about the size of and relationships among the teaching staff, community relationships, and grading systems, also arise with respect to these less orthodox clinics.

[FN9]. The one major structural question that I do not address is funding. Of course the most reliable source of funding for a clinic is its law school's regular budget (based on a combination of tuition and endowment income). Reliability is important because clinics must often make multi-year commitments to clients and community organizations. They become part of the service network of a city or region, and major disruptions occur in the community if a clinic is funded in some years but not others. Nevertheless, in the United States some clinics are dependent on subsidies or grants from government agencies or private charities, and clinics in less wealthy countries may have to be even more inventive about obtaining the funds necessary for clinicians' salaries and other clinic expenses.

[FN10]. They are not even the answers that other clinicians at Georgetown would choose. Georgetown has about a dozen clinics, of which CALS is only one, and each of them has its own goals, subject areas, teaching methods, etc.

[FN11]. With respect to a small number of relatively minor subjects, such as whether the teachers or the students should make the rules about file maintenance, I not only lay out the issues but also state a fairly strong view of the decision that clinic supervisors should make. With respect to most issues, however, there is no correct answer applicable generally to clinical programs and law schools.

[FN12]. As Peter T. Hoffman put it nearly 15 years ago, "An effective clinical course should be the result of a rational process of selecting and adapting specific means to specified ends [starting with] the determination of course objectives [but this sequence] is rarely followed in reality." Hoffman, supra note 5, at 278 and 278 n. 4.

[FN13]. See infra text at note 17.

[FN14]. I have posted on Georgetown University's Home Page the full statement of CALS' educational goals in the form that we publish it to our students, as well as the full description of our supervisory methods. I would also be

happy to mail these portions of our Office Manual to any reader on request. The home page is located at <http://www.ll.georgetown.edu/lc/>. Those who do not have access to the World Wide Web may write to the Center for Applied Legal Studies at 111 F Street, NW, Washington, DC 20001. A similar statement of educational goals frequently stated by clinics, written by a committee of clinicians, appears in Report of the Committee on the Future of the In-House Clinic, 42 J.Legal Educ. 508, 511-17 (1992).

[FN15]. See infra text following note 68.

[FN16]. See infra text accompanying notes 56-71. Occasionally, a clinic has a student whose skills or motivation are unusually poor, and the supervisors may have to modify their goals and methods with respect to that particular student. However, we have found that devolving enormous responsibility is effective with respect to a very high percentage of our students.

[FN17]. In some American law schools, service to clients was a primary goal of clinics at their inception, but this objective was supplanted by educational goals when outside funds for clinical education diminished, and law school faculties showed little enthusiasm for serving poor people unless teaching was primary. Minna J. Kotkin, Reconsidering Role Assumption in Clinical Education, 19 N.M.L.REV. 185, 192 (1989).

[FN18]. See infra text following note 54.

[FN19]. See infra text following note 54.

[FN20]. See GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS 292-339 (1978).

[FN21]. See Meltsner & **Schrag,** Scenes from a Clinic, supra note 2, at 10, 18-19.

[FN22]. This goal is consistent with the suggestion of the American Bar Association's MacCrate Commission that a lawyer should be committed to the values of "contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them [and] to enhance the capacity of law and legal institutions to do justice." ABA, TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT--AN EDUCATIONAL CONTINUUM 140-41 (1992).

[FN23]. Clinics are not necessarily the only law school institution, or even the best such institution, for helping students think about how they can embark on careers of public service. Some law schools have non-clinical programs, such as New York University's Root-Tilden-Snow Scholars Program, or Georgetown's Public Interest Law Scholars (PILS) Program, through which selected students who desire careers as public interest lawyers are awarded scholarships and offered academic enrichment to enable them to achieve those goals. Georgetown's PILS Program is described on the Law Center's home page, supra note 14. In addition, at many law schools, career offices offer students literature, counseling and panel presentations to introduce them to non-traditional career options. Whether or not law schools can afford significant scholarship programs for students interested in public service careers, they may be able to strengthen their visible commitment to public interest law by creating a center that brings together the school's services (career counseling, information about volunteer opportunities, speaker programs, etc.) for students who want to work for governments or non-profit organizations, or who plan to spend significant portions of their careers handling pro bono cases. Georgetown has recently created its Office of Public Interest and Community Service (OPICS) for this purpose.

[FN24]. See Marvin S. Kayne, Cases Illustrating Ethical Problems, in CLINICAL EDUCATION FOR THE LAW STUDENT 114 (Council on Legal Education for Professional Responsibility, Inc. ed., 1973); Meltsner & **Schrag,** Report from a CLEPR Colony, supra note 2, at 618-22; Lester Brickman, Contributions of Clinical Programs to Training for Professionalism, 4 CONN.L.REV. 437, 443-44 (1971).

[FN25]. See Meltsner & **Schrag,** Report from a CLEPR Colony, supra note 2, at 601 n. 33.

