



## NORTHWESTERN UNIVERSITY LEGAL CLINIC

### News & Notes

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Winter 1989

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#### TWENTIETH YEAR

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

The Clinic was born of two forces which coalesced in the late 1960s and early 1970s: the involvement of students and faculty in political and social issues, specifically the civil rights movement and opposition to the Vietnam War; and questions within the legal community concerning the relevance of legal education to "real world" problems. The latter concerns ranged from doubts as to whether law schools had knowledge of or cared about perceived social injustices to the very basic issue of whether law schools were producing "competent" lawyers. Primarily as a response to the latter concern, in 1970 the Ford Foundation funded the Council on Legal Education For Professional Responsibility (C.L.E.P.R.). C.L.E.P.R. was given 10 years and \$10,000,000 to see to it that law schools better prepared their students for practice. Northwestern was one of C.L.E.P.R.'s first grantees. C.L.E.P.R.'s grant helped to open the Thorne Hall basement to students who were motivated to learn what the practice of law entailed and who were anxious while in law school to do something to support the social and political causes in which they believed. Thus, the Clinic was active both in the representation of individuals in need of legal services as well as on behalf of organizations which advocated social change. There is no doubt that the "political" orientation of many of the Clinic students and faculty in the early days must have alienated law school faculty and students who understandably thought that the Clinic ought to confine itself to education. The end of the Vietnam War and disillusionment with "movement" politics left the faculty to concentrate on the development of the "teaching law office" that the Clinic is today. Although the Clinic continues to provide an opportunity for students to use their developing professional skills

to pursue "public interest" objectives, the Clinic's faculty is committed to the primacy of the Clinic's educational mission. This educational mission includes as perhaps its most important feature, the critical examination of the lawyer's role on behalf of clients, as actors in our system of justice, and as citizens. The clinical program's agenda during the last 15 years has been to develop an educational program which will produce competent and ethical lawyers who will be committed to making our system of justice more efficient and fairer.

When the Clinic opened its doors, supervised casework was the only teaching methodology. A classroom component -- Clinical Trial Advocacy -- was added in 1973. Since 1973 the clinical program has made great strides in improving the casework and classroom components. Unlike many law schools where casework and simulation advocates fight for dominance, Northwestern's faculty has encouraged the development of both teaching methodologies. The clinical program now offers an exciting sequence of simulation-based courses in the second year, Clinical Trial Advocacy and Pre-Trial Litigation, and case-based instruction in the second (3 hours per semester) and third years (4 hours per semester). Students may enroll in one or in all of these courses. Because each of these components of the clinical program deserves full time pedagogical and administrative attention, Steve Lubet has been given the responsibility of overseeing the simulation courses. Steve's commitment to this work has produced a stimulating, instructive, and carefully sequenced series of learning experiences covering all aspects of the litigation process. Steve's creation of the Program on Professionalism, described on page 19 of this newsletter, is a further attempt to make the clinical program more coherent, efficient, and effective.

Another exciting development is Bob Burns' creation of a clinically-based evidence course. Bob developed this course after becoming convinced that students would understand principles of evidence better if those principles were presented in the context of simulated cases. Bob has developed materials which allow students to see how the rules of evidence function in trials. He has also developed two N.I.T.A. (National Institute of Trial Advocacy) - style case files for use in Clinical Trial Advocacy. These files are designed to present case theory, evidentiary, and ethical issues in a sequenced fashion. These new files are also being used this semester in Clinical Trial Advocacy.

As the result of John Elson's efforts, the Clinic recently received grants from the Department of Education and from the Legal Services Corporation to fund the Clinic's Special Education Project. It is unusual for a clinical program to receive two such grants in one year. The fact we have received both grants is a tribute to the quality of our Special Education Project and strengthens the clinical program's national reputation. John's leadership in the Clinical Section of the American Association of Law Schools has also contributed to the increased national presence of Northwestern's clinical program.

