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CLINICAL LEGAL EDUCATION

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Professor Richard Rosen was born in 1947 and grew up in Charlotte, North Carolina. He attended Vanderbilt University where he received his B.A. in 1969. He subsequently began his legal studies at the University of New Mexico before transferring to the University of North Carolina. He graduated from UNC in 1976. Following law school graduation, Rosen served as a staff attorney in the Washington, D.C. public defender's office from 1976-82. He then joined the UNC law faculty as a clinical supervising attorney and became director of the UNC School of Law Clinical Program in 1983. He continues as a member of the law faculty, overseeing the school's clinical programs, as well as teaching and writing in the areas of criminal law, criminal procedure, professional responsibility, and capital punishment. He has contributed significant service to the law school, through his work on curriculum innovation, and to the bar, through his pro bono representation of indigent defendants.

At the University of North Carolina School of Law, and generally throughout academia, clinical legal education is defined as legal education centered around actual client representation by law students. Although UNC entered the field of clinical education rather late in the day, it has, over the last sixteen years, fashioned a clinical program that gives a substantial portion of the third-year class a valuable experience in real-life lawyering, while at the same time providing high quality representation to hundreds of indigent clients each year. It is this combination of excellence in education and service that has become the hallmark of the UNC School of Law Clinical Programs.

THE EARLY EFFORTS AT UNC

The twentieth century produced a marked change from the time-honored clerkship method of legal education. As the century turned, state after state passed laws requiring law school graduation and a bar exam, and law schools universally patterned their classes on the

classroom/casebook method fostered by Christopher Columbus Langdell at Harvard Law School. This pattern continued for over half of the century, and it was not until the late 1960s that law schools began seriously to explore alternatives to this model of legal education.

Some schools began to offer simulated trial classes based on a model developed by the National Institute of Trial Advocacy (NITA). At UNC the first trial advocacy class was offered in 1969 by Professor Kenneth Broun, an early participant in NITA and one of NITA's first Executive Directors. At the same time, law schools around the nation began experimenting with client contact clinical programs¹ and at UNC the faculty began considering the establishment of a clinical program.

These efforts bore fruit in the early 1970s with the establishment of two programs that offered students a chance to gain practical legal experience. First, in January 1971 the law school helped start a legal aid office in Chapel Hill. This office, staffed by a single attorney and a secretary, offered second- and third-year law students a chance to experience a "hands-on" approach to the study of law, albeit on a voluntary, noncredit basis. Professors Nakell and Pollitt also taught seminars which provided students with an opportunity to work on cases involving claims by indigent prisoners in the United States Court of Appeals for the Fourth Circuit. Although these programs provided students with valuable learning experiences, it soon became obvious that a more systematic approach was needed to allow the law school to offer clinical education on a permanent basis.

THE START OF THE MODERN CLINICAL PROGRAM AT UNC

By the late 1970s the clinical legal education movement was sweeping the country, and UNC began to explore ways to establish a permanent program of for-credit, client contact legal education. During this time students kept up a consistent demand for clinical opportunities, and various faculty committees examined existing clinical programs and the available literature on clinical legal education. Based on this work, in 1977 the law school took a major step in developing a client contact clinical program by hiring a

1. One of the earliest programs was begun by Professor Paul E. Wilson at the University of Kansas in 1965. Paul E. Wilson, *Legal Assistance Project at Leavenworth*, 24 LEGAL AID BRIEF CASE 254, 255 (1966).

permanent, tenure-track faculty member to develop a clinical program for the UNC School of Law.

The person chosen to fill this role was David Rudolf, a *cum laude* New York University Law School graduate with extensive trial and appellate experience. Professor Rudolf arrived at the law school in August of 1978, and in the 1978-79 school year he supervised twelve students in the Prisoner Legal Assistance Clinic. These students represented indigent persons in post-conviction criminal matters and in criminal misdemeanor cases. The cases were referred to the clinic by North Carolina Prisoners' Legal Services, an office established largely through the efforts of Professor Nakell that offers legal assistance to indigent prisoners. The students participated in the clinic for two semesters and received three hours credit each semester. In addition, the clinic students were required to take the three hour trial advocacy course and Professor Rudolf's three credit Prisoner's Rights and Post-Conviction Remedies course. Professor Rudolf also began to lay the groundwork for the expansion of the clinical program, applying for, and receiving, the first in a series of federal grants which allowed the law school to expand and consolidate its program of clinical legal education.