[FN26]. At Georgetown, which has nearly a dozen separate clinics, most clinics employ graduate Fellows--young lawyers--to participate in teaching. They are paid stipends (in **1996,** about $30,000 per year for two years), and the tuition and fees for the LL.M. degree are waived. While helping to teach at CALS, Fellows need not take other courses, but they must write a publishable law review article (one day in many of their weeks is laid aside for research and writing to make this possible). See Georgetown University Law Center, Clinical Graduate Fellowship Opportunities in Teaching and Advocacy **(1996),** available from the Law Center. The Georgetown Fellowship programs have existed for decades; given the high quality of the teacher-lawyers they attract for modest salaries, it is surprising that these programs have not been replicated widely.

[FN27]. At CALS, the ratio is 4:1. Most semesters, one professor and two Fellows teach twelve students. In some semesters, two professors and two Fellows teach 16 students. Many schools, particularly those in less developed countries, will not be able to afford student-teacher ratios anything like those at Georgetown. Clinics with much higher ratios could still be excellent, but would probably have to be modest about what they can expect to teach most of their students.

[FN28]. Sometimes, deans (and faculties) hire two clinicians who do not know each other and assign them to work together, but this procedure does not make compatability more likely. Permitting a clinician to have at least a strong role in the selection of a primary colleague seems less risky.

[FN29]. Students, too, can in principle play a role in making clinic policy, and some experimentation along these lines has already taken place. See infra note 102.

[FN30]. In the first year, the other teacher had no faculty status, but the following year, Georgetown designated all of its clinical teachers (except the temporary Fellows) as professors.

[FN31]. For a general description of Fellows, see supra n. 26.

[FN32]. Distinctions do exist in salaries, academic titles, and, as noted infra text following note 64, summer responsibilities.

[FN33]. Our selection procedures are described infra at text following note 66.

[FN34]. In most years, Professor Koplow and I have each spent one semester teaching in the clinic (with no other course responsibilities) and one semester teaching more traditional classroom courses. Occasionally we have taught in the clinic together, with a somewhat larger number of students. An instructor who is not teaching in the clinic during a particular semester participates in the end-of-semester evaluation meetings but not the semi-weekly management team meetings.

[FN35]. Of course a large law school may have more than one clinic, or more than one project within a large clinical superstructure, each dealing with a different area of law.

[FN36]. For example, when CALS students handled social security disability cases and small claims consumer protection cases simultaneously, they were able to contrast an administrative proceeding with a judicial case; a case that could involve negotiation with one that had to go to a hearing; and often a case in which they were trying to obtain relief with one in which they were trying to resist a judgment.

[FN37]. See Abram Chayes, The Role of the Judge in Public Law Litigation, 89 HARV.L.REV. 1281 (1976); ROBERT M. COVER ET AL., PROCEDURE 219-427 (1988).

[FN38]. This issue is explored in Meltsner & **Schrag,** Report from a CLEPR Colony, supra note 2, at 589-90.

[FN39]. Of course not all clinic clients prevail or settle their cases. However, because of law students' persistence and skill, and the amount of time and energy they are able to devote to their clients, clinics tend to have remarkable success rates. Cost may be a further consideration in caseload determination; big cases can necessitate large expenditures for investigation, discovery, and expert witness fees. See JONATHAN HARR, A CIVIL ACTION (1995) (environmental lawsuit requiring millions of dollars of expenditures by the plaintiffs' lawyers).

[FN40]. Frank S. Bloch has argued that "to maximize law students' readiness to learn from a clinical experience, the cases must present real legal disputes and must require the use of lawyering skills. Thus [a sound teaching] model would include a case selection process that would favor cases such as administrative appeals from denials of various public benefits and contested eviction proceedings in which law students can act as lawyers, rather than cases such as multiple debt actions without viable defenses that require financial counseling and cases involving routine applications for benefits that can be resolved by a case worker or social worker." Frank S. Bloch, The Andragogical Basis of Clinical Legal Education, 35 VAND.L.REV. 321, 351 (1982).

[FN41]. For example, a local tribunal may permit student practice and its rules may seem to permit the orderly introduction of evidence and the entertainment of legal argument. But it is important to observe the tribunal in action. It may turn out that the judge who most frequently hears cases refuses to consider or apply legal standards and is interested only in promoting settlements or deciding cases according to his or her sense of fairness, or that female advocates rarely prevail, or that students are mocked, etc. Unless the clinic supervisors specifically want to make it a priority to teach students how to deal with idiosyncratic judges (a non-trivial skill), the clinic might choose to practice in an area of law that did not involve appearing in that tribunal.

[FN42]. For a description of Georgetown's clinics, see Georgetown University's home page on the World Wide Web cited supra note 14.

[FN43]. See infra text accompanying note 108.

[FN44]. Student representation of clients seeking civil protection orders in situations of domestic violence appears to be an excellent opportunity for one- semester law school clinical practice, but we did not consider this possibility for CALS because by the time we were ready to change our focus, Georgetown's Sex Discrimination Clinic had made this work its main activity.

[FN45]. 59 Fed.Reg. 62284 (INS Dec. 5, 1994). See David A. Martin, Making Asylum Policy: the 1994 Reforms, 1995 WASH.L.REV. 725 (1995).

[FN46]. 8 C.F.R. Sec. 292.1 (1995).