The casework component of the clinical program is alive and well. This semester, over 50 students will represent clients under the supervision of Clinic faculty. Synopses of selected cases handled by the Clinic students and faculty are set forth at the end of this newsletter. But the case summaries do not tell the entire educational story. Clinical faculty who teach through casework are making greater use of faculty and student teams

to prepare and to try cases. On major cases, teams consist of a professor, a clinical fellow, and several students. These teams meet regularly to plan the representation and to share the results of student and faculty efforts on behalf of clients. In this way, cases may become seminars unto themselves in which students and faculty exchange ideas about how clients can best be represented. Students learn a great deal from each other as they work closely together on behalf of clients.

All of this suggests that clinical education at Northwestern is flourishing and ever-changing. The goal of the clinical program remains pretty much the same now as when the Clinic's doors opened in 1969: the active involvement of students in an intensive learning experience about the lawyering process. The means of achieving that goal will change as the years go by in response to careful thought about how the process of legal education can be improved to meet the needs of the legal community and the public.

What does the future hold for the clinical program? I believe that the challenge of the '90s will be to preserve and to strengthen the Clinic's already outstanding simulation and casework components. If not addressed properly, there can be a tension between meeting student demand for clinical education and continuing to build the national reputation of the Clinic through the scholarly and professional activities of the Clinic's faculty; a tension which, I think, the Clinical program has rather successfully addressed in the past.

National and professional stature of the Law School is enhanced by faculty participation in bar projects, and scholarship. But time spent pursuing activities which are not directly student oriented obviously reduces the amount of time faculty can spend with students. One of the strengths of our program has always been the extent to which faculty and students work together in class and on cases. Unlike many schools, Northwestern does not rely on a "farm out" model to provide students with casework experience; we involve our senior faculty in the direct supervision of cases.

In order to strengthen the casework and simulation components of our clinical program while at the same time enabling our faculty to engage in scholarship and in other activities to improve the profession, the Law School has set a goal of obtaining funding for five clinical fellows per year--one clinical fellow for each full-time faculty member. We are hopeful that this goal will be reached in the near future. Alumni contributions to the Clinic are devoted solely to the support of clinical fellows.

I am writing the last part of this piece on a train coming back to Chicago from Menard State Penitentiary's Death Row. I have been appointed to represent a prisoner under the sentence of death in a post-conviction proceeding. Two students and I have just spent 5 hours with our condemned client. The students have participated in both the simulation and casework components of our clinical program. During our trip down to Menard, we pored over the trial transcript and court documents, planning today's interview. As one might expect in a case like this, our attention was focused on the previous trial performances of trial counsel, the judge, and the prosecutor. Because of the students' participation in lawyering process and trial advocacy courses, and because

of their experience in the representation of clients in other cases, the discussion was well informed. We analyzed the functioning of the "lawyer component" of a death penalty case, a case that should be our justice system's most carefully managed and competently staffed proceeding. Today, we interviewed our client in anticipation of the preparation of an amended post-conviction petition. Lessons about the weaknesses and strengths of our system emerged over and over again as we talked. The students were engaged; they were learning to utilize the powers of analysis and the skills that their education at Northwestern had sharpened. The challenge of the future will be to continue to refine this model of legal education and to make it available to more students.

We plan to celebrate the 20th anniversary of the Clinic in the Spring of 1990. The Alumni Dinner on May 3, 1990 will celebrate the Clinic's 20th Anniversary. A day long Clinic program will be held on May 4, 1990 at the Law School. You will soon receive news about the celebration. I hope that you will be able to join us.

Thank you for sending in your Clinic questionnaires. They will be included in a reunion booklet.

Finally, I thought that you might like to see samples of observations about the Clinic, 1975 to the present.

**Thomas F. Geraghty**  
Director

## **STUDENT REPORTS: 1975, 1977, 1989**

### **FROM 1975:**

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

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

In my third year, I took Trial Advocacy under the guidance of Tom and Diane Geraghty, Jon Hyman, Mark Schoenfield, and Barbara Caulfield. The course was one of the best that I took at Northwestern, since I received training in all of the fundamental aspects of a trial that were not covered in other law school classes. I should even note that I still have Jon Hyman's January 3, 1975 eight page memo critiquing my mock jury

trial. I still read the memo a few times each year to remind myself of one of the primary points that Jon pressed home during Trial Advocacy -- develop a theme and stick to it from voir dire to closing argument. After graduation, I returned to the Clinic and assisted Tom Geraghty and Mark Schoenfield with their Trial Advocacy classes. I enjoyed the experience, since it helped me to repay some of the debts that I owed the Legal Clinic for what it taught me.