1980 was an important year for clinical legal education at UNC. First, with funding from the United States Department of Education, two supervising attorneys were added to the Prisoner Legal Assistance Clinic. I returned to the law school in January of 1980, having served for four years with the Public Defender Service for the District of Columbia after graduating from the UNC School of Law. Patricia Lemley, a 1974 graduate of Loyola of Chicago College of Law and an experienced trial assistant in the office of the United States Attorney for the Middle District of North Carolina, joined me as a supervising attorney in September of 1980.

1980 was also the year that the law school expressly adopted a plan for the implementation of clinical legal education at UNC, a plan that provided the basis for the expansion and consolidation of UNC's clinical programs and which set out a framework for clinical education at UNC that still exists today. In February of 1980 the Clinical Committee, chaired by Norman Lefstein,² presented a "Report and Recommendations" on the future of clinical education at the law school. The heart of this document, which was adopted by the full

2. Other committee members were Joe Kalo, Ron Link, Dave Rudolf, and student Mark Kirby.

faculty, was the recommendation that the school proceed to develop its clinical program using an "in-house" clinical model and rejecting the externship, or "farm-out" method of clinical legal education.

In a "farm-out" clinic, or externship, a student is placed with a law firm or other legal provider for practical experience, with the law school contributing to the students' education through a weekly seminar and some supervision in the field. One advantage of this model is that the students get to choose from a wide variety of legal experiences. Another is that it is a relatively cheap way to provide clinical education, especially compared with the "in-house" model chosen by the UNC faculty, where all the student work is supervised by a full-time faculty member.

Despite the expense, however, the UNC law faculty chose the "in-house" model. Only by keeping full faculty control over all aspects of the clinic, with all student work being supervised by full-time faculty members, could the school guarantee that the clinical program was maximizing the educational benefit of the clinical experience. The adoption of the in-house model with close faculty supervision also ensured that the clients represented by the students, all indigent as required by State Bar rules, received first-rate representation.

Under the plan adopted by the faculty, the clinic would be run by a project director who would be a full tenure-track member of the faculty. The supervising attorneys would be full-time law school personnel whose primary responsibility would be supervision of the students and the teaching of related courses to the clinic students. The students would handle all aspects of the cases assigned to them under close faculty supervision: interviewing, investigation, negotiation, counseling, drafting, and representation at trial or hearing. Emphasis would be placed on preparation of cases under the watchful eye of the supervising attorney and constant evaluation and critique of student activities.

THE CLINICAL PROGRAM IN THE 1980S

With this framework in place, the 1980s was a decade of growth and consolidation for the clinical programs. The Prisoner Legal Assistance Clinic evolved into the Criminal Law Clinic, with students concentrating their efforts on representing indigent criminal defendants in misdemeanor cases in the courts of Orange and Chatham

County, as well as assisting faculty members in defending felony cases.³ The clinical faculty developed a course entitled "Lawyering Process-Criminal" to complement the clinic experience. Required of clinic students, it provided a classroom setting for instruction on such general topics as interviewing, counseling and negotiating, as well as topics specifically geared toward criminal litigation, such as plea bargaining and sentencing.

The 1980s also witnessed an increasing commitment by the law school and the University to clinical legal education. In 1981 the University provided a modular building to house the law school's clinical program. First one, and then the second, of the supervising attorney positions in the Criminal Law Clinic were moved from "soft" grant money onto permanent University funding.

The law school also began to look to develop additional clinics. An Appellate Defender Clinic was established, with students representing indigent criminal defendants. In this clinic, which was available to eight students each semester, the students conducted research and prepared briefs for their clients under the supervision of an experienced appellate attorney, James Glover. Unfortunately, because of the lack of a student practice rule that would allow the students to argue their cases in the North Carolina appellate courts, this clinic was discontinued in 1983.⁴

In 1982 the law school developed yet another clinical program, the Civil Legal Assistance Clinic. Started as a joint program with Legal Services of North Carolina and North State Legal Services, the Civil Legal Assistance Clinic provided law students with an opportunity to represent indigent clients in civil cases under the direction of a supervising attorney. The Civil Legal Assistance Clinic was patterned closely on the Criminal Law Clinic, with the overall administration of the program vested in the clinic director, and with the students closely supervised by a supervising attorney who was a full-time faculty member. The main difference between the two, of course, lay in the types of cases handled by each clinic, with the civil clinic students representing clients in landlord-tenant disputes, government benefit claims, and consumer claims, among others.