[FN47]. Experienced asylum advocates told me that multiple interviews were always necessary, because it took many sessions before most clients would feel comfortable enough with a representative to reveal the complete narrative of often humiliating horrors, including rape, torture, and the murder of relatives, that had befallen them. See, e.g., Steven Forester, Haitian Asylum Advocacy: Questions to Ask Applicants and Notes on Interviewing and Representation, Part II, IMMIGRATION NEWSLETTER (Nat'l Lawyers Guild National Immigration Project, LA), Aug. 1992 at 1, 3.

[FN48]. Another 1994 change in the regulations explicitly provided that witnesses, presumably including experts, could be heard in asylum officer interviews, too. See 8 C.F.R. Sec. 208.9(b) (1995) and comment at 59 Fed.Reg. 62284, 62292 (INS Dec. 5, 1994).

[FN49]. Our reading of the level of student interest was accurate. When we changed our caseload to begin doing these cases, the number of annual applications to CALS increased by a factor of three.

[FN50]. In the Washington, D.C., area, several charitable programs serve the refugee population, and some of them have staff lawyers and law students who handle asylum cases. In addition, George Washington University Law School has a general purpose immigration clinic that includes asylum work, and American University has a human rights clinic that includes asylum work.

[FN51]. In her forthcoming book, Professor Lerman addresses questions about how to structure "externship programs," in which students work in government agencies and other law offices for academic credit and study their work in law school seminars. LISA G. LERMAN ET AL., LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS (forthcoming 1997).

[FN52]. Marjorie Anne McDiarmid's survey in the late 1980s found that among those responding to a questionnaire, 48 clinics were year-long offerings, while 80 lasted for a semester or one or two quarters. Marjorie A. McDiarmid, What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead, 35 N.Y.L.SCH.L.REV. 239, 257 (1990).

[FN53]. Deans and clinicians should simplify the analysis of and the negotiations over clinic credit allocations by decoupling the issue of academic credit for students from the issue of teaching credit for faculty members. For classroom teachers, offering a four-credit course usually counts as four teaching credits toward a teacher's annual complement that must be filled. However, most deans recognize that clinical teaching involves much more tutorial student contact than classroom teaching. Therefore, the proper number of clinical and classroom courses to be taught by a clinical teacher in a given year should be worked out independently of the number of academic credits awarded to students taking the clinic and should not be a factor in capping those student credits. For example, students taking a one-semester clinic might get nine academic credits out of a normal semester's load of thirteen credits, but (contrary to the usual law school practice) the instructor might get only six teaching credits out of the school's normal requirement that the teacher offer eleven credits during the year. Thus the fact that the dean desires the teacher to offer the clinic both semesters, or to teach the clinic one semester and one or two other courses the other semester, would not artificially require the students to receive only five or six credits for their nearly full time work.

[FN54]. Marjorie Anne McDiarmid's study of in-house clinics concluded that on average, clinic students work one more hour per credit than students in other courses. McDiarmid, supra note 52, at 250.

[FN55]. This analysis of the difficulty of grading clinic students is a summary of a more detailed explanation of the grading problem that we issue to our students in our Office Manual. CALS will supply a copy of the longer explanation upon request. Some of the analysis dates back to the mid-1970s when Michael Meltsner and I first discussed the dimensions of this problem. In the subsequent twenty years, none of the problems has gone away, and I do not think that my ability to grade clinic students has improved. It should be noted that while grading (comparing students to each other and assigning letter or number grades that influence significantly a student's career prospects) is very difficult for the reasons explained here, evaluation (helping students to describe the quality of their work, and offering additional commentary) is a routine and pleasurable aspect of clinic work.

[FN56]. I have kept such records on rare occasions--where a pair of students requests me to do so, or where students are performing poorly but believe that they are performing well and have intimated that they plan to protest the grade if they do not receive an "A".

[FN57]. Of course, a clinician might select those tribunals according to the opportunities they afford for students to practice in a manner that serves the teacher's educational goals, rather than starting with the tribunals and settling for the education that their rules permit. Student practice rules need not, however, be thought of as fixed for all time. Like most legal norms, they tend to evolve over time, and clinicians and deans may have considerable influence with the judges who promulgate the rules.

[FN58]. Some courts or agencies impose additional conditions, e.g., that the client be indigent. Some courts may require that the sponsoring organization be not a clinic but a legal aid organization, a requirement that can be met by incorporating a legal aid organization at the law school, as NYU and Columbia Law Schools did in the 1970s to meet New York State's requirements.

[FN59]. Persuading tribunals to permit student practice may seem a formidable undertaking, but at least in some countries it might turn out not to be so difficult. Clinical education in the United States did not become popular (except in Colorado) until the very end of the 1960s, but within a few years thereafter, nearly every state permitted student practice. See Steven H. Leleiko, State [and] Federal Rules Permitting the Student Practice of Law: Comparisons and Comments, in BAR ADMISSION RULES AND STUDENT PRACTICE RULES (Fannie J. Klein ed., 1978). The courts passed these rules not to help educate students, but to make it possible to provide more representation to people who could not afford to pay lawyers. See Harold H. Greene, Judging the Students: Judicial Attitudes on Student Practice, in CLINICAL EDUCATION FOR THE LAW STUDENT 262, 265-66 (Council for Legal Education for Professional Responsibility, Inc. ed., 1973). A clinic could open its doors without waiting for legislative or judicial approval of student practice, if the instructors are permitted to practice and to use students as their assistants. This role is not ideal from the perspective of teaching students about assuming responsibility, but opening a clinic with students in limited roles may be better than waiting for the necessary approvals.