#### **FROM 1977:**

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

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

THANKS. . . A MILLION!

Vince DeGarlais '89

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

I wish I could say that all of my experiences at the Clinic were as pleasurable as my first. Nevertheless, all of my experiences have proven just as invaluable. For instance, it was not pleasurable to see a client indicted for murder sleeping on a cold floor in a small concrete cell packed with others while waiting to appear before a judge already

an hour late for his scheduled call. I learned a valuable lesson about how we treat those who are presumed innocent until proven guilty. Nor was it pleasurable to hear witnesses in this same case tell tales of being shot at or having police pull up and shove them against the police car as if it was an everyday occurrence. Nor did I gain any pleasure when I visited the neighborhood where our client grew up and the murder occurred. After seeing a look of hopelessness and apathy in so many faces, I learned a valuable lesson about "the land of opportunity." Although these lessons weren't pleasurable, I am glad I learned them before embarking on my legal career.

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

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

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

**THANKS . . . A MILLION!**

#### **SOME REFLECTIONS ON THE LEGAL CLINIC**

Lorri Staal '89

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

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

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

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

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

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

In some ways, the interpersonal relations were the greatest challenge of the project. Beyond simply working alongside each other during rough moments, we had to place an enormous amount of trust in each other. The case was too complicated for one person to do all the work by herself and time was too short for us to check thoroughly each other's work. At one point, four hours before our brief was due, Tom sent me to the library to write an entirely new, but critical, section of the brief. That was a point at which I began to question whether "responsibility" was really something I should aspire to have.

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

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

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

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

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

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

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

## FACULTY NEWS

**Tom Geraghty** continues as Director of the Clinic and full-time supervisor of 12 students working furiously on serious criminal cases. During the last year, Tom and his students tried four jury cases and represented several other clients in bench trials and appeals. Tom just completed the thirteenth annual Midwest regional session of the National Institute for Trial Advocacy. During the last year he taught in N.I.T.A.'s "advanced" and teacher training programs as well as in N.I.T.A.'s negotiation program at Northwestern. He is currently the Reporter for the A.B.A. Section of Litigation's Effective Arguments to the Court Program which was held in Washington, D.C., May 4-6, 1989. That program was video taped and the tapes and written materials will be available from the A.B.A. in the fall. Tom is also reporter for the Illinois Judicial Conference program on jury management. Future projects include the organization of a national conference on teaching trial advocacy, sponsored by the Law School, by the A.B.A.'s Section of Litigation, and by N.I.T.A.

In addition to his responsibilities as Principal Investigator of the Special Education Project, **John Elson** has been busy with American Association of Law School (AALS) activities. At the AALS Annual Meeting in New Orleans in January, 1989, he presented a paper for the AALS Executive Committee Program on "Legal Scholarship: Between the Scylla of the Profession and the Charybdis of the Academy." As a member of two AALS workshop planning committees, John helped plan the clinical education workshop held in Washington, D.C. in May, 1989, and the professional responsibility miniworkshop to be held in San Francisco in January, 1990. As a member of the AALS Professional Development Committee, he went to Washington in October and to New Orleans in January to help determine what AALS workshops and conferences would be scheduled next year. In November, 1988, John also served on the site inspection team for the ABA sabbatical reinspection of the University of Washington School of Law in Seattle. In April, 1989, he served on the ABA inspection team of Georgia State University School of Law and in November, 1989, he performed an ABA site inspection of Boston College's Semester Abroad program in London, England. In 1989 he also became Chair of the Skills Training Committee of the ABA's Section of Legal Education. In that capacity he has addressed meetings of law school administrators and inspection team leaders on how to conduct ABA inspections of law schools' professional skills programs. His article, "The Case Against Legal Scholarship, or If the Professor Must Publish Must the Profession Perish?" was published in the September, 1989 issue of the Journal of Legal Education.