3. This move was made largely for educational reasons: Because of the vagaries of post-conviction and prisoners' rights litigation, and especially the length of time it takes to litigate these cases, they were considered particularly difficult to use as educational vehicles.

4. Even after the demise of the Appellate Defender Clinic, the law school has in some years offered an Appellate Defender seminar patterned on the clinic.

The development of the Civil Legal Assistance Clinic during the 1980s also paralleled the development of the Criminal Law Clinic. For the first several years, the initial supervising attorney position was funded by grants from the United States Department of Education and Legal Services of North Carolina. A second supervisor was added to the Civil Legal Assistance Clinic using grants from DOE and the Legal Services Corporation. By the end of the decade the University and law school took over the funding for both positions. In addition, a Lawyering Process-Civil course was added to complement the client representation.

CLINIC PERSONNEL

The first half of the 1980s was a time of rapid expansion and turnover in clinic personnel. In 1982 David Rudolf, having accomplished his major goal of establishing a clinical program at UNC, left the law school to enter private practice. I left my supervising attorney position to take over as acting director of clinical programs for the 1992-93 school year, and at the end of that year I was appointed to the position on a permanent basis. In 1983 Jovita Flynn, the secretary in the clinic, left to return to graduate school, and she was replaced by Shelby Mann, a graduate of Alamance Community College who had been working at the law school since 1978.

The 1982-83 school year saw three new supervising attorneys starting work at the clinic. The two criminal clinic positions, open with my move to director and Patricia Lemley's departure for private practice in Virginia, were taken over by Mark Olive and William Larimer. Mr. Olive was lured to Chapel Hill from his position as a clinical faculty member at the University of Tennessee School of Law. Mr. Larimer had graduated from UNC in 1975 and since that time had established himself as one of the preeminent criminal defense attorneys in Orange County. The initial supervising attorney in the Civil Legal Assistance Clinic was Jean Cary, a 1975 Georgetown University Law Center Graduate who had practiced as a Legal Services Attorney in Charlotte and Raleigh, and who had been the statewide Coordinator of the Public Benefits Task Force for Legal Services attorneys immediately prior to accepting the job with UNC.

In 1985, with the addition of a second supervising attorney position in the Civil Legal Assistance Clinic, Ms. Cary was joined by Lucie White, a *magna cum laude* graduate of Harvard Law School who, after clerking for Federal District Court Judge James McMillan in Charlotte, had worked for several years for Legal Services of the Southern Piedmont in Monroe, North Carolina. In the Criminal Law

Clinic, 1985 was the year when Mark Olive departed to litigate death penalty cases in Florida. Mr. Olive was replaced by Michelle Robertson, a 1982 UNC School of Law graduate who had practiced criminal law in Durham and Chapel Hill, and who had the honor of being the first clinic graduate to return as a supervising attorney in the clinic.

Several more personnel changes occurred in the late 1980s. Both Jean Cary and Lucie White left the Civil Legal Assistance Clinic; they were replaced by Walter Bennett and Alice Ratliff. Mr. Bennett, who joined the clinic faculty in 1986, is a 1972 University of Virginia Law School graduate. After more than a decade practicing law and serving as a District Court Judge in Charlotte, Mr. Bennett returned to Virginia for an LL.M. degree, which he received with honors in 1986. Prior to joining the law faculty in 1987, Ms. Ratliff, who graduated from UNC School of Law in 1976, practiced with the North Central Legal Assistance Program in Durham, where she served as both Managing Attorney and Acting Director.

THE CLINICAL PROGRAMS: NOW AND THE FUTURE

If the 1980s can be described as the decade of change and growth for the clinical programs at the UNC School of Law, the 1990s, to this point, can be considered the era of stability. The school continues to operate a Criminal Law Clinic and a Civil Legal Assistance Clinic, and the students continue to represent their clients under the close supervision of four full-time faculty members acting as supervising attorneys.⁵ Moreover, there has been a significant change from the days of rapid turnover in clinic personnel.

In 1987 the faculty voted to grant job security to clinical faculty members by providing them with long-term contracts and status as Clinical Professors, Associate Clinical Professors, or Assistant Clinical Professors.⁶ With this change, the clinic staff has remained stable since 1988, with myself as director, Shelby Mann as the administrative assistant,⁷ Bill Larimer and Michelle Robertson as supervising

5. The only change in the structure of the clinical program since 1985 has been the addition of a one-semester option for criminal clinic students, added in 1988 as a way to provide a clinical experience for students who do not have the time or resources to commit to a full-year clinic.