[FN60]. See the discussion of supervisory methods, infra text following note 68.

[FN61]. This is an issue for deans as much as for clinicians. Occasionally, deans have hired clinical teachers on eleven month contracts (presumably paying them at least 11/9 of a regular academic salary), rather than the usual nine- month academic contracts, on the sometimes-implicit assumption that clinicians would have to staff their programs on a year-long basis. A clinician hired on such a contract might be less likely to consider the possibility of reducing or eliminating summer operations.

[FN62]. See infra text accompanying note 108.

[FN63]. We have not yet encountered a case in which a client initially consented to delays occasioned by our calendar but later came to believe that such a delay could be harmful to his or her interests. If such a case arose, I doubt that we would consider enforcing the terms of the retainer agreement.

[FN64]. That is, the supervisors in three or four clinics could rotate summer responsibility for "baby-sitting" the cases of all of those clinics.

[FN65]. ABA, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 405(e) and accompanying interpretations (1994).

[FN66]. The faculty co-directors of CALS are tenured members of the faculty. Each of them spends approximately half the time teaching clinically and half the time teaching traditional courses. They have had the same opportunities for leaves of absence as other faculty members, and their University has been generous in offering summer writing grants to facilitate scholarship. In many semesters, they have invited non-clinical faculty members to co-supervise two clinic cases with them or with the Clinic's Fellows, and as a result, a large number of faculty members have experienced first hand the intellectual depth of clinical education. Indeed, the fact that some non-clinical faculty members knew from personal experience how resource-intensive clinical education must be may have helped to head off a budget cut in the mid-1980s.

[FN67]. It is somewhat more difficult to gain pre-job experience in clinical teaching (or for that matter in classroom teaching) than in case handling. A person who is becoming a new clinical teacher may have had experience as a student or even a student supervisor in a clinic, but there are few opportunities to do assistant clinical teaching before starting a job as a clinical supervisor. Practitioners without prior clinical teaching experience might at least want to attend the Association of American Law Schools' clinical teacher training conference held every other summer. It usually includes several opportunities to observe experienced teachers showing and critiquing tapes of supervisory meetings with students.

[FN68]. See Kotkin, supra note 17; James H. Stark et al., Directiveness in Clinical Supervision, 3 PUB.INT.L.J. 35 (1993); Aiken et al., supra note 3; Hoffman, supra note 5; Peter T. Hoffman, The Stages of the Clinical Supervisory Relationship, 4 ANTIOCH L.J. 301 (1986); George Critchlow, Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene, 26 GONZ.L.REV. 415 (1990); Bloch, supra note 40; Meltsner & **Schrag,** Scenes from a Clinic, supra note 2; Kenneth R. Kreiling, Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision, 40 MD.L.REV. 284 (1981); Michael Meltsner et al., The Bike Tour Leader's Dilemma: Talking About Supervisors, 13 VT.L.REV. 399 (1989); Margaret M. Barry, Clinical Supervision: Walking That Fine Line, 2 CLIN.L.REV. 137 (1995); Jennifer Howard, Learning to "Think Like a Lawyer" Through Experience, 2 CLIN.L.REV. 167 (1995).

[FN69]. Minna Kotkin suggests that particularly insecure, self-critical, or immature students cannot easily read or hear about a skill and then translate it into action in a new experience without first watching someone else (the teacher) undertake the action first. She recognizes, however, that modeling case handling for students has heavy costs; the "dynamic of authority established in the minds of the client, adversary, and court may be irrevocable" and supervisors may not have the time to handle their own cases and also supervise students on the students' cases. Kotkin, supra note 17, at 197, 201.

[FN70]. Much of the discussion about supervisory methods is framed in terms of how students learn best, but James H. Stark, Jon Bauer and James Papillo point out that the quality of client service is also a factor, and that because teachers

are always more experienced than students, the more decisions and actions teachers leave to students, the less likely the client is to receive the "best possible" representation from the clinic. Stark et al., supra note 66, at 45. In their survey of clinicians, they found that concern for clients causes clinicians often to be more directive with students than they believe they should be. Id. at 49. George Critchlow says that "the clinical teacher should consider the consequences of student performance in terms of delay, financial and emotional costs to the client, and impact on the resources of the court and interested parties.... Where the clinical teacher believes intervention will expedite resolution of the legal problem and save time, money and anxiety for the client and others, there should be less reluctance to take over primary responsibility for the relevant task." George Critchlow, supra note 66, at 435, 437 (emphasis added). But he also acknowledges that there "is probably nothing more stressful and draining for the clinical teacher than suffering through a poor student performance. The desire to avoid such stress may be a conscious or unconscious factor in many decisions to intervene." Id. at 428 n. 43. And he describes at length an example in which he did not intervene even when a student froze at the outset of a crucial closing argument. Id. at 437-40.