**Steven Lubet** was Director of a N.I.T.A. Midwest Deposition Program, held in August, 1988. His monograph, "Vending Operator, Inc. v. N.I.T.A. Department of Transportation: Advanced Materials in Business Litigation" will appear in 1989; N.I.T.A. has produced an eight hour series of videotapes based on this case file. Steve's publications this year include: "Some Early Observations on an Experiment with Mandatory Mediation," Ohio State Journal of Dispute Resolution, (forthcoming); "Professor Polonius Advises Judge Laertes: Rules, Good Taste, and the Scope of Public Comment," 2 Georgetown Journal of Legal Ethics (forthcoming); "International Criminal Law and the Ice Nine Error: A discourse on the Fallacy of Universal Solutions," 28 Virginia Journal of International Law 963 (1988); "Extradition Unbound: A Reply to Professors Bassiouni and Blakesley," 24 Texas International Law Journal (forthcoming); "Financial Disclosure by Judges: Functional Analysis and Critique," 40 University of Florida Law Review 241 (1988) (with Judith Rosenbaum); "Regulation of Judges' Business and Financial Activities," 37 Emory Law Journal 1 (1988); "Judicial Impropriety and Reversible Error," 3 Criminal Justice 26 (1988).

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

**Bob Burns** spent the fall semester as the Perkins Bauer Professor at the Law School. This professorship allows a faculty member to spend a semester developing innovative teaching materials and methods. Bob developed a set of materials from which both trial advocacy and the law of evidence could be taught. In the spring semester, Bob Burns and Steve Lubet taught the coordinated trial advocacy and evidence courses for the first time. They will teach the courses again in the fall of 1989. Bob also taught a seminar in the philosophy of law and published three articles on legal philosophy entitled: "When the Owl of Minerva takes Flight at Dawn: Radical Constructivism in Social Theory" in Essays on Unger's Politics (1989); "Rawls and the Principles of Welfare Law," 83 Nw. U.L. Rev. 184 (1989); "The Appropriateness of Mediation: An Ethnographic Reflection on Fuller and Fiss," Ohio St. J. Dis. Res. (1989).

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

**Nancy Gibson** completed her two year fellowship with the Legal Clinic in August. She continues with the Clinic for another year supported by a grant from the Legal Services Corporation. Nancy will specialize in special education law during the up-coming year. During the 1988-89 academic year, she continued her work on the Clinic's Juvenile Advocacy Project, concentrating primarily on the representation of juveniles in

delinquency cases. She completed the N.I.T.A. Midwest Regional course in March.

**Barbara Shulman** completed her second and final year of her fellowship with the Clinic. During the last year she represented clients in juvenile cases including delinquency, abuse, and neglect. She has been active in the Juvenile Law Committee of the Chicago Council of Lawyers and published an article on custodial rights in the Council's Juvenile Law Bulletin.

**Laura Miller** joined the Legal Clinic staff in August, 1988, after spending four years in the juvenile and criminal divisions of The Legal Aid Society of New York City and two years at the New York law firm of Rosenman and Colin. She is working with John Elson on the Special Education Project, funded by the Department of Education, and is a member of the Attorney General's Disabled Persons Advocacy Division Advisory Council. Laura attended the Midwest Conference on Clinical Education at Drake University in November, 1989, and attended the 10th National Institute on Legal Problems of Educating the Handicapped in San Diego, California, May, 1989. Laura will continue with the Clinic during the 1989-90 academic year, supported by funds from the Department of Education.

## CLINIC ADDS TO TEACHING STAFF

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

Two new clinical fellows have joined us. They are **Julie Nice**, a 1986 graduate of the Law School. Since graduating from Northwestern, Julie practiced in the Uptown office of the Legal Assistance Foundation of Chicago. **Bruce Boyer**, also a 1986 graduate of the Law School, comes to us from Jenner & Block where he was a litigation associate.