6. The faculty also outlined a procedure whereby a clinical faculty member could request consideration for a tenure track position. To date, no supervising attorney has chosen that option. The director, Richard Rosen, is a tenured full professor.

7. In 1991 the university upgraded Ms. Mann's position to classify it as administrative assistant I. This was a long overdue official recognition that Ms. Mann had shouldered

attorneys in the Criminal Law Clinic, and Alice Ratliff and Walter Bennett in the Civil Legal Assistance Clinic.⁸

The clinical programs have become an integral part of legal education at UNC-Chapel Hill, in large part because of the continued demand for and appreciation of clinical legal education by the student body of the law school. There is little doubt that student desire for clinical education was the main factor behind the law school's initial foray into clinical legal education, and student support for clinical legal education has remained strong. In 1982 the law school's clinical committee sent out a questionnaire to clinic alumni asking for their evaluation of their clinical experience. The responses were unanimously positive, and helped to fuel the continued growth and consolidation of the clinical program in the ensuing years. Moreover, law school graduates who participated in a clinic continue to show their appreciation with words of praise and financial contributions to a separate endowment established specifically to benefit the clinical programs.⁹

Yet it is just this popularity of the clinical programs that has led to two interrelated difficulties now facing the clinical program at the law school. One is a space problem—the modular building provided for the clinic over a decade ago, when the clinic was less than half its present size, has proven to be inadequate. The second is the surging demand for a clinical experience, so that over the last several years dozens of students each year who wish to participate in a clinic find themselves unable to do so.

The first problem should be solved with the building of an addition to the law school—the plans for the addition include significant space for offices for clinic faculty and students. The second

significant administrative responsibilities for the management of the clinical programs.

8. Mr. Bennett is currently beginning a leave of absence from the clinic to work on an oral history project funded by the Keck foundation. See *Lawyers Talking: UNC Law Graduates and Their Service to the State*, 73 N.C. L. REV. 849 (1995). During the 1994-95 school year, Mr. Bennett will be replaced by Hazel Mack, a Temple Law School graduate who has been serving as Managing Attorney for the Legal Aid Society of Northwest North Carolina, Inc., in Winston-Salem, North Carolina. During an earlier leave, Mr. Bennett's position was occupied by Susan Stancill, a 1988 UNC School of Law (and clinic) graduate.

9. The clinical programs have also reaped praise from others in the legal community. In one interview, now Chatham and Orange County District Attorney Carl Fox told a reporter that "[Clinic students] are well prepared—probably better prepared than most attorneys." *UNC Legal Clinics Helping Many*, THE CHAPEL HILL NEWSPAPER, Oct. 15, 1984, at 7B. According to District Court Judge Stanley Peele, "The clinic program produces a graduate who is a thousand percent better when he starts his practice. . . . [Clinic students] show the way a case ought to be tried." Cornelia Lee, *Champions For Justice*, CAROLINA ALUMNI REVIEW, (Chapel Hill, N.C.), Spring 1988, at 28-29, 35.

is more difficult, and the school is now trying several approaches to meet the increased student demand. For instance, during the summer of 1994 the law school offered a summer school clinical program for the first time,¹⁰ and during the spring 1995 semester the law school will offer, also for the first time, a Lawyering Process course for non-clinic students.

Despite these challenges, the University of North Carolina School of Law can feel proud of the distance it has traveled over the last sixteen years. In that time the school, starting virtually from scratch, has established a clinical program in which over a fourth of the third-year class is provided an opportunity to learn lawyering skills in a real world situation under the watchful eye of an experienced lawyer/teacher. To the extent that challenges remain for the clinical program and the school in the area of clinical legal education, they can be attributed in large part to the determination of the school's leaders to provide only the best in the way of legal education.

10. The summer program, which was financed by a grant from U.S. Department of Education, consisted of two sections of the Criminal Law Clinic. The supervising attorneys were Michelle Robertson of the clinic staff and Grady Jessup, a visiting North Carolina Central Law School faculty member with extensive experience as an assistant public defender in Charlotte, North Carolina. The grant will also provide for a summer clinic in 1995, but beyond that funding is uncertain.