[FN71]. Aiken et al., supra note 3. In practice, clinicians vary considerably in their views about how directive they should be, in their attitudes about directiveness with respect to various aspects of representation, and in how much their actual styles of supervision match their theories of how they ought to behave when supervising. But most clinicians seem to lean against strong intervention. For example, a survey showed that 76% of clinicians believed that "even if supervising attorneys know the law, they should make students find it themselves," and 69% also thought that "supervising attorneys should not share their ideas on tactics with students until students have developed and articulated their own tactical ideas." Stark et al., supra note 68. Prof. Wallace J. Mlyniec has suggested to the author that the debate about instructors' interventions in student work is not really about the issue of whether to intervene, but rather at what stages to intervene; the relatively non-directive instructors intervene extensively during the pre-hearing phases of a case (e.g., by the many questions they ask students, and by writing comments on their drafts of briefs), but are more restrained during the early phases (e.g., client interviews) and during hearings. For a student's perspective, see also Howard, supra note 68, at 184 (As a clinic student, "Every time I asked Professor Barry, her response was the same: "What do you think?").

[FN72]. Aiken et al., supra note 3. A year or two before changing fields of law, we made one big change in the method described in that article. We stopped requiring students to negotiate a learning contract with supervisors at the beginning of the semester, and we began imposing the relationships described in the article on our students, subject to discussion and change at any time the students found those relationships dysfunctional. We did not require such discussion and change, and only a minority of students ever asked to make amendments. This change in our procedure reflected our realization that at the beginning of a semester, students don't know enough about what supervision is like (despite reading a lot about it in our Manual) to bargain meaningfully for changes in the procedure. We also were able to get into the cases a week earlier because we no longer spent the first week negotiating a learning contract with each student.

[FN73]. Details elaborating this description of our supervisory relationships are posted on the World Wide Web. See supra note 14.

[FN74]. This relationship is consistent with Frank S. Bloch's admonition that in clinical education, "students should be encouraged to decide when to ask questions and when to explore for answers on their own. In other words, the student should help the teacher decide when the teacher needs to direct and teach, and when the student can be left alone." Bloch, supra note 40, at 350.

[FN75]. In CALS, as elsewhere, the nature of the supervisory relationship evolves over time, as the teacher learns more about what kinds of guidance and feedback best enables each student to learn. Peter Toll Hoffman has described the virtual inevitability of such evolution. Hoffman, The Stages of the Clinical Supervisory Relationship, supra note 69, at 301. However, Hoffman appears to suggest that in the middle of the relationship, the teacher should suggest tactical options to the student, whereas toward the end of the teaching relationship, the teacher should defer, to a greater degree, to a student's analyses and decisions. Id. at 308 (example of teacher suggesting methods for

postponing answering a complaint), 309. In CALS, our relationship in the early and middle parts of a supervisor's relationship with students has tended to leave the tactical and other research much more to the students (unless, having thought about the issue more than casually, they make deliberate decisions to seek our advice). We have tended to volunteer our own opinions to a greater degree toward the end of the relationship, either because (for weak students) closer to the hearing, there is a greater risk that a client will be harmed if we think that a theory or tactic will be omitted unless we offer our views or (for strong students) we are no longer concerned that if we inject ourselves to a greater degree, the student will follow our lead rather than learning to take responsibility for independent decision-making.

[FN76]. In some semesters, CALS students didn't fully grasp the distinction that was clear in our minds between case-related decisions (for which they had responsibility) and educational decisions (for which we had responsibility). Accordingly, some of them thought that because they could decide, for example, what claims to assert on a client's behalf or what theories to pursue, they could also decide to skip a weekly case team meeting or come to a meeting without an agenda. We found that at the beginning of the semester, it was useful to reinforce, orally and in writing, the idea that although their expertise about their particular clients' concerns soon outstripped ours, we had greater knowledge of and responsibility for educational approaches, and that our ability to allow them so much freedom in case-related decision-making depended on their working within the rigorous model of case work that we published in our Manuals.

[FN77]. David F. Chavkin, Matchmaker, Matchmaker: Student Collaboration in Clinical Programs, 1 CLIN.L.REV. 199 (1994).

[FN78]. Chavkin recognizes that empirical research on the benefits and disadvantages of student collaboration has been very limited, and his article includes caveats about drawing firm conclusions at this stage, as well as a call for further study.

[FN79]. Chavkin briefly discusses--and dismisses--the concept of having more than two students working on a case, but some clinics do create larger teams of students to work on more substantial projects.

[FN80]. While I think that Chavkin's article somewhat understates the benefits of student collaboration and overstates its problems (even though on balance he favors collaboration), I appreciate that Chavkin has made an important contribution to our understanding of the issues by identifying the many ways in which pairing can help or hinder education, client service, and other goals.

[FN81]. See Aiken et al., supra note 3, at 1052, n. 26.

[FN82]. These manuals can be expensive. It is not necessary to require students to pay fifty dollars or more for a manual that most of them will not use after leaving the clinic. Instead, the clinic can buy several copies of the manual and either issue them to each student or each partnership for the duration of the clinic or rent them to the students to recover the purchase costs in a year or two.

[FN83]. Of course there are also students who do not read manuals and take in only what is said in oral announcements. It may be necessary to state the most important clinic rules orally and in writing.

[FN84]. IMMIGRANT LEGAL RESOURCE CENTER, WINNING ASYLUM CASES (1993, rev. 1995).