## THE JUVENILE ADVOCACY PROJECT

The Juvenile Advocacy Project continues to provide valuable learning experiences for Clinic students, while also furnishing much needed legal services to children and their families in Juvenile Court. The Juvenile Advocacy Project is supported in part by the

## Illinois Lawyers Trust Fund.

We encourage students to view their representation of juvenile clients as encompassing more than investigating the facts and researching the legal issues involved. A conventional "legal" approach does not always ensure that a client who is acquitted or who received probation instead of being incarcerated will avoid a second brush with the law. In many cases, arrangements must be made which will ensure that the client receives educational or social services designed to reduce recidivism. This type of representation requires persistence, dedication, and knowledge of available resources.

Examples of the types of "non legal" support we have provided for our clients include placement in a residential program so that a juvenile who was being tried as an adult could be released on bond so that he could live in a Catholic boarding school while awaiting trial, enrolling a drop-out student in an alternative school, and securing family counseling for a troubled family. Each of these non legal services contributed significantly to favorable legal outcomes. We have developed good working relationships with probation officers, court liaisons, and other social service resources in order to secure needed services for clients.

As our case summaries below indicate, the Program has provided many different types of learning experiences. Students have been involved in interviewing, fact investigation, trial preparation, arguing motions and conducting hearings, as well as counseling and advising clients and their families.

### **Reports on Selected Juvenile Cases:**

The Clinic recently settled a federal class action suit which sought to require the State to provide inpatient psychiatric care in private hospitals for mentally ill juveniles. The settlement requires the Illinois Department of Public Aid to fund private hospitalization. To date approximately 800 juveniles have received in-patient psychiatric treatment at private hospitals as a result of the Glen D. suit.

The suit was brought when Glen D. was referred to us as an individual client. We felt that he was in need of psychiatric treatment. However, no private hospital would accept him as a patient because Medicaid did not pay for in-patient psychiatric hospitalizations for juveniles. In an effort to obtain services for Glen D. and for other juveniles similarly situated, the Clinic, with the assistance of Wendy Meltzer, filed and successfully litigated Glen D.

Delon D.: We were appointed to represent Delon, a 15 year old charged with aggravated assault and battery. Delon was already on probation for another case before this one came to trial. We were able to negotiate with the State's Attorney to drop the aggravated battery charge and reduce the aggravated assault charge to simple assault, a misdemeanor. Third year student Kathlyne Rog handled the dispositional hearing where the prosecutor vigorously argued for Delon's incarceration in the temporary detention center. We prevailed and the judge sentenced Delon to one year's probation without any

time in the detention center. Because we suspected that Delon may have a learning disability, arrangements were made with his school to have him screened for an evaluation.

**Tracy and Theresa J.**: In January, we represented two sisters in Juvenile Court, charged with aggravated battery. Second year student John Hoellen and third year student Martin Hahn prepared the case for trial, interviewed witnesses, and visited the scene of the alleged battery. Martin Hahn successfully argued the Motion to Dismiss at the close of the State's case, based on the complainant's inability to adequately identify the respondents.

**Richard M.**: Richard is a 15 year old who served 4 months in the Department of Corrections on a battery charge. Third year student Matthew Hagopian and second year student Faye Kroshinsky were involved in drafting the appellate brief. Our main contention on appeal is that he received ineffective assistance of counsel from the public defender who represented him at his trial. Although Richard had been paroled from jail, the appeal is still necessary because, under the law, if Richard is convicted of another crime, he could be reincarcerated until he reaches the age of 21.

**Ms. R.**: This case presented Clinic students and faculty with questions concerning the relationship between zealous advocacy and the best interests of the child. The client's son is an emotionally disturbed 14 year old who was sentenced to the Department of Corrections. The client has emotional problems as well. The Department of Corrections revoked Ms. R.'s visitation privileges. Third year students Matthew Hagopian and Kathylyne Rog, and second year student LaDale George assisted Clinic fellow Nancy Gibson in successfully obtaining full visitation rights after extensive negotiation with the Department. We also represented the client in the Department's planning for her son's parole hearing. The Department wanted to place him in a residential treatment program instead of returning him immediately to his mother's custody. All of the experts to whom we spoke, including the son's and the mother's psychiatrists, were against returning him home to the mother. However, because that is what the client wished, we had to argue for the son's parole to the mother's custody. At the same time, we persuaded her of the need to take an active role in locating a residential placement for her son, should the parole board decide not to release her son to her custody. Clinic students identified placement alternatives and presented these to the mother. Last month, the Department sent the son home on an authorized leave. If all goes well, he should soon have a parole hearing with a recommendation that he return home. If not, it is expected that the board will consider residential placement.

