An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice

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I. INTRODUCTION

If law schools are not in the business of preparing students for the practice of law, then to what do we owe their existence? The history of legal education is rife with controversy over how prospective lawyers should be educated and trained for the practice of law. While the traditional Socratic method of instruction is the traditional methodology for educating students in America’s law schools today, clinical legal education has become an integral component of law school instruction over the past thirty years. Yet, in an attempt to maintain enviable academic reputations, along with the fear of being viewed as vocational trade schools, law schools have been slow to embrace clinical legal education and other forms of practical skills training on the premise that legal education should focus on the “how to of thinking” and not the “how to of doing.” While the debate over effective law school teaching methodologies will probably continue for many years to come, some illuminating conclusions about the importance of clinical legal education can be drawn: clinical legal education has made significant contributions to litigation, trial practice, and the day-to-day practice of law by providing effective hands-on legal training to prospective lawyers. Throughout the country, law school trial practice clinics have successfully represented community groups, noteworthy causes, and individuals in litigation that has had profound effect on social and legal reform.

I will begin this essay by providing a brief summary of how clinical legal education has evolved, including, more specifically, a description of how clinical legal education came about. This historical perspective

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2. See id. at 173–93 (discussing different theories of clinical education in the 1970s).

3. See id. at 189 (quoting Note, Modern Trends in Legal Education, 64 COLUM. L. REV. 721 (1964)).
includes an outline of the overall mission and goals of clinical programs that have developed over time, and a discussion of two of the four identified clinical teaching methodologies, the service-model and the law-reform model. Both of these models, or hybrids thereof, underlie clinics wherein students represent real clients and often litigate matters in court. It is through the representation of clients in trial practice clinics that the legal profession has been impacted and by which law students have synthesized the theory of law with the practice of law. Next, I will discuss the rich history of clinics at the University of Kansas School of Law, highlighting four of the clinics that provide students with exposure to trial practice. Finally, I will briefly explore the meaning of what has become known as “impact litigation” and give a cursory overview of other trial practice clinics in U.S. law schools that are currently engaging in impact litigation, such as innocence projects and environmental activism. These law clinics are successfully representing individual clients and community groups to achieve legal and social reform on a national level. Well-publicized successful litigation by law clinics has in some instances fueled debate about whether law school clinics should be involved in high-powered and controversial litigation. In a few cases, law school clinics engaging in impact litigation have faced and overcome challenges and pressure from political and corporate constituencies, as well as opposition from various other interests in order to continue to fulfill the missions and goals of their respective clinics.

II. A BRIEF HISTORY OF LEGAL EDUCATION

"The books are the thing. The word, not the deed." 4

Prior to the twentieth century, formalized law school programs existed in America, but prospective lawyers were primarily educated and trained by the apprenticeship system. 5 Apprenticeship training, which varied widely, consisted principally of apprentices “reading law” derived from cases and textbooks and observing real-life lawyering by practitioners who served as teachers and mentors. 6 While apprenticeships pro-

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6. Quigley, supra note 5, at 464.
duced stellar attorneys, critics of apprenticeship programs viewed them as uneven, inconsistent, and potentially exploitive.7

Toward the end of the nineteenth century, the rapid creation of new law schools eventually overtook the apprenticeship system as the primary method of training prospective lawyers.8 This systematic change also gave way to a pedagogical change in how students were educated in law schools. In 1870, Dean Christopher Columbus Langdell of the Harvard Law School instituted the case method of study, whereby students learned law by studying selected appellate opinions.9 The case method of study, coupled with Dean Langdell’s innovative Socratic style of classroom teaching, trained law students to think analytically and critically about the underlying legal principles derived from appellate decisions.10 Dean Langdell’s case-Socratic method immediately gained widespread recognition and became universally accepted by law schools.11 Thus, legal education was once again transformed.12

In the early part of the twentieth century, however, dissatisfaction with the case-Socratic methodology became apparent. The first movement to discredit the Langdellian teaching methodology, known as Legal Realism, came about in the 1920s and 1930s.13 The Realists believed that the study of appellate opinions was fundamentally flawed and required much more, such as an understanding of how the law and the profession function in society.14 According to the Realists, law students would be better trained if they were also exposed to the social and psychological forces that existed at the time a case was decided.15 Furthermore, the Realists reasoned that law schools were responsible for inculcating in students certain moral and ethical “sensitivities to the consequences of legal decisions.”16

7. Grossman, supra note 1, at 163 n.4; Quigley, supra note 5, at 464. See also Robert C. Casad, The Kansas Trial Judge Clerkship Program, 18 J. LEGAL EDUCA. 75, 77 (1965) (discussing how a clerkship program enjoys the benefits of previous apprenticeship programs while avoiding or decreasing many of the drawbacks).
10. Grossman, supra note 1, at 163; Barry, supra note 9, at 6.
11. Grossman, supra note 1, at 164–65; Barry, supra note 9, at 6.
13. Id. at 166.
14. Id. at 167.
15. Id.
The ideology of Legal Realism shifted somewhat after the World War II. A movement known as Neo-Realism, led by Karl Llewellyn, also claimed that the Langdellian case methodology was isolated and suffered from other inadequacies. The Neo-Realists’ interest in revolutionizing legal education did not focus on clinical education nor the need to train conventional law practitioners per se. Rather, the Neo-Realists argued law students should be trained to “assume roles as policy advisors or policy makers in government or in powerful institutions.” While neither the Realist nor the Neo-Realist ideologies created significant curricular changes in legal education, vestiges of both movements created a tension between the theoretical study of law and the study of society causing what “has been [described] by one [legal scholar] as [an intense] ‘schizophrenia’ in legal education.”

A. The Birth of Clinical Legal Education

“The shortcomings of today’s law graduate lies not in a decent knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made.”

—Justice Warren Burger, Former Chief Justice of the Supreme Court of the United States

While the case-Socratic teaching methodology came under scrutiny and criticism in the early part of the twentieth century, a handful of law schools including the University of Denver, George Washington University, the University of Tennessee, and the University of Southern California incorporated legal aid clinical work into their curricula, although these schools varied regarding whether students received credit for working in such clinics. Despite disenchantment with the case-Socratic

18. Id.
19. Id. at 167.
20. Id.
21. Id. at 168.
22. Quigley, supra note 5, at 469–70. The Chief Justice’s concern that law schools were failing to properly train students for the practice of law was again evident in his paper delivered at Fordham University School of Law at its Fourth Annual John F. Sonnett Memorial Lecture on November 26, 1973 wherein the Chief Justice stated “[t]he third year in school should, for those who aspire to be advocates, concentrate on what goes on in courtrooms. This should be done under the guidance of practitioners along with professional teachers.” Warren E. Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice, 42 FORD. L. REV. 227, 232 (1973).
23. Quigley, supra note 5, at 467. The University of Pennsylvania implemented legal aid work into its curriculum as early as 1893. Id. In 1896, a group of law school seniors at the University of
method, however, the concept of clinical legal education failed to take hold on law schools in the early part of the twentieth century. 24

1. Advocates for Clinical Programs

It wasn’t until the 1930s that the concept of clinical legal education found its way into scholarly publications. Proponents of clinical legal education, including Jerome Frank and John Bradway, wrote scholarly articles that exposed the deficiencies of the case-Socratic method and advocated for the implementation of clinical legal education in law school curricula. 25 Frank, a harsh critic of the Langdellian case methodology, declared that the case-book system was “hopelessly oversimplified.” 26 Frank also poetically stated in one of his works that “students trained under the Langdell system are like future horticulturalists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else. They resemble prospective dog breeders who never see anything but stuffed dogs.” 27

In an effort to remedy the flaws and inadequacies inherent in the case-Socratic methodology, Frank argued for the necessity of implementing legal clinics in law schools so that students could be exposed and to actively participate in the practice of law. 28 Under Frank’s vision, law students would learn to develop relationships with clients, observe the behavior of witnesses, judges, and juries, and develop skills in negotiation and litigation. 29 Frank did not seek abandonment of the case-Socratic methodology altogether. Rather, he advocated for practical exposure to the law so as to enhance the training of prospective lawyers. 30

John Bradway, another ardent proponent of clinical legal education, is credited with taking the concept of the legal aid clinic and implementing it into the teaching curriculum of the law school. 31 In 1933, Brad-

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24. See Quigley, supra note 5, at 469–70 (relating that by 1969 Chief Justice Warren Burger felt compelled to call for an increase in clinical legal education).