[FN85]. That is, such matters as use of the telephones, computers and copiers; expense reimbursement policy; security

arrangements; message systems; library and office access, etc.

[FN86]. Our students actually receive a fourth manual as well, an Assignment Manual containing all of the exercises and assignments for the classroom component of the course. By giving them these assignments in a single manual at the beginning of the term, we enable them to look ahead and not be surprised by a particularly demanding assignment that would otherwise be distributed as a handout only a week or two before it was due. Also, by forcing ourselves to write the assignments before a semester starts, we avoid having to create class assignments while also supervising cases during the semester.

[FN87]. In the United States, commercial services manage immense, searchable databases of legal decisions, news reporting, and medical and business information, and although commercial use is costly, law students and teachers have unlimited access to these databases for course-related research at no charge.

[FN88]. My negotiations with Dean Carl Selinger in the spring of 1984 led to the creation of the clinical office in the basement of West Virginia Law School that found its way into the title of Marjorie Anne McDiarmid's article, What's Going on Down there in the Basement: In-House Clinics Expand Their Beachhead, supra note 52.

[FN89]. Id. at 274.

[FN90]. CALS students do most of their research and writing in a large student work room across the hall from the CALS suite, which includes the clinic's office manager, one of its co-directors, its Fellows, and an additional room housing its specialized library and a conference table. An interview room is adjacent to the work room. The work room has computers and telephones, but students must go to another part of the building to use fax and copying equipment. The work room is open, and the law school is guarded, 24 hours a day, 7 days a week. The CALS office manager is a skilled college graduate who has served the clinic for more than ten years.

[FN91]. Here's my most astonishing expert and creative students story. Two Jewish CALS students spent weeks trying to find an expert psychiatrist to evaluate their client's mental disability and provide testimony to help her to obtain Social Security disability benefits. Their client could not afford to pay any fee. They used all kinds of word-of-mouth leads, but every psychiatrist they called turned them down. Finally they called a Dr. Goldberg and told him what they wanted. "Why did you call me?" the psychiatrist asked. "We used the Yellow Pages," the students told him. "We figured that Jewish psychiatrists would be the most likely to give us free help, because they'd have a lot of Jewish guilt. And you had the most Jewish name in the book." Goldberg agreed on the spot, and the students won the case.

[FN92]. For example, the government's basic asylum application form, the "I- 589," is designed for pro se use; it asks the applicant a series of important questions such as "Have you or any member of your family ever been mistreated/threatened by the authorities of your home country ...?" Most attorneys representing asylum advocates think that it is desirable to attach to this form a lengthy narrative affidavit from the applicant, telling his or her story chronologically and in great detail. If a lawyer follows that model, what should be done about the spaces after the specific questions in the form? Should one exclude from the affidavit the information provided in those spaces, repeat some of the information there and in the form, or merely cross-reference the affidavit? Interestingly enough, the answer may depend on how rich the facts of the particular case are, presenting a clinical supervisor with some interesting teaching opportunities.

[FN93]. Possibly, the learning value of this struggle diminishes with time, for even if the clinic never develops a standard retainer form, once some students have reduced their agreement with clients to writing, future students will undoubtedly draw upon that past experience and the former students' work will become a de facto clinic form.

[FN94]. When we began handling asylum cases, the instructors wrote a standard form retainer agreement rather than turning this issue over to students. We did so primarily because we wanted to make certain that all clients were informed, and that we had a record that they were informed, that clinic representation came with some baggage such as possibly slowed case handling during vacations; an understanding that although representation was free, they would be responsible for any out-of-pocket expenses; and an understanding that we did not commit in advance to handling appeals. When Professor Koplow and I began teaching CALS in the early 1980s, we seriously considered asking students to develop their own retainer agreements; more recently, I don't think that we reconsidered this issue as thoroughly as we reviewed most issues of clinic design.

[FN95]. The advent of computer disks has made the temptation to copy from past cases greater, because if prior students' work is retained on disk, current students don't even have to retype their predecessors' relevant work. Of course, in clinics that do make closed case files available, some students don't consult them at all, even when their clients might be helped by prior students' research.

[FN96]. Our institutional memory includes closed case files, a progressively larger subject matter index, a personnel index, a master log in which the office manager keeps track of what ultimately happens to every case we accept for representation, and an archive reflecting administrative correspondence of the clinic. The office manager also has an informal institutional memory, and from time to time we discuss how the office manager should respond to students when they ask her directly (because they are more reluctant to ask instructors, or because the instructors may not know) how past students addressed a particular problem or dealt with a particular official. Because she is human, she naturally wants to help them, but to the extent that they are using her to avoid even having to use the index and closed files, or to think creatively, we sometimes think that we want her to be less forthcoming. This is an ongoing issue that we have not yet resolved satisfactorily.

[FN97]. Early in the semester, our students who stereotypically associate formal requirements with conservative orthodoxy are sometimes surprised to find that CALS instructors who devote their lives to serving the poor nevertheless ferociously enforce clinic record-keeping requirements. They soon learn that rigorous record-keeping is an integral part of loyal service to clients.

[FN98]. This easily replicable research is discarded when the case is closed, so that our file cabinets are not too quickly filled.