**In re E.M.**: Second year students Elizabeth Evans and Aime Gessler, along with third year student Bob Sterbank, represented a grandmother in her efforts to regain custody of three grandchildren that she raised after DCFS removed the children from her home last year without cause. Two of the children were placed in a foster home and the third was institutionalized. After pursuing administrative remedies without success, students drafted petitions in Juvenile Court to challenge DCFS' continued custody of the children. Prior to trial and after much negotiation, DCFS capitulated and agreed to return all children to their grandmother, provide necessary services, and to allow the

grandmother to adopt the children.

**Lonnie F.:** We have represented Lonnie in a series of petitions for delinquency. Third-year Steve Durham and second-year Paul Gaynor assisted with his trial for possession of a weapon in May. Although the defense succeeded in showing several material inconsistencies in the police testimony, the court found the police more credible than the defense witnesses and found Lonnie delinquent. We represented Lonnie at his sentencing hearing, at which he was sentenced to spend two weeks in juvenile detention.

**Jermaine T.:** Two second-year and one first-year Clinic students represented Jermaine T., a 14 year old boy charged with theft and unauthorized use of a credit card. Jermaine and another boy allegedly stole a credit card from one of their teachers and then tried to use it to buy merchandise. Our defense was that although Jermaine was with the other boy when he tried to use the stolen credit card, Jermaine could not be held accountable for either the theft or the attempted use because he had not participated in, nor did he have any knowledge of, the crime committed by the other boy. Students prepared the case for trial but the judge dismissed the charges after the State failed to be ready for trial.

**Derrick S.:** Twelve year-old Derrick S. was charged with committing a robbery which occurred five months before his arrest. A second and a third year law student assisted Nancy Gibson with the trial of this case. The third year student conducted two direct examinations and gave the closing argument. Our theory of the case was that it was a case of mistaken identity. The judge agreed with us and acquitted Derrick after a two-day trial.

**Melodie W.:** Melodie is a 16 year old ward of the State whose legal guardian is the Department of Children and Family Services. Although she had been a ward for almost two years, the Department had not placed her in a permanent placement, and she was moved from group home to group home. We represented her in both a Juvenile Court proceeding and a DCFS administrative case review to have her placed in a foster home.

## **SPECIAL EDUCATION PROJECT**

The Special Education Project began in August, 1988, with a one year grant from The Department of Education. Clinic students supervised by John Elson, Laura Miller, and Nancy Gibson represent handicapped children who are not receiving adequate special education funding and/or placement from the Chicago Board of Education. The Special Education Project has been refunded by the Department of Education and by the Legal Services Corporation for the 1989-1990 academic year. This funding will support Laura Miller and Nancy Gibson's participation in the project, as well as the services of a psychologist and a social worker. The social worker's involvement should permit the Clinic to provide more comprehensive services to its clients.

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

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

#### **Reports on Selected Special Education Cases:**

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

Clarence J. is a 5 year old boy who is mentally retarded and has severe cerebral palsy. He also is a carrier of the hepatitis b virus. Although Clarence does not need to be hospitalized, he has been living at La Rabida Children's Hospital for the past year because his mother cannot care for him and the Board of Education has failed to find an appropriate placement for him. The Board has failed to provide him even with educational services in the hospital. Clinic students Carol McElvain and Kerri Howland recently brought an action in federal court to enjoin the Board of Education to provide a proper educational placement for Clarence. In response to the Clinic's lawsuit, the Board has voluntarily provided Clarence with services in the hospital, but has not located a permanent placement for him. The court has not yet made a final decision in this case.