25. Id. at 468–69.


27. Id. at 168–69.

28. Id. at 169.

29. Id.

30. See id. (describing Jerome Frank’s recommendations for enhancing legal education).

way, who was at that time the Director of the Legal Aid Clinic at the Duke University School of Law and one of the earliest prolific scholars in clinical legal education, published an article in the *University of Chicago Law Review*, in which he outlined five goals of clinical instruction in law schools: (1) bridge the gap between theory and practice; (2) "synthesize" substantive law with procedural law; (3) introduce and integrate the client and other personalities into the "study and practice of law"; (4) expose students to advocacy; and (5) teach students to analyze a problem from the beginning, rather than in the end as was done in the case-Socratic method with the use of appellate opinions.\(^{32}\)

Frank’s and Bradway’s published criticisms of the case-Socratic method and their ideas for implementing change into law school curricula fueled debate about the role law schools were to undertake in preparing students for the practice of law.\(^{33}\) While scholarly attention was given to clinical legal education, practitioners began demanding that law schools offer more practical skills training for students. In the early 1950s, Arch M. Cantrall, an influential practitioner, supported Frank and Bradway’s position that students should be exposed to both theoretical and practical legal training.\(^{34}\) Mr. Cantrall argued that law schools should offer instruction on practice and client development, law office management, and practical legal ethics.\(^{35}\) Mr. Cantrall’s idea that law schools should bear responsibility for practical training triggered a strong response from Dean Joseph A. McClain, Jr., of the Duke University School of Law.\(^{36}\) Dean McClain asserted that it was impossible for law schools to properly prepare students to handle all the practical problems that a lawyer might face in practice.\(^{37}\) Further, Dean McClain placed blame on the legal profession for its failure to ensure that new lawyers were properly trained to practice law.\(^{38}\)

The controversy over who should have responsibility for exposing and training prospective lawyers for the practice of law netted positive results. Law schools began to implement, on an experimental basis, trial


\(^{33}\) See generally Grossman, supra note 1, at 170 (discussing debates over the education and training of law students).


\(^{35}\) Grossman, supra note 1, at 170–71; Cantrall, supra note 34, at 909.

\(^{36}\) Joseph A. McClain, Jr., *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A. J. 120 (1953); see also Casad, supra note 7, at 76 ("[l]aw schools have generally disclaimed the ultimate responsibility for this phase of legal education.").

\(^{37}\) McClain, supra note 36, at 122.

\(^{38}\) Id. at 175.
“practice courts” and other hypothetical law school instruction, including drafting and seminar courses modeled from simulated problems. \(^{39}\) By the 1960s, the height of social consciousness in America, there was growing concern that law schools failed to expose and sensitize students to issues of professional ethics as well as to the moral and social obligations inherent in the legal profession. \(^{40}\)

2. Funding for Clinical Programs

While the movement to implement clinics in law schools gained momentum in the 1960s, the issue of funding came to the forefront. Lawyers such as William “Bill” Pincus were instrumental in seeking financial assistance for the start-up of law clinics during the 1960s and 70s. \(^{41}\) Between 1959 and 1965, the NCLC, which was affiliated with the American Bar Association, Association of American Law Schools, and the National Legal Aid and Defender Association, issued grants to law schools for start-up clinics totaling $500,000. \(^{42}\) The success of NCLC prompted the Ford Foundation to allot additional funding to NCLC, which changed its name to the Council on Education in Professional Responsibility (COEPR). COEPR existed for a few years, then it was reorganized and named the Council of Legal Education for Professional Responsibility (CLEPR). \(^{43}\) With the generous financial assistance of the Ford Foundation, CLEPR provided almost $12 million to fund new clinics in law schools throughout the country and to develop educational materials for students. \(^{44}\) In 1971, CLEPR estimated and reported that 100 law schools in the United States had a combined total of 204 clinics, involving approximately 4000 students and 300 faculty members. \(^{45}\) By the time CLEPR dissolved in 1978, clinical programs existed in almost every law school in the country. \(^{46}\) Thereafter, between 1978 and 1997, Con-

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\(^{39}\) See Barry, supra note 9, at 11 (discussing law school efforts to provide more practical training); see also Casad, supra note 7, at 76 (same); Grossman, supra note 1, at 171 (same).

\(^{40}\) Grossman, supra note 1, at 172.


\(^{42}\) Blaze, supra note 31, at 942.

\(^{43}\) Barry, supra note 9, at 19; Blaze, supra note 31, at 942; Grossman, supra note 1, at 172–73; Mlyniec, supra note 41, at 966.

\(^{44}\) Grossman, supra note 1, at 172–73.

\(^{45}\) Paul E. Wilson, Clinical Legal Education at K.U., an introduction, THE KU LAWS, Fall 1973, at 3, 4.

\(^{46}\) Mlyniec, supra note 41, at 966–67.
gress appropriated over $87 million to fund clinical legal education programs in American law schools.\footnote{Barry, \textit{supra} note 9, at 19.}

3. The Student Practice Rule

During the late 1960s, while CLEPR funds were expended to create new clinics in law schools, a major lobbying movement was spearheaded to encourage states to promulgate student practice rules that would allow law students to practice law and to represent clients in trial courts under certain conditions.\footnote{Id. at 20.} The motive behind this effort was to enable law students to assist the practicing bar and to expose law students to real-life lawyering, including trial practice, vis-à-vis participation in clinics.\footnote{Grossman, \textit{supra} note 1, at 175; Peter A. Joy, Political Interference With Clinical Legal Education: Denying Access to Justice, 74 \textit{TUL. L. REV.} 235, 268 (1999) [hereinafter \textit{Political Interference}]; see also In the Matter of Chemung County Neighborhood Legal Services, Inc., 348 N.Y.S.2d 230 (N.Y. App. Div. 1973) (granting approval to a legal services corporation to allow law students and law graduates awaiting bar examination results to provide client representation under the supervision of a licensed staff attorney).} By the end of the 1970s, thirty states had promulgated student practice rules, using the ABA Model Student Practice Rule created in 1969 as a model.\footnote{Grossman, \textit{supra} note 1, at 175; David F. Chavkin, \textit{Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor}, 51 SMU L. Rev. 1507 (1998).} Today, every state and most federal courts have rules that allow law students who are enrolled in clinics to represent clients in court under the direct supervision of a law school faculty member or a licensed attorney.\footnote{Political Interference, \textit{supra} note 49, at 267. \textit{See generally} In the Matter of Chemung County Neighborhood Legal Services, Inc., 348 N.Y.S.2d at 230 (allowing law students and students who have graduated, but not yet taken the bar exam, to represent clients under the supervision of a licensed attorney).} While student practice rules vary from state to state, these rules have served as the gateway for offering law students the opportunity to be exposed to the practice of law. More importantly, these rules have encouraged and facilitated the training of trial lawyers.\footnote{\textit{See generally} Chavkin, \textit{supra} note 50, at 1517 (defining the supervisor-client relationship in terms of the student attorney and supervising attorney).}

B. The Mission and Goals of Clinical Legal Education

"There is only one difference between casebook method of law instruction and the clinical method. The Landeggian casebook method uses vicarious legal experiences as its central core of educational mate-
rivial while the clinical method uses direct or "first-hand" legal experience."

