
17. Preparation of draft legislation, since enacted, to provide greater health benefits to resident aliens in American Samoa.


19. Establishment of program at Federal Mediation and Conciliation Service to encourage minority professionals to become mediators and conciliators.


CLINICAL EDUCATION AT COLUMBIA: THE COLUMBIA LEGAL ASSISTANCE RESOURCE

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In recent years, more than ninety American law schools have introduced experimental courses in clinical legal education, programs that have been defined by an organization actively sponsoring them as those that “involve law students in the lawyer’s role: aiding and counseling individual clients, appearing in court, researching legal issues on active cases.” ¹ According to the Council on Legal Education for Professional Responsibility, ABA approved law schools are now operating 204 such programs, involving almost 4000 students and 300 faculty members.² Columbia University School of Law is no exception to the trend. The curriculum for the 1971–1972 academic year includes five seminars in which students are assigned work on actual cases or legal disputes, three in which students work on actual cases or disputes but have no client contact, and four which enable students to earn academic credit working for community organizations or governmental agencies.

One of Columbia’s clinical experiments is called the Columbia Legal Assistance Resource (CLAR). Because the structure of the CLAR program is somewhat different than that encountered in most other clinical education courses, a short description may be helpful to those planning clinical courses at other institutions or evaluating current activity in the field.

In June, 1969, the Columbia faculty approved a proposal for the establishment of two clinical seminars to be taught by two faculty members employed for that purpose—roughly eighteen students to participate in each; initially, *Associate Professor of Law, Columbia University School of Law; Co-Director, Columbia Legal Assistance Resource.


² Id. at viii.

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3 credit hours to be available. Financial support was obtained from the University Urban Center, private sources, and the Council on Legal Education for Professional Responsibility (CLEPR). These funds, taken together, were sufficient to pay the salaries of two faculty members and one secretary for a two-year term, as well as extremely modest supporting costs. At the end of the experimental period, the program would be evaluated and a decision made as to its future as a permanent portion of the curriculum. In January, 1970, Professor Harold Rothwax joined the faculty to teach one section of CLAR. In July, 1970, I joined to teach the second section. In January of 1971, Professor Rothwax left the University to become a judge of the Criminal Court of the City of New York. He was replaced in August of 1971 by Professor Philip Schrag.

Most clinical courses at ABA approved law schools fit roughly into two classes. Some institutions have authorized student work at a clinic or law office (usually serving the poor), directly operated by the school. Clients bring their problems to the clinic, just as they would to any neighborhood legal services office. At the clinic they are served by staff attorneys and students who work under the supervision of these attorneys. Other schools farm students to a variety of community-based projects or agencies—narcotics addiction centers, criminal prosecution or defense offices, juvenile courts, and the like. In such programs, students often directly represent clients as negotiators or advocates. Both these approaches often offer students the opportunity of, in effect, being the lawyer in the case, subject, of course, to control and supervision by staff attorneys, organizational attorneys, and faculty members having ultimate responsibility for the particular clinical program.

While it is difficult to generalize about the quality of this supervision, most clinicians to whom I have spoken concede that ensuring an analytic and evaluative function in such programs is the most serious problem encountered. It is a rare attorney out in the field—even if he is employed directly by the school—who is free to subject particular legal problems to analysis and reflection for a student’s benefit, while at the same time serving his client and “getting the job done”. Given other academic obligations, the numbers of students and cases involved and the distant location of much student work from the law school environment, faculty supervision is often nominal.

The Columbia approach through the CLAR program substitutes a faculty-litigator model for student-attorney or field work model. Judge Rothwax, Professor Schrag and myself all had substantial experience in the practice of law before joining the faculty. We continue to litigate on behalf of our own clients, or to cooperate with other members of the bar in public interest litigation, only now we do so with the assistance of our students. Thus in our program the professor is the advocate, or to put it another way, the senior partner in a public interest law firm in which the students are associates.

If this approach makes the students somewhat less responsible for the client’s interests than in the student-attorney model, it has several advantages which I believe more than compensate. First, the sort of litigation in which CLAR can become involved is far more complex than that usually dealt with in a clinical program. Professor Rothwax generally restricted himself to

\[3 \text{ Id. at 400–420.}\]
criminal trial matters, but rather than the misdemeanor cases which are the
grist of the usual clinical mill, he was retained in a variety of complex criminal
trial matters of the sort which only an experienced and eminent practitioner
can direct. In his seminar, Professor Schrag has a docket of some seven-
teen cases, including an extremely rich selection of public interest law prob-
lems: for example, consumer class actions, and cases to invalidate election
law provisions preventing national convention candidates from listing pres-
dential preferences on the ballot, to enforce the New York City Air Pollution
Control Code, and to obtain documents under the Freedom of Information
Act.

My own seminar has assisted in the preparation of the brief and oral argu-
ment in a major Supreme Court case, In re Burrus, sub nom, McKeiver v.
Pennsylvania, 403 U.S. 528 (1971), involving the rights of juveniles charged
with delinquency to a jury trial. It has represented members of New York's
Chinatown community challenging the search and seizure of alleged illegal
aliens by Immigration and Naturalization Service employees. It has helped
set up and staff a private legal aid office located in a Harlem church; as-
sisted the Ralph Nader organization in its investigation of a major New York
City institution; drafted petitions for writs of certiorari in potentially prece-
dent-making civil rights and welfare cases; prepared model legislation; and
represented several federal habeas corpus petitioners in significant cases. A
member of the seminar assists the office of the pro se Clerk for the Court of
Appeals for the Second Circuit in determining the merits of appeals; others
have worked on major political cases including the appeal of Bobby Seale from
his conviction for contempt and the case which led to the acquittal of the New
York Panther “21”.