Clinic students Ann Feldkamp, Mia Barricini, Greg Ranslam, Jean Anderson, and Tim Weaver worked to obtain speech therapy for deaf children who attend Kinzie School in Chicago. The Board of Education has failed to provide speech services for any of the School's approximately 75 deaf students, in violation of the Federal Education for the Handicapped Act and the Federal Rehabilitation Act.

Elizabeth D. is a mentally retarded girl who also has an attention defect disorder. Her attention disorder requires her to receive medication during the school day. The Board of Education refused to dispense the medication, despite a clear legal duty to do

so, stating that only a nurse can give medication and that a nurse could not be assigned to Elizabeth's school. Clinic student Mike Cronin successfully negotiated with the Board to send a nurse to her school daily to dispense the medication.

Jim Mutchnik and Susan Glatt negotiated with the Board to obtain intensive services for Rickey C., a severely emotionally disturbed child who had failed in all his prior school placements. Susan also obtained needed services through formal mediation for Mikva W., a blind, developmentally-delayed child.

Susan Coler and Diane Cifuentes negotiated with the Board to provide education for Vera R., a profoundly retarded child with cerebral palsy who had not been receiving services for over a year. Susan also persuaded the Board to pay for a child to have a private educational evaluation after the Board conducted a cursory evaluation of her and misdiagnosed her learning disabilities as mental retardation.

Adly Pozas and Martha Ertman used administrative procedures to obtain approval for private residential school placement for Anthony M., a mentally retarded youngster who was at risk of being sent to the Department of Corrections by the Juvenile Court.

## SELECTED CLINIC CASES

### Criminal

After two mistrials, our client was found guilty of murder by a jury. The evidence against Angel H. consisted of eye-witness testimony and the fact that a knife, consistent with the victim's wounds, was seen in the possession of our client and was found hidden in our client's apartment after the murder. The knife had small traces of blood on it, but the traces were so small that it was impossible to tell whether the blood was human or animal. Our client came to the scene of the crime shortly after the murder. Post-trial motions were denied. The case is now on appeal.

The Clinic represents a young man, Adrian H., a 17 year-old charged with murder. He is accused of participating in a "drive by," allegedly gang related, shooting of an 11 year old boy. There are two other defendants: the person who allegedly fired the shots and the driver of the car. Our client, who had never been arrested before, was prosecuted under an accountability theory. He made a statement to police in which he stated that he was present in the car from which the shots were fired. Five witnesses identified him as the driver. Students assigned to the case conducted an extensive investigation including interviewing all of the witnesses to the crime. Students also assisted in the preparation of pre-trial motions. The trial was held in October. Our client was convicted. Post-trial motions were denied. We have filed a notice of appeal.

After the Clinic successfully represented petitioner, Kent C., in a federal habeas corpus action, we agreed to represent him in the retrial of his case in state court. The

state alleged that our client participated in a 1982 shooting which resulted in the death of an innocent bystander. The Seventh Circuit remanded the case for a new trial because at the Client's first trial the state court judge refused to permit defense counsel to examine the state's witnesses concerning their gang affiliations as a possible motive for testifying against our client. After a two week jury trial, during which evidence of the prosecution's witness' gang affiliations was admitted into evidence, Kent C. was acquitted.

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

### **Civil Rights**

In February, third year student Steve Durham argued a civil rights case in the Seventh Circuit. The client had filed a pro se complaint in the district court, alleging that FBI agents had held a loaded gun to his head during a custodial interrogation. The district court dismissed the complaint for failure to state a claim, holding that the actions of the police were not "shocking to the conscience" since no physical force was used. The Seventh Circuit appointed Barbara Shulman to represent the plaintiff on appeal. Second year John Hoellen and third year Steven Durham filed a brief on behalf of the plaintiff. On appeal, the Seventh Circuit reversed and remanded, directing that the plaintiff's claims be considered under a due process, rather than a fourth amendment analysis because the plaintiff had already been seized when the alleged abuses occurred. The Clinic has filed a petition for certiorari seeking review of the Seventh Circuit's ruling.