[FN99]. Some CALS instructors require the Journal of Action to be printed in the form of an ever-expanded WordPerfect table, while others regard student handwriting as sufficient. A word-processed Journal of Action is much more readable but it takes somewhat more effort by the students.

[FN100]. It is often difficult to tell, during a brief or even an initial lengthy interview, whether a potential client's claim is weak or strong, but it is sometimes possible to tell that the client does not appear by any stretch to have a valid legal claim.

[FN101]. That is, we did not want any students to discover, after one or two more thorough interviews with a client, that the client was unwilling to agree to the representation, and that the students would have to start from the beginning. Students bore an awesome responsibility when representing an affirmative applicant, because the act of applying would identify the client to the Immigration and Naturalization Service, and losing applicants are served with orders to show cause initiating deportation proceedings. We made clear in our pre-screening, and again in the students' interview, and again in our retainer agreement, that we did not guarantee our affirmative application clients that we would represent them in those proceedings. Fortunately, every one of the clients whom we represented in an

affirmative application during our first year of operation was granted asylum. One such application was denied at the initial interview stage, but we in fact represented her in the subsequent deportation proceeding at which the judge granted asylum.

[FN102]. Students did help to determine this policy in the first year of the Battered Women's Rights Clinic at City University of New York (CUNY). Susan Bryant & Maria Arias, A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community, 42 J. OF URBAN AND CONTEMP.L. 207, 213 (1992).

[FN103]. Id. at 214.

[FN104]. In the second year of the CUNY Battered Women's Rights Clinic, when students did not help to formulate an intake policy, they were not as enthusiastic about the clinic. Id. at 215.

[FN105]. Lisa G. Lerman, Fee-for-Service Clinical Teaching: Slipping Toward Commercialism, 1 CLIN.L.REV. 685 (1995).

[FN106]. The absence of such limits in student practice rules might reflect the fact that in fora in which small claims, public benefits, or issues of status such as child custody are litigated, very few litigants can afford private counsel, and those who receive private counsel might often have lawyers who, because of the low financial stakes involved and the relative poverty of most of their clients, tend to accept far more cases than they can handle competently. Accordingly the court might want to leave to the law schools maximum discretion about which cases students will handle, rather than trying to make fine distinctions themselves. Before 1979, the American Bar Association recommended that students be allowed only to represent indigents, but in that year it amended its model student practice rule to permit students to represent any person. It reasoned that the indigency requirement "severely and unnecessarily restricts the educational opportunities of students, and the opportunities of law school faculties to provide their students with a broad range of practical experience." Critchlow, supra note 68, at 423, n. 16.

[FN107]. Of course a client can reject representation by particular clinic students for any reason, and clinic supervisors might also allow students to reject proposed clients for reasons other than the student's views about the client's wealth. For example, supervisors probably must require a student to reject representation if the student discovers a conflict of interest (such as a family relationship between the student and some person who is adverse to the client) and might permit the student to reject representation if helping the client to pursue the client's objectives would be fundamentally repugnant to the student's values, if the student thinks that the case is frivolous even though the supervisor disagrees, etc. How much discretion students should be allowed in accepting representation is an interesting subject, but potentially a substantial one, so I have elected not to treat it in this already long article.

[FN108]. Some judges might refer such clients informally; others may provide lists of legal services providers in the community, on which the clinic could be included.

[FN109]. For its asylum docket, CALS developed guidance about steps that were likely to be necessary after winning or losing asylum cases, and checklists of actions to be taken in cases that were closed or to be transferred. Some years ago, we discovered that students eager to leave the clinic and study for exams in other courses did not always do a thorough job when undertaking the tasks specified in the checklists, so we evolved, and have continued, a practice of going over the files with the students, after they believe that they have done what was required by the checklists. This is probably the least educationally valuable student-teacher interaction of the entire course, but it has saved us several times from the embarrassment of missing a necessary step.

[FN110]. This is not a universal practice. In the late 1980s, 11% of clinics did not include a classroom component. McDiarmid, supra note 52, at 247.

[FN111]. My effort (with Meltsner) to give readers a sense of how rich clinical classes can be appears in Report from a CLEPR Colony, supra note 2, at 611-23.

[FN112]. At some schools, it may actually be possible to "front-load" the classroom component of the clinic if that is what clinicians would prefer to do.

[FN113]. When CALS was doing consumer protection cases, our orientation included having students watch and then discuss a simulated meeting of a student partnership, in which teachers, in full costume, played the students. For a period of a few years we also used a skit in which two teachers, dressed as devils with horns and tails and carrying candles in a darkened classroom, taught students the differences between the local consumer protection administrative agency and the small claims court by arguing about which forum would impose greater pain on its litigants.

[FN114]. Stories reported by Oklahoma City University law students suggest that in a class full of students who have had any legal work experience at all, students will be able to relate some very disturbing observations for class discussion. Lawrence K. Hellman, The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization, 4 GEO J. OF LEGAL ETHICS 537, n. 165-69, n. 260-272 (1991). This hypothesis has been confirmed by students enrolled in CALS. Students may feel more free to exchange such observations if they do so in papers they write that conceal both their own names and the identities of any law firms or clients who were involved. The teachers can then distribute the unattributed papers to other students as a prelude to discussion.