While legal clinics began to emerge in law schools throughout the 1960s and 1970s, the role of clinics in law school curricula as well as the goals of clinical teaching methodology were unsettled and required further definition, structure, and clarity. Over the years, many scholars have written commentaries on what constitutes clinical legal education. John Bradway, in the 1930s, explained that a

"clinic is a method of approaching law as a whole rather than a section of either its substantive or procedural aspects. It offers a study of a most complicated mental process. One certainly may teach the practice of law through the clinical method. Given enough material, one may also teach any field of substantive law by the same method."

In 1984, Professor Anthony Amsterdam, in his remarks at the National Conference on Legal Education and the Profession, stated that even though clinical legal education takes many forms, there are five essential components to clinical teaching methodology: (1) a student is presented with a legal problem similarly faced by a practicing lawyer; (2) the student is forced to identify the underlying issues of the legal problem; (3) the student addresses the problem by analyzing it, formulating possible responses to it, and following through to resolve it; (4) the student’s performance with the problem is subject to critical assessment, typically by a faculty member; and (5) the critical assessment focuses on creating a method by which the student will be able to conduct future self-assessment of his or her conduct in practice.

Over the last thirty years, four broad, sometimes overlapping, goals have developed regarding clinical legal education. These four goals include teaching law students the skills necessary to practice law, providing quality legal services to the indigent, imparting in students a sense of professional responsibility, and engaging in litigation for the purpose of reforming the law. Skills training has been the most commonly-cited

54. Blaze, supra note 31, at 946 (quoting John S. Bradway, The Legal Aid Clinic As an Educational Device, 7 AM. L. SCH. REV., 1153, 1155 (1934)).
56. See generally Quigley, supra note 5, at 471–73 (highlighting nine, more specific, goals identified by the AALS Committee on the Future of the In-House Clinic). See generally Blaze,
educational purpose for the existence of clinical programs in law schools. Clinics often provide practical skills training, which includes client interviewing and counseling, fact finding and investigation, research into a particular client problem, professional responsibility, negotiation, trial preparation, and other litigation techniques that are often absent from traditional law school instruction.

The service objective of providing legal assistance to the poor has close ties to the early history and development of clinical legal education; nevertheless, the service goal is generally secondary to educational objectives. In 1959, the American Association of Law Schools drew a distinction between a legal clinic and a legal aid society, declaring in essence that while both provide legal services to an indigent community, the legal clinic’s main undertaking is to properly educate its students.

Beyond practical skills training and providing services to the poor, clinical education goals also seek to instill moral and professional responsibility in law students. Essential to the core of professional responsibility is the lawyer’s concept of himself and his role in the legal process. Charlie Miller, a long-time clinical professor at the University of Tennessee School of Law’s Legal Clinic, once stated that the difference between the goal of learning practical skills and the goal of a student’s development of professional responsibility is comparable to the difference “between the carpenter’s ability to hammer a nail or level a board, and on the other hand, the architect’s capacity to design and su-

supra note 31, at 945–47 (discussing the mission of clinical programs). Charlie Miller, a clinical professor at the University of Tennessee Legal Aid, identified a fifth goal of clinical legal education—education about society. Blaze, supra note 31, at 948 n.72 (quoting Charles H. Miller, Living Professional Responsibility: Clinical Approach 4 (1973) (unpublished manuscript, on file with the author)).

58. See id. at 188 (noting skills provided by clinical programs).
60. Id. at 951 (quoting Leon T. David, The Clinical Lawyer-School: The Clinic, 83 U. PA. L. REV. 1, 3 (1934)). See also Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508, 513 (1992) ("[o]ne of the primary goals in teaching modes of analysis and professional skills is to provide means by which students can learn from experience").
61. See generally Graham, supra note 16 (discussing the moral and professional responsibilities that clinical education provides law students); Casad, supra note 7, at 54, 75, 78 (same). The Legal Theory and Practice courses at the University of Maryland School of Law aim to inculcate in students that lawyers have both a moral obligation and the “professional responsibility” to represent poor and underrepresented people. Barbara Bezdek, Theoretics of Practice: The Integration of Progressive Thought and Action: Reconstructing a Pedagogy of Responsibility, 43 HASTINGS L.J. 1159, 1159 (1992).
pervise the construction of a building which is suitable to the needs of his client.\textsuperscript{63}

Legal reform, a dimension of the service goal, presents itself in various forms but usually its broad goal is to create positive social change through litigation.\textsuperscript{64} Advocating in good faith for change in the substantive law, challenging the application of a law to a particular client, and attacking the unfairness of discriminatory procedural rules are all forms of legal reform.\textsuperscript{65}

The goals of education, service, law reform, and professional responsibility are not mutually exclusive.\textsuperscript{66} Cases litigated in service-oriented or law-reform clinics can be used in reaching educational goals for law students as well as achieving positive outcomes for clients or instigating societal or legal reform.\textsuperscript{67} Furthermore, strict law school control, with reputable and conscientious clinical faculty and a supportive local bar, plus a low student-faculty ratio should enable clinics to remove much of the unpredictability of legal work and to ensure a positive and constructive learning experience for students.\textsuperscript{68} While at times tension may exist between these goals, clinical legal education is often the best forum for teaching law students to be adept at practice skills and to engage in client representation in a professionally responsible manner.\textsuperscript{69}

C. Models of Clinical Legal Education

Four models of clinical legal education have been identified as: (1) the service model; (2) the law reform model; (3) the participant-observer model; and (4) the teaching model.\textsuperscript{70} The first two models, the service and law reform models, involve real clients.\textsuperscript{71} The second two models, the participant-observer model and teaching model, and are not real-client based.\textsuperscript{72} A discussion of the first two models is provided below.

\begin{itemize}
\item \textsuperscript{63} Blaze, supra note 31, at 949 (quoting Miller, supra note 56).
\item \textsuperscript{64} See id. at 952 (explaining that one dimension of the service role is to empower the poor to use lawyers to solve their problems).
\item \textsuperscript{65} Id. at 952.
\item \textsuperscript{66} Grossman, supra note 1, at 187. See generally Bezdek, supra note 61 (discussing the impact that clinical programs have on law students and legal education).
\item \textsuperscript{67} Grossman, supra note 1, at 187.
\item \textsuperscript{68} Id. at 186.
\item \textsuperscript{69} Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 CLINICAL L. REV. 385, 386 (1996).
\item \textsuperscript{70} Grossman, supra note 1, at 162.
\item \textsuperscript{71} Id. at 173–80.
\item \textsuperscript{72} Id. at 180–93.
\end{itemize}
because it is through representation of clients and involvement in the litigation process that law school legal clinics have made noteworthy contributions to the profession and society. Moreover, the emotional and ethical issues that a lawyer may face in practice are inherent in real-client programs, which aid in providing the student with a well-rounded educational, yet practical experience.

1. The Service Model

Concern for the poor in the 1960s and the resulting “war on poverty” led to the creation of law clinics staffed by practicing lawyers in mostly urban areas, where the primary focus was providing legal services to those who were unable to afford lawyers in both the civil and criminal context. The Supreme Court’s 1963 decision in *Gideon v. Wainwright*, requiring that indigent defendants charged with felonies receive legal counsel, added new and increased pressure on the legal profession to provide services to the poor. It was about this time that law schools felt compelled to assist in meeting the demands for legal services to the indigent population. Initially, law schools farmed out students to community legal aid and public defender offices, where students served as additional manpower to attorneys representing indigent clients. While some educational value for law students was achieved as a result of working in community-based legal aid offices, service to the indigent remained the primary goal. Eventually, pressure was placed on law schools to develop new in-house clinics that would enable students to earn law school credit under the supervision of a law school faculty member.

Service-modeled clinics are typically formatted in one of two ways, both of which usually involve the litigation of routine cases in areas such as family law, landlord-tenant law, public benefits law, and consumer law. The first format, the farm-out method, is essentially an externship program that places law students in an attorney’s office to work under

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73. See id. (discussing the participant-observer model and the teaching model).
74. See Grossman, supra note 1, at 185 (discussing the advantages of real-client programs for law students).
75. Id. at 173.
76. Id. (citing Gideon v. Wainwright, 372 U.S. 335 (1963)).
77. Id. at 173.
78. Id.; see also Legal Aid Program Grows, THE KU LAW, Winter 1971, at 3.
80. Id.
81. Id.
82. Id. at 175.
the licensed attorney’s direct supervision. Under this format, law school faculty members serve in a supervisory or administrative capacity only and do not directly supervise the casework of the intern. These faculty members are typically responsible for the classroom component of the program. The second format, the in-house clinics, is entirely school-operated with faculty members who are licensed attorneys supervising the work of the student intern. In-house programs are costly and could potentially entangle a university or law school in controversy, but present a better medium for a law school to oversee and manage the educational experience of students.

Clinical legal education programs revolving around the service-oriented model have not been without criticism. Some identifiable drawbacks to this model include the repetitive and mundane nature of the work, heavy caseloads, exploitation of students, and possibly inconsistent or unreliable attorney supervision.

2. The Law Reform Model

Dissatisfaction with the service-model of clinical legal education led some law schools to create clinics centered on efforts to reform specific areas of the law. These so-called societal justice clinics usually focus on legislative reform and center their programs around litigating issues involving civil rights, environmental law, poverty rights, and consumer matters. Under this model, carefully chosen test cases are selected and litigated by experienced law school clinical faculty with the assistance of law students enrolled in the clinic. Low caseloads and the team approach used in this model allow cases to be thoroughly examined, dissected, and prepared under the supervision and leadership of a faculty member. While there are many advantages to the law reform model, cases can be complex and litigation protracted, students take a secondary

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83. Id.
84. Id.
85. Id.
86. Id.
87. Id.
88. Id. at 176.
89. Id. at 178.
90. Barry, supra note 9, at 13–14; see also Grossman, supra note 1, at 178 (discussing the “law reform” model of clinical legal education); Jon C. Dubin, Clinical Design for Social Justice Imperatives, 51 SMU L. Rev. 1461 (1998) (discussing the social justice dimensions of clinical design).
91. Grossman, supra note 1, at 178.
92. Id.
and less prominent role in the litigation, and clients involved in such cases have been deemed "guinea pigs."\textsuperscript{93} Moreover, often times, students are left with a narrow and limited exposure to cases.\textsuperscript{94}

III. CLINICS AT THE UNIVERSITY OF KANSAS SCHOOL OF LAW

The clinics at the University of Kansas School of Law are among the oldest and most reputable in the country. In the early 1960s, with the financial backing of CLEPR, state and federal funding sources, and grants from private donors, the KU law school became one of the front runners to formally implement clinical legal education into its curriculum.\textsuperscript{95} Two of the law school's earliest clinics, the Juvenile Court Clinic and the Prison Legal Assistance Program (later renamed the Defender Project), were pioneers in clinical legal education and served as models for other law schools in the United States seeking to launch similar clinics.\textsuperscript{96}

The Juvenile Court Clinic, created in the late 1950s, appears to be the first recognized clinic supported by the KU law school.\textsuperscript{97} This clinic exposed students to the juvenile justice system and permitted them to represent indigent youth prosecuted on criminal charges in state court.\textsuperscript{98} Students in the clinic conducted factual investigations, prepared cases, participated in trials, and drafted probation and sentencing orders, among other tasks.\textsuperscript{99} While the Juvenile Justice Clinic is no longer a freestanding clinic at the KU law school, a variation of its program objectives has essentially been absorbed by the law school's in-house legal aid clinic, the Douglas County Legal Aid Society.\textsuperscript{100}

The Paul E. Wilson Defender Project ("the Project"), one of two inhouse clinics at the KU law school, is also the law school's oldest continuously operated clinic.\textsuperscript{101} The Project, started in 1965, was the brain-

\textsuperscript{93} \textit{Id.} at 179.
\textsuperscript{94} \textit{Id.} at 178–79.
\textsuperscript{95} WILSON, supra note 45, at 4; Keith G. Meyer, The Defender Project, THE KU LAWS, Fall 1973, at 5.
\textsuperscript{96} WILSON, supra note 45, at 4.
\textsuperscript{97} See Robert E. Schulman, The Juvenile Court Program, THE KU LAWS, Fall 1973 at 12, 12 (stating that the Juvenile Court Clinic was the oldest clinic at the law school and, as of 1973, had been in operation for more than 15 years).
\textsuperscript{98} The Juvenile Court Clinic, An Educational Experience, THE KU LAWS, Winter 1971, at 8.
\textsuperscript{99} Id.
\textsuperscript{100} See CLINICAL EDUCATION PROGRAM, supra note 23 (discussing the clinical opportunities available to students of the University of Kansas School of Law).
\textsuperscript{101} Id.
child of Professor Paul E. Wilson and appropriately bears his name.\textsuperscript{102} It provides legal assistance to prisoners incarcerated at the United States Penitentiary in Leavenworth, Kansas as well as Kansas state correctional facilities.\textsuperscript{103} The Project is one of the first law school clinics of its kind to provide legal representation to indigent inmates.\textsuperscript{104} Under Professor Wilson’s leadership, the Project was designed to expose law students to the administration of criminal justice and to educate students on the law of post-conviction remedies.\textsuperscript{105} From early in its history, the overall purpose of the Project has been to educate its students; its secondary goal is to provide service to indigent inmates who are in need of legal assistance.\textsuperscript{106} Professor Keith Meyer, director of the Project from 1969 to 1975, once wrote that “hopefully, [the student] obtains a better understanding of the standard activities of a practicing attorney. . . . [T]he student is [also] exposed to the prison system.”\textsuperscript{107} Each academic year, students enrolled in the clinic handle a broad scope of post-conviction matters, including constitutional challenges that involve direct appeals in Kansas state courts and habeas corpus petitions in federal court.\textsuperscript{108} Recently, the Project has become involved in innocence work, whereby interns in the clinic petition trial courts for DNA testing in an effort to exonerate prisoners who claim that they have been wrongfully convicted.\textsuperscript{109} The interns involved in the Project receive a total of four credit hours for each of the two semesters that they participate in the clinic. While client representation and fieldwork comprise the majority of time spent in the clinic, students are also required to enroll in a weekly classroom component facilitated by the Project’s clinical faculty members.\textsuperscript{110} Since the Project’s inception in 1965, positive results have been achieved for its incarcerated clients, including having detainers “dropped,” “obtaining evidentiary hearings,” and obtaining “early parole” for those eligible.\textsuperscript{111}

\textsuperscript{102} David Gottlieb, \textit{Clinical Education: Teaching the Skills of Lawyering}, \textit{THE KU LAWS}, Fall 1995, at 1, 1.
\textsuperscript{103} \textit{CLINICAL EDUCATION PROGRAM}, supra note 23.
\textsuperscript{104} Meyer, supra note 95, at 5.
\textsuperscript{105} Id. at 6; Gottlieb, supra note 102, at 1.
\textsuperscript{106} Meyer, supra note 95, at 5.
\textsuperscript{107} Id. at 6.
\textsuperscript{108} Interview with Professor Jean Phillips, Director of the Paul E. Wilson Defender Project, University of Kansas School of Law (Jan. 23, 2003).
\textsuperscript{109} Id.
\textsuperscript{110} \textit{See Course Details}, The University of Kansas School of Law, at http://www.law.ku.edu/academics/details.asp?Number=896 (Mar. 12, 2003) (stating that the Defender Project Class is a corequisite).
\textsuperscript{111} Meyer, supra note 95, at 10.
The other in-house clinic at the KU law school is the Douglas County Legal Aid Society, which began in 1969 as a collaborative effort between the law school and the Douglas County Bar Association.112 The Legal Aid Clinic is a trial practice clinic and its broad mission, as stated in its original articles of incorporation, is to provide legal services to “all who are eligible and who are unable to procure legal assistance elsewhere.”113 Additionally, the purpose of the Clinic is to “secur[e] justice for and to protect the rights of the needy.”114 The Clinic is governed by a nine-member board of directors, made up mostly of members of the local Douglas County Bar.115 The Dean of the law school serves as an ex-officio member of the Board.116 In the Clinic’s infancy, members of the local bar served as supervising attorneys under the direction of law school faculty members.117 Today, two full-time clinical faculty members provide direct supervision over interns and casework. The physical location of the clinic has changed over the years, with its first temporary site being a small room in the Douglas County Courthouse in Lawrence, Kansas.118 Thereafter, the clinic moved to a commercial space in downtown Lawrence, and finally to its current site on the first floor of the law school building, Green Hall.

Presently, third-year law students in the Legal Aid Clinic provide legal representation in Kansas district courts to indigent clients in domestic relations, landlord-tenant, collections, and other civil actions.119 Interns in the Clinic also serve as public defenders representing indigent clients in municipal and juvenile court.120 Thus, the opportunity to appear in court and litigate various types of cases not only presents students with the interesting tasks and challenges of being a trial lawyer, such an opportunity also helps to create and instill a sense of self-confidence in their abilities to practice law after graduation from law school.

In order to facilitate client representation by law students, Kansas Supreme Court Rule 709, originally promulgated in 1969 and known as

114. Id.
115. Id. At the clinic’s inception a 21-member advisory committee counseled the Society’s Board of Directors on policy matters. Bean, supra note 112, at 7. Former Kansas Supreme Court Justice Fred N. Six was one of the clinic’s founding fathers and served as the Society’s president for some time. Id.
118. Id.
119. CLINICAL EDUCATION PROGRAM, supra note 23.
120. Id.
the state's student practice rule, allows legal interns to represent indigent clients in both civil and criminal matters in Kansas courts under the direct supervision of a licensed attorney.\textsuperscript{121} To qualify for Rule 709 status, the law student must have completed at least four semesters of law school, or the equivalent thereof, and be certified by the dean of the law school to be "of good character and competent legal ability."\textsuperscript{122} Interns enrolled in the Legal Aid Clinic must have completed a Professional Responsibility course to qualify for the clinic. It is also advisable that students complete law school courses in Evidence and Trial Advocacy prior to participation in the clinic so as to enhance their trial experience once enrolled.

There are two other clinics at the KU law school that expose students to trial practice, the Criminal Justice Clinic and the Judicial Clerkship Clinic. Both clinics are externship programs that require interns to devote a minimum of a full eight-hour day or two four-hour days to working on-site at the designated prosecutor's office or with the assigned judge, respectively.\textsuperscript{123} Also, participation in a weekly classroom component, facilitated by the supervising faculty member, is required for students enrolled in these clinics.\textsuperscript{124}

The Criminal Justice Clinic, formally organized as a clinic in 1982,\textsuperscript{125} appears to be a spin-off of the County Attorney Internship Program, which was started in 1970.\textsuperscript{126} Through a grant funded by former Governor Robert B. Docking's Commission on Administration of Criminal Justice, the County Attorney Internship Program consisted of thirty-five paid summer internships in which both KU law students and Washburn law students were eligible.\textsuperscript{127} Interns were placed in various prosecutors' offices across the state of Kansas with their work supervised by county attorneys in the assigned field offices.\textsuperscript{128}

\textsuperscript{121} Wilson, supra note 45, at 3–4. The student practice rule, Kansas Supreme Court Rule 709, was originally promulgated as Rule 215, but the general content of the Kansas student practice rule has remained the same since its inception in 1969. \textsc{Kan. Sup. Ct. R.} 709.

\textsuperscript{122} \textsc{Kan. Sup. Ct. R.} 709.

\textsuperscript{123} Application for Criminal Justice Clinic, 2003-2004 (on file with author); Application for Judicial Clerkship Clinic, 2003-2004 (on file with author).

\textsuperscript{124} Application for Criminal Justice Clinic, 2003-2004 (on file with author); Application for Judicial Clerkship Clinic, 2003-2004 (on file with author).

\textsuperscript{125} \textsc{Clinical Legal Education}, supra note 23.

\textsuperscript{126} \textit{See County Attorney Internship Program and Trial Judge Clerkship, The KU Laws, Spring 1971}, at 3 (inferring that the County Attorney Internship Program was the predecessor to the Criminal Justice Clinic).

\textsuperscript{127} \textit{Id.}

\textsuperscript{128} \textit{Id.}
Unlike the County Attorney Internship Program, students enrolled in the Criminal Justice Clinic do not receive compensation for their work. Rather, they earn law school credit for their participation. The Criminal Justice Clinic engages students with the day-to-day work that prosecutors face, including working closely with law enforcement agencies, drafting criminal complaints, preparing for and participating in preliminary hearings and jury trials as well as other aspects of the criminal justice process.\textsuperscript{129}

The Judicial Clerkship Clinic, formerly known as the Kansas Trial Judge Clerkship Program, was created by Professor Robert C. Casad in 1963 with a grant from the National Council on Legal Clinics.\textsuperscript{130} The clinic places students with both state and federal trial judges in northeastern Kansas.\textsuperscript{131} Students participating in this externship program conduct research and prepare memoranda for their supervising judges.\textsuperscript{132} More significantly, interns in the Judicial Clerkship Clinic have the opportunity to observe the skills and techniques of trial lawyers by watching voir dire and jury selection, the presentation of evidence at trial, instructions to the jury, and post-trial motions argued by counsel.\textsuperscript{133} Students are also in the unique position to experience firsthand the unfolding of the judicial process by being able to view trials, hearings, and conferences conducted by their respective judges. Professor Casad stated in a 1965 article, published in the Journal of Legal Education, that one of the purposes of the Trial Judge Clerkship Program was "[t]o promote a professional sense of responsibility, especially that connected with the trial of lawsuits, through a clearer understanding of court operations and the work of judges."\textsuperscript{134}

Three of the most recent clinics, established at the University of Kansas School of Law in the 1990s, are the Public Policy Clinic, the Elder Law Clinic, and the Media Law Clinic.\textsuperscript{135} All of these newer pro-

\textsuperscript{129} Clinical Education Program, supra note 23.
\textsuperscript{130} Casad, supra note 7, at 75.
\textsuperscript{131} Clinical Education Program, supra note 23; see also Robert C. Casad, Trial Courts and Law Schools, An Alliance for Progress, 49 J. AM. JUD. SOC. 52, 53-55 (1965) (describing the Kansas Trial Judge Clerkship program at the University of Kansas School of Law).
\textsuperscript{132} Clinical Education Program, supra note 23.
\textsuperscript{133} Casad, supra note 7, at 77.
\textsuperscript{134} Id. at 75.
\textsuperscript{135} The fourth clinic is the Legislative Clinic. It seems that the Legislative Clinic is a rebirth of the Legislative Workshop (later a course named the Legislative Process) first offered in 1969 by former Kansas Attorney General Robert Londerholm. Second- and third-year students in the workshop conducted research on a particular state legislative issue and drafted a proposed statute. Legislative Workshop Adds New Emphasis to Learning, THE KU LAWS, Fall 1969, at 1, 5; Students Try Their Hand At Drafting Laws, THE KU LAWS, Winter 1971, at 3-4. Students enrolled in any of
grams, along with the well-established Legislative Clinic started in 1969, offer students the chance to actively participate in diverse areas of legal practice as well as witness the complicated and interesting ways in which the law intersects with society. As a result, the various practice skills acquired from participation in these clinics also help to lay a firm foundation for building successful future litigators because students "undertake this [clinical] work not as passive observers but as active problem-solvers."

The wide array of clinical opportunities at the University of Kansas School of Law demonstrates the school’s commitment to integrating clinical training into the student’s legal education. Indeed, in 2002, the ABA announced that the University of Kansas School of Law was third in the United States in the number of positions available for students in faculty-supervised clinics.

IV. CLINICAL LEGAL EDUCATION TODAY

"The student suffers if he does not have clinical training." Some empirical evidence indicates that today’s law school graduates are more prepared for the practice of law than law graduates thirty years ago. Furthermore, scholars and other legal commentators have suggested the same anecdotally. Advocates of clinical legal education emphasize that low student-faculty ratios and a learning environment in which continuous critical assessment and feedback is given by faculty members imparts and fosters practical legal skills and assists in developing a well-rounded lawyer who will continue to learn from his or her own experiences after graduation from law school.

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these clinics are not required to comply with Rule 709, the student practice rule, because there is little to no representation of clients in state or federal court.


137. See generally Gottlieb, supra note 102 (discussing how the clinical education at the University of Kansas School of Law teaches students the skills of lawyering).


139. CLINICAL LEGAL EDUCATION, supra note 23.

140. Bradway, supra note 32, at 477.


142. Id.

Clinical programs have moved into the mainstream of law school curricula over the years. The overall structure and goals of litigation-based clinics have remained the same since the first legal clinics started in the early part of the twentieth century. Some law school clinics focus on providing legal representation to particular clients, including the indigent, the homeless, victims of domestic violence, children, prisoners, the elderly, and small businesses. And there are clinics that specialize in certain areas, such as immigration, tax, bankruptcy, intellectual property, international human rights, family law, environmental law, and criminal law, among others. Many law schools in the United States have distinguished histories involving clinical legal education and continue to create new and interesting clinics for their students.

Generally, student support for the clinical experience appears to be overwhelmingly positive. Many factors contribute to student enthusiasm for clinics, including social-consciousness, a desire to serve the community, boredom and dissatisfaction with traditional classroom methodology, and professional, yet informal relationships with clinical faculty members. Despite student demand for clinical offerings, there has been some debate about whether law students should be directly involved in attorney-client relationships. This controversy stems primarily from the unpredictability of the practice of law. Other drawbacks of clinical legal education have also been identified. For instance, students may be forced to devote substantial time to an active case at the expense of traditional law school classes. Most clinics also require a low student-faculty ratio, resulting in high operational costs for law schools. Furthermore, assessing credit hours and measuring student performance for grading purposes is difficult.

Whatever the pros and cons of clinical legal education, the need to provide practical legal training to law students has remained a consistent focal point in the profession and, in varying degrees, the legal education

144. See id. at 624–25 (discussing how clinical programs have moved into the mainstream of law school curricula).
147. Id
148. See generally Grossman, supra note 1, at 179 (discussing student support for the clinical experience).
149. Grossman, supra note 1, at 179; Casad, supra note 7, at 83–84.
150. Grossman, supra note 1, at 182.
151. Id.
152. Id.
153. Id.; Barry, supra note 9, at 21–22.
world. The contemporary call to provide clinical opportunities for students is primarily linked to the 1992 MacCrate Report ("the Report"),¹⁵⁵ which summarized the results of a study conducted by a committee of the American Bar Association's Section of Legal Education and Admissions to the Bar, known as the Task Force.¹⁵⁶ The Report, named after Robert MacCrate who was the chair of the Task Force, was 414 pages in length and officially titled, Legal Education and Professional Development—An Educational Continuum.¹⁵⁷ At the heart of the lengthy MacCrate Report, was the Task Force's identification of ten lawyering skills and four professional values "which new lawyers should seek to acquire."¹⁵⁸ Among the ten skills listed, plus their multiple subparts, were "Problem Solving; Legal Analysis and Reasoning; Legal Research; Factual Investigation; Communication; Counseling; Negotiation; Litigation and Alternative Dispute Resolution Procedures; Organization and Management of Legal Work and Recognizing and Resolving Ethical Dilemmas."¹⁵⁹ The four values identified by the Task Force included "Provision of Competent Representation, Striving to Promote Justice, Fairness and Morality, Striving to Improve the Profession, and Professional Self-Development."¹⁶⁰

The Task Force's reason for including a numerated set of skills and values was to promote discussion among and within all sectors of the legal profession, including legal education, so as to create a focus on the issues relating to the skills and values that are central to the role of prac-


¹⁵⁶. Quigley, supra note 5, at 470; see also The MacCrate Report, supra note 156, at 401. Between 1989 and 1992, the committee of this section, called the Task Force, held seven plenary sessions, and had four public hearings in which both oral and written comments were accepted. Thereafter, a draft of the Report was made and circulated to practitioners and legal educators for comment. Engler, supra note 155, at 115.

¹⁵⁷. Engler, supra note 155, at 113. See generally Robert MacCrate, Introduction: Teaching Lawyering Skills, 75 NEB. L. REV. 643 (1996) (discussing the specifics of "lawyering skills" and how they are best taught to law students).


¹⁵⁹. Id. at 113 n.13.

¹⁶⁰. Id.
ticing lawyers.\textsuperscript{161} Most notably, the Report emphasized the need for clinical legal education programs in law schools and made other specific curricular recommendations to law schools, thus creating an array of responses, both positive and negative, from the legal education arena.\textsuperscript{162}

In the wake of the Report, law schools across the country seemed to react and give ample consideration to clinical legal education and clinical pedagogy in general, but there is little evidence to suggest that the Report’s recommendations have transformed legal education in any significant way.\textsuperscript{163} But the Report did trigger a response from the ABA. The ABA openly recognized the need for law school clinics and enacted amendments to its accreditation standards, specifically amending Standard 301(a) to explicitly state that law schools are responsible for maintaining educational programs that are structured to prepare graduates for the practice of law.\textsuperscript{164} It seems that both the MacCrate Report and the subsequent amendments to the ABA accreditation standards both played an instrumental role in the integration of clinical methodology in law school instruction.\textsuperscript{165} By the end of the 1990s, more law schools had in-house clinics and the number of clinical faculty had increased substantially.\textsuperscript{166}

\textbf{A. Clinical Involvement in "Impact Litigation"}

Today law school clinics provide competent and skilled representation to a variety of clients and in a variety of ways.\textsuperscript{167} Everyday a majority of law school clinics, like many general practice law firms, help ordinary people with their common legal problems such as divorces and other family law disputes, consumer and immigration issues, landlord/tenant matters, and bankruptcies.\textsuperscript{168} Recently, however, some clinics have altered their focus from representing the individual client (who is typically indigent) or providing legal representation in established and

\begin{itemize}
\item \textsuperscript{161} Id. at 113.
\item \textsuperscript{162} Id. at 114. Dean John J. Castonis of the Vanderbilt University School of Law criticized the MacCrate Report’s recommendations for increased practical skills classes/clinics for students, stating that the report ignored the administrative costs of implementing such recommendations. Id. at 117.
\item \textsuperscript{163} Id. at 144–46.
\item \textsuperscript{164} Id. at 145.
\item \textsuperscript{165} See id. at 144–49 (assessing the impact of the Report and accreditation standards).
\item \textsuperscript{166} Id. at 147. The working conditions of clinical faculty has also improved in the wake of the Report. More law schools now offer their clinicians tenure track positions, higher salaries, and the right to participate in law school governance. Id.
\item \textsuperscript{167} See Schlossberg, supra note 146, at 197–98.
\item \textsuperscript{168} Id.
\end{itemize}
apolitical areas of the law to engaging in what has been called “impact litigation.”\textsuperscript{169}

What is impact litigation precisely? One commentator describes it as “political lawyering,” wherein lawyers, using Legal Services Corporation funding, litigate matters to seek legal reform for the benefit of indigent people.\textsuperscript{170} Another commentator characterizes impact litigation as consisting of class action suits and other complex cases wherein the results of litigation typically affect large numbers of people.\textsuperscript{171} Whatever its appropriate definition, a faction of clinics has gone from representing clients in conventional types of cases to engaging in mass litigation efforts where legal and societal reform are the primary goals.\textsuperscript{172} Law school clinical involvement in high-profile cases or mass litigation efforts has led to charges by some critics that clinics are breeding grounds for training liberals and advancing liberal agendas.\textsuperscript{173} Political agendas that focus on disabling or abolishing law school clinical programs, as well as other attempts to block access to the judicial system, have been present for years and distract from the work and goals that the clinics seek to accomplish.\textsuperscript{174}

For instance, in the late 1960s, two clinical faculty members at the University of Mississippi School of Law, whose job duties included work with the North Mississippi Rural Legal Services, were terminated


\textsuperscript{172} For instance, in 1988, Yale Law School’s Homelessness Clinic filed or intervened in six separate cases prevailing at the trial level in all of the cases and winning more than $100 million dollars for its clients. Laura G. Holland, Comment, Invading the Ivory Tower: The History of Clinical Education at Yale Law School, 49 J. Legal Educ. 504, 527 (1999). In one of these cases, Savage v. Aronson, the students in the Homelessness Clinic filed a class action law suit and sought an injunction on behalf of individuals who were to be evicted from their emergency housing pursuant to a new state law. \textit{Id.} The clinic won an injunction at the trial level, which was later reversed by the Connecticut Supreme Court. \textit{Id.} More recently, the innovation of the International Human Rights Clinic, one of eight clinical programs at American University, Washington College of Law, involves legal work centered on human rights claims before both domestic and international courts. Claudio Grossman, Building the World Community: Challenges to Legal Education and the WCL Experience, 17 Am. U. Int’l L. Rev. 891, 835–39 (2002). Students participating in this clinic have also represented clients from “Togo, Sierra Leone, Chad, the Democratic Republic of Congo, Nigeria, and Rwanda,” in asylum cases before the U. S. Immigration and Naturalization Service and in the federal courts. \textit{Id.}

\textsuperscript{173} Peach, supra note 171, at *2.

\textsuperscript{174} \textit{Political Interference, supra} note 49, at 268.
from their faculty positions at the law school because of the clinic’s involvement in a school desegregation case.\textsuperscript{175} Not only did the faculty members lose their jobs, the University of Mississippi trustees and various state legislators also severed ties with the legal services program.\textsuperscript{176} In 1989, an ethical complaint was filed against a clinical law professor at the Rutgers Law Clinic, a state-funded university, when the clinic represented a client before the Council on Affordable Housing, a state agency.\textsuperscript{177} At issue in the complaint was whether the professor was considered a state employee for purposes of the New Jersey Conflicts of Interests Law.\textsuperscript{178} In holding that the professor was not a state employee for purposes of the conflict of interest law, the New Jersey Supreme Court declared that “\textsuperscript{179}given the educational purposes of the clinic . . . the State University would be academically and educationally disadvantaged by the contrary interpretation . . .”

Other clinics nationwide have also faced various forms of interference by politicians and other constituencies. In 1981, Iowa legislators threatened enactment of laws that would prevent law clinics at the University of Iowa from litigating any claim wherein clients sought to sue the state.\textsuperscript{180} This retaliatory effort by state politicians came about after the law clinics successfully litigated to reform prison conditions for inmates in the state penal system.\textsuperscript{181} Similarly in Idaho, in 1982, state legislators became upset after a law clinic at the University of Idaho successfully obtained a stay of execution for a death row inmate.\textsuperscript{182} In Tennessee, in 1981, controversy over attorney’s fees in civil rights litigation caused the law clinic to separate from the legal aid program.\textsuperscript{183}

Attacks on clinics by politicians or powerful business interests are often triggered when clinics challenge these constituencies or litigate against their interests. New Jersey attorney Curtis Michael, who was recently unsuccessful in litigating a case against the Rutgers-Newark Constitutional Law Clinic involving free speech rights at a shopping

\textsuperscript{175} Trister v. University of Mississippi, 420 F.2d 499 (5th Cir. 1969); Political Interference, \textit{supra} note 49, at 269.
\textsuperscript{176} Political Interference, \textit{supra} note 49, at 269.
\textsuperscript{177} \textit{In re} Determination of Executive Commission on Ethical Standards, 561 A.2d 542 (N.J. 1989).
\textsuperscript{178} \textit{Id.} at 543.
\textsuperscript{179} \textit{Id.} at 549.
\textsuperscript{180} Political Interference, \textit{supra} note 49, at 269 n.171.
\textsuperscript{182} Political Interference, \textit{supra} note 49, at 269 n.173.
\textsuperscript{183} Joy & Weissselberg, \textit{supra} note 181, at 533.
mall, stated that “[t]hese clinics are funded by state resources [and] take advocacy positions that . . . aren’t really accountable to an electorate that ultimately funds them.”\textsuperscript{184} A spokesman from the Washington Legal Foundation, a conservative think tank, criticized what has been deemed liberal activism, arguing “[w]e think there needs to be a balance.”\textsuperscript{185} In an effort to offset liberal activism, the George Mason University School of Law created the Economic Freedom Law Clinic where the focus of the Clinic is to teach law students litigation “from a pro free enterprise, limited government and economic freedom perspective.”\textsuperscript{186}

Two recent and prime examples of impact litigation, which involve controversial efforts by law school clinics, are innocence projects and environmental litigation. Clinical participation in these specific areas of the law has triggered mixed responses from various public and private constituencies, which are deserving of extensive attention and discussion.

1. The Innocence Projects

The Innocence Project for Justice at the Rutgers University School of Law in Newark and the Center for Wrongful Convictions at the Northwestern University School of Law are among approximately twenty-five law clinics across America that have been instrumental in the release of wrongfully convicted individuals.\textsuperscript{187} The purpose of innocence work is to seek the exoneration of those persons who were wrongfully convicted of crimes by requesting genetic testing of old evidence as well as engaging in factual reinvestigation of an inmate’s case with the goal of uncovering other relevant evidence that could prove the inmate’s innocence.\textsuperscript{188} Professor Lawrence C. Marshall of the Northwestern University School of Law and lawyers Barry Scheck and Peter Neufeld are credited with establishing these programs throughout the U.S., which provide free legal assistance to prisoners, but do not pay for the expensive costs of the genetic testing itself.\textsuperscript{189} In a letter sent to practitioners and law schools across the country to solicit implementation of innocence project work,

\begin{thebibliography}{9}
\bibitem{184} Peach, \textit{supra} note 171, at *5.
\bibitem{185} \textit{Id.}
\bibitem{186} \textit{Id.}
\bibitem{187} Maria Vogel-Short, \textit{Rutgers Project Seeks to Free Inmates, Activists Say One In Seven Wrongfully Convicted}, N.J. LAW., Aug. 12, 2002, at 5.
\end{thebibliography}
Barry Scheck stated that "[l]aw schools are the last, best hope" for those inmates on death row who have viable claims of innocence. David Brock, a South Carolina lawyer and expert in the federal death penalty, stated that the innovation of innocence work has "linked cutting-edge science to what should be the most basic job of any legal system which is righting injustice." Professor Lori Urs, who directs the innocence project at the Rutgers University School at Law in Newark, claims that as many as one in seven inmates incarcerated in New Jersey's prisons have been wrongly convicted. Moreover, Urs has pointed out that most wrongful convictions are a result of mistaken eyewitness identifications and shoddy police work. With a team of about twelve law students, Professor Urs sifts through hundreds of letters written by prisoners claiming innocence. Like most innocence projects, the Rutgers clinic carefully selects cases that have merit, conducts investigation into the claims, and represents inmates seeking exoneration by requesting DNA testing as well as judicial review of other evidence in an effort to get a conviction reversed.

The impact of innocence work has been overwhelming, triggering religious groups and other organized death penalty opponents to advocate for abolishment of capital punishment. Over the last few years, at least eleven states have considered moratoriums of their state death penalty laws. In 1997, the American Bar Association called for a nationwide moratorium on executions until procedures were in place to minimize the risk of executing innocent persons. And U.S. Senator Russell D. Feingold of Wisconsin proposed a bill that would abolish the federal death penalty.

191. Fighting the Good Fight, supra note 188.
192. Vogel-Short, supra note 187. Professor Lori Urs, a law student, took a leave of absence from law school and worked for a year with Sister Helen Prejean, whose commitment to advocating against the Death Penalty was portrayed in her book and inspired the movie, Dead Man Walking. Id.
193. Id. According to another source, since the Supreme Court reinstated the death penalty in 1976, a total of 26 people sentenced to death in Florida and Texas had been exonerated for their crimes. On a national level, there have been 75 persons exonerated, compared with 490 persons who have been put to death. Rovella, supra note 190.
194. Vogel-Short, supra note 187.
195. Id.
196. Fighting the Good Fight, supra note 188.
197. Id.
199. Id.
Recently, on January 11, 2003, hours before leaving his post as governor of Illinois, George Ryan commuted the death sentences of the state’s 163 inmates reducing their terms to either life or 40 years. Announcing his blanket commutation to a cheering crowd at the Northwestern University School of Law, Governor Ryan declared that Illinois’s capital punishment system was “haunted by the demon of error.” The governor went on to quote the late Supreme Court Justice Harry Blackmun, saying that “[b]ecause the Illinois death penalty system is arbitrary and capricious—and therefore immoral—I no longer shall tinker with the machinery of death.” The previous day, in a speech at the DePaul University College of Law, Governor Ryan pardoned four men on Illinois’s death row.

The governor’s decision to commute and pardon the sentences of death row inmates came after an intense three-year study conducted by an ad hoc committee, the Commission on Capital Punishment, which was convened in 2000 by the governor himself. According to Governor Ryan, the study exposed flaws in the determination of “who among the guilty deserves to die.” Governor Ryan’s controversial actions were praised by world leaders and death penalty opponents, such as the Reverend Jesse Jackson and Nelson Mandela. Those critical of the governor’s actions claim that a criminal investigation surrounding an unrelated corruption scandal may have influenced his decision to vacate death row. Family members of murdered victims and some state prosecutors were outraged. One prosecutor called Ryan’s decision “stunningly disrespectful to the hundreds of families who lost their loved one to these Death Row murderers.” Regardless of the ill consequences of his pardons and commutations, Governor Ryan stated that he hoped his decision would incite increased awareness and examination of capital punishment throughout the country.

200. Id.
201. Maurice Possley & Steve Mills, Clemency for all: Ryan commutes 164 death sentences to life in prison without parole: ‘There is no honorable way to kill,’ he says, Chi. TRIB., Jan. 12, 2003, § 1, at 1.
202. Id. (quoting Governor George Ryan who himself quoted the famous words of the late Supreme Court Justice Harry Blackmun).
203. Warden, supra note 198, § 2, at 1.
204. Rob Warden, supra note 198, § 1, at 1; see also Shia Kapos, Inmates’ Families Beseech Ryan, CHI. TRIB., Jan. 4, 2003, § 1, at 14 (discussing the moratorium that accompanied this study).
205. Possley & Mills, supra note 201.
206. Id.
207. Id.
208. Id. (quoting Cook County State’s Attorney Richard Devine).
209. Id.
2. Environmental Litigation

In recent years, law school environmental law clinics have successfully challenged coal, oil, timber, and chemical companies in lawsuits filed to protect the sanctity of the environment or to protect people and animals from the adverse effects of environmental abuse. The successes of these clinics have come with a price, resulting in “political interference” whereby the clinics are often publicly criticized by government officials or large corporate entities for their involvement in litigating these types of cases. For example, the Environmental Law Clinic at the University of Oregon School of Law has been involved in endangered species and forest conservation litigation and has become a subject of political interference. Known for its lawsuit against the U.S. Bureau of Land Management to shield the Northern Spotted Owl from extinction, the Clinic’s successes in court created discontent among state officials and corporate interests. At the request of the timber industry and state officials who were unhappy with the Clinic’s involvement in environmental causes, the university formed an independent committee to conduct an investigation of the Clinic and its practices. After a thorough review, the committee concluded that the Clinic “fulfills its educational function extremely well, through its advocacy serving a proper social role.” Although the clinic was vindicated, it physically moved off-site from the Oregon Law School building and is currently affiliated with the Western Environmental Law Center, a non-profit organization.

A few years ago, the Environmental Law Clinic at the University of Pittsburgh School of Law came under scrutiny for its representation of a group that sought to prevent logging operations and construction of an expressway in the Allegheny National Forest. Various constituencies including government officials and developers sought to have the Clinic disabled or moved off the law school campus. In March 2002, the uni-

210. See generally Elizabeth Amon, Environmental Law Clinics Spark Fierce Opposition From Industries, BROWARD DAILY BUS. REV., Apr. 8, 2002, at 12 (discussing the challenge to the University of Pittsburgh’s environmental law clinic); see also Political Interference, supra note 49, at 243 (discussing the challenge to Tulane University’s law clinic).
211. Political Interference, supra note 49, at 269–70.
212. Id.
213. Id.
214. Id. and Weisselberg, supra note 181, at 534.
versity's and law school's administrations declared that the Clinic would remain open, but would be funded strictly from private sources.216

Probably the most publicized controversy involving a law school clinic was the political turmoil and resulting legal hornet's nest that centered around the Tulane Law School's Environmental Law Clinic ("TELC") in 1998.217 Students enrolled in the TELC had successfully represented indigent clients as well as community groups in litigating environmental claims that effectively harmed corporate interests within the state of Louisiana.218 As a result of TELC's success in litigating these types of environmental cases, some large corporations and powerful state politicians engaged in clever tactics intent on crippling or preventing the TELC from further involvement in environmental litigation.219 The law students and the supervising attorneys in the clinic were referred to as "storm troopers" and "modern day vigilantes" by these powerful constituencies.220

The particular litigation that caused the backlash from these interests involved the TELC's involvement in filing environmental discrimination claims with the Environmental Protection Agency and attacking state pollution permits improperly issued to Shintech Corporation for its