These cases have had a surprising impact on the community. For exam-
ple, in a recent case handled by a CLAR seminar (Flemings v. Chafee, 330 F.
a Supreme Court decision (O'Callahan v. Parker, 395 U.S. 258 (1971)) hold-
ing that military jurisdiction did not extend to crimes committed by service-
men in which there was no connection with the armed services. At oral ar-
ument, the Department of Defense represented that more than 500,000 former
servicemen would be affected by the disposition of the issue involved. The
Flemings case also demonstrates that CLAR students play an extremely sig-
nificant role in the litigation which the seminar handles, even though it is the
faculty member who is the counsel, for important aspects of the brief and
oral argument were developed by student research.

Another advantage of the faculty-litigator approach is that the character of
cases handled is more closely equivalent to those that Columbia law students
are likely to see in their future practice than many of the problems which
would be encountered in a legal service office or public agency. Experience
interviewing clients and witnesses, drafting pleadings, researching points of
law, analyzing documentary evidence and planning strategy and tactics is thus
closely related to problems which well may become the basis of the individual
student's practice of law.

Finally, the program as organized is consistent with my own personal edu-
cation goals. While I am quite pleased that the program is of modest ser-
vise to the community, enlarging the resources available for law reform in
the City of New York is not my only aim. Nor am I primarily concerned
with offering the students the challenge of putting ideas into practice which comes from working with clients in actual cases pending in the courts. These aspects of the program are immensely valuable and more than justify clinical education—if justification it still needs. Nevertheless, I am more concerned with teaching the art of planning and executing successful litigation designs than to give students an opportunity to flex their muscles outside of the classroom. For this reason, the number of cases handled and direct student responsibility is of secondary importance. CLAR cases are selected on the basis of their educational potential, a potential which I define as more than what is learned by solving a problem which happens to be the actual problem of a person or group.

Each student works with me on what might best be described as a tutorial basis. His work is criticized not only from the perspective of an adversary who wishes to achieve a particular result, but also from the point of view of a relatively detached observer of the particular subject matter and institutions involved—one who wishes to know not only what will sell but what is best. The student is required to report the problems he has faced to a weekly CLAR seminar meeting, where he must expose the difficulties encountered to the class and defend his position. On the other hand, students are expected to offer the seminar a critique of my judgment and performance in those cases on which we have collaborated. Additionally, they are required to read and discuss more than 200 pages of privately printed litigation material, which consists of model pleadings and briefs, as well as trial and appellate court opinions. Approximately one-third to one-half of the seminar class time is spent considering these materials.

Thus with the important exception that actual clients or institutions are involved and make special demands on the faculty-litigator and student, the educational process at work in the CLAR seminar is similar to that which takes place in traditional law school classes. However, because the faculty-litigator is a responsible attorney on all CLAR cases, he is in a unique position to expose, criticize, and evaluate the strategy and tactics of each case or project. Hopefully, he makes available to students the model of a successful practitioner, one whose goal is to maximize the law reform potential in any particular case. Rather than just giving the students "experience", he is presenting the stuff of complex litigation to students in manageable proportions, in a setting where exploitation of the student’s labor is at a minimum, and where there is maximum time for doubts to be aired or decisions to be debated. "What shapes students’ attitudes and values," Charles Silberman has said, "is not simply their own clinical experience, but their perception of how their professors act, of how they behave in the clinical experience, how they deal with clients—in short, what values are revealed in their behavior." 4 If one shares Silberman’s view of the primary purpose of clinical education as “socialization into a professional model”—as I do—then the faculty-litigator model is a particularly attractive means of achieving it.

The CLAR approach is not, however, without its difficulties. Like most clinical programs, it is costly. Furthermore, the professor, as the responsible attorney of law, is put to the great strains of any single practitioner, pressures

magnified somewhat by the unfamiliarity of school administrative personnel with the pace and needs of a practicing lawyer. Although much of this might be alleviated if the faculty member had a staff attorney assistant, funds have not yet become available for us to do this in the Columbia program. The CLAR model also might not work well in other than an urban community—with a great variety of potential cases—where opportunity exists to maximize the law reform element in any particular litigation. Additionally, our work is controversial. Other institutions may not feel themselves in a position to support representation of clients whose views may, to some, be ascribed to the law school.

Despite these problems, the CLAR experiment seems to be a success. Last spring 86 students applied for the 18 positions open in a CLAR seminar. And a Faculty Advisory Committee recently found that CLAR had avoided several of the common pitfalls of clinical education—repetitious low-level work, heavy caseloads, strain on students’ time, failure to focus on underlying legal concepts, and loose supervision. In short, schools interested in enhancing certain aspects of the curriculum—“the observation, participation in and analysis of the way in which a case develops and proceeds through litigation,” as the Columbia Faculty Committee put it—are advised to consider adoption of CLAR’s faculty-litigator approach.