[FN115]. Paul Bergman et al., Learning from Experience: Nonlegally-specific Role Plays, 37 J. OF LEGAL EDU. 535 (1987) presents nineteen short non-legal role-playing simulations, requiring no advance preparation, that illustrate aspects of legal processes, particularly direct and cross-examination.

[FN116]. CALS students are given a choice of having an instructor observe their initial interview with a client or making an audio or video tape for the instructor.

[FN117]. See GRAHAM ALLISON, ESSENCE OF DECISION 67 et seq. (1971).

[FN118]. In a clinic, grading can interfere with evaluation of the institution as well as with the quality of its instruction. Supra, notes 56- 71 and accompanying text. If the instructors debrief students before the students receive their grades, the students may be reluctant to criticize aspects of the clinic's design or the quality of the instruction. But if they try to debrief students who have already received their grades, those with good grades may minimize their misgivings and those who received the lowest grades may be so bitter that they too can no longer be objective. It is difficult to overstate the degree with which many students who receive the lowest grade given by clinic (even if the grade is a B) inappropriately regard the grade as an emblem of personal failure, often overlooking the fact that clinics simply cannot give all students an A. In part this phenomenon occurs because in a clinic, to a much greater degree than in a classroom course, students feel as though they are investing their personality into their cases, and therefore they are being graded on their qualities as people rather than their performance as law students.

[FN119]. In principle, clients could not only fill out a form but also play a larger role in evaluation. For example, at the end of a semester a few clients could be invited to participate in an evaluation meeting or retreat with the

supervisors. At CALS we have never included clients in our evaluation meetings, but we also have never decided not to do so. Perhaps this reflects our emphasis on teaching or our exhaustion and limited patience for meetings at the end of each semester, but we may have overlooked the value of advice that our clients could offer us.

[FN120]. See supra text following note 32.

***245** APPENDIX

CHECKLIST OF ISSUES IN **CONSTRUCTING A CLINIC**

I. What are the goals of the proposed clinic?
A. Ideally, what goals should be pursued?
B. Which of these goals might have to be scaled back because of limited resources?

II. What should be the composition of the clinic's teaching staff?
A. How many teachers should the clinic have?
B. What qualifications should each such teacher bring to the job?
C. What relationships of authority or collegial collaboration should be encouraged among the clinic's teachers?

III. On what types of cases or projects should the clinic work?
A. Should the clinic specialize in a limited number of legal subjects?
B. Should the cases be large public law cases or smaller cases?
C. If the clinic is going to specialize, on what particular subjects should students work?

IV. How should students be credited for their work?
A. What should be the duration of the clinic?
B. How much academic credit should be awarded for a student's participation?
C. On how many cases should a student work while in the clinic?
D. Should the clinic be graded or should students simply pass or fail?
1. If the clinic is graded, what should be the criteria for grading?
2. If the clinic is graded, what should be the procedures for grading?

V. What should the relationship be between students and tribunals in which they appear?
A. What do the tribunal's rules require?
B. Can the rules be changed?
C. Within the rules, what relationship should the students and the instructors have with the tribunal?

VI. How should the clinic manage the interruptions built into the academic calendar?

VII. What relationships are desirable between the clinic and non-clinical faculty?

VIII. What methods should the clinic use to select its students?
A. What should be the temporal relationship between clinic ***246** recruiting and registration for other law school courses?
B. What advertising is desirable?
C. To what extent should the instructors learn about applicants and make deliberate selections among them?
D. What selection criteria, if any, should be applied?
E. What method, if any, should be used to discourage students from revoking their acceptance of a clinic?

IX. What training should clinic instructors have before beginning to supervise students?

X. What methods should the instructors use to supervise the students?

XI. Should students work individually or collaboratively in the clinic?

XII. What materials should be collected or prepared before the clinic begins?
A. Should the clinic purchase commercial manuals?
B. Should the instructors write their own practice manuals to account for requirements of local tribunals or its educational mission?
C. What tangible or electronic library should it acquire?

XIII. What requirements does the clinic have for work space, equipment, and support staff, and standby experts?

XIV. What use should the clinic make of forms, and to what extent should these be compiled before the clinic begins to work?

XV. What paper tracking systems should the clinic devise?
A. How will the clinic build its institutional memory?
B. What kind of filing system should the students use?

XVI. How will the clinic create an orderly flow of cases?
A. Should the instructors or the students devise intake policies and procedures?
B. Of what should those policies and procedures consist, and in particular, should clients be means-tested?
C. Should the instructors seek to establish institutional relationships with tribunals that will contribute to an orderly case flow?
D. What system should be used to close and transfer cases when students leave the clinic?
E. What should be done with requests for representation that the clinic will not be able to honor?

XVII. What should the instructors do about classes?
A. Should the clinic have a classroom component?
B. What if any orientation to the clinic will students need?
C. If there is to be a classroom component, can it be organized ***247** to be synchronous with students' typical work on cases?
D. What is the best balance between skills training and other types of classroom work?

XVIII. What institutions should be built into the design of the clinic to facilitate its evolution to adapt to changing circumstances?
A. What mechanisms should be used to provide for student evaluation?
B. What devices should be used to make it easy for the instructors to think about and effectuate periodic changes?

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