The issue in Greene v. Meese et al. was whether exhaustion of administrative remedies is required in prisoner Bivens cases. The case was argued before the 7th Circuit in February. (See Lorri Staal's description of her participation in that case at pp. 6-9). The Seventh Circuit decided the case in June, holding that exhaustion of administrative remedies is required in federal prisoners' Bivens actions. The Court, however, agreed with our contention that the district court should only have dismissed the unexhausted claims and remanded the case for further proceedings on the exhausted claims.

### **Child Custody**

Second-year students Elizabeth Evans and Aime Gessler, along with third-year student Bob Sterbank have been representing a grandmother in her efforts to regain custody of three grandchildren whom she raised, after Department of Child and Family Services (DCFS) removed the children from her home last year without cause. Two of

the children were placed in a foster home and the third was institutionalized. After pursuing administrative remedies without success, students drafted petitions in Juvenile Court to challenge DCFS's continued custody of the children. Prior to trial and after much negotiation, DCFS capitulated and agreed to return all children to their grandmother, provide necessary services, and allow the grandmother to adopt the children.

### **Mental Health**

Second-year student Paul Gaynor obtained voting rights for Stan P., who is incarcerated at Menard State Penitentiary as a Sexually Dangerous Person. A provision of the Criminal Code allows persons charged with sex offenses to be incarcerated as Sexually Dangerous Persons without a conviction. Because the Illinois Voting Act provides that all adults may register to vote unless convicted of a crime, Stan P. was eligible to register even though he was an inmate at Menard. The prison refused to allow him to register. After we threatened legal action, the prison finally agreed to allow Stan P. to vote.

We are continuing our representation of clients who have been committed to the Elgin Mental Health Center after having been found not guilty by reason of insanity. Mark D. was found not guilty by reason of insanity of residential burglary; he was committed to Elgin for nine years for attempting to steal a radio and a pair of sunglasses. Last year, we successfully petitioned the court to allow him off the grounds of Elgin for small periods of time. This March, second-year students Aime Gessler and Ann Parsons, along with third-year student Steve Durham successfully petitioned the court for Mark D.'s release.

### **Death Penalty**

The Clinic has taken its first death penalty case. We were appointed after the Illinois Supreme Court affirmed our client's conviction on direct appeal. Issues in the case include competence of counsel at trial and at the sentencing hearing. Trial counsel failed to call any witnesses on behalf of the client at the sentencing hearing and also failed to file a motion to suppress the defendant's confession despite the fact that the defendant claimed during his testimony at trial that the confession was coerced. The defendant's confession was the most compelling piece of evidence against him.

The Clinic first had to litigate the issue of whether the post-conviction judge may dismiss a post-conviction petition as frivolous after counsel has been appointed. After briefing the issue, the court gave the Clinic leave to file an amended petition. The Clinic is now in the process of preparing that amended petition. Students and faculty recently interviewed the client on Death Row at the Menard State Penitentiary.

### **Tenant/Landlord**

Cynthia Bowman and a team of students, in cooperation with Cook County legal Assistance Foundation, waged a lengthy legal battle to prevent the eviction of 60 tenants from the North Glenview Mobil Home Park. The tenants were being evicted in order to

make way for a Toyota dealership. Affidavits gathered by the students show that 56% of the residents are over the age of 60, and 33% are over 70. They live on fixed incomes, primarily Social Security, and their trailers are their only assets. Although these homes are nominally "mobile," in fact they cannot be moved because of their size, age, and the scarcity of mobile home parks within a radius of 100 miles of Chicago.

The tenants scored an initial victory before the Glenview Zoning Board in December, when the Board denied permission for the conditional use permit necessary to construct another auto dealership on Waukegan Road, but the Board's decision was reversed by the Village Board of Trustees in January. The tenants' battle continued in the Circuit Court of Cook County, where they sued under the Illinois Mobile Home Landlord and Tenants Rights Act to prevent their eviction.

## **ANNOUNCING THE PROGRAM ON ADVOCACY AND PROFESSIONALISM**

The Program on Advocacy and Professionalism has been established at the School of Law to explore the lawyer's professional obligations: vigorous and effective representation; candor, honesty, and fair dealing; and public service. To this end, the Program coordinates and provides resources to the Law School's classroom offerings in the area of professional competency.

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

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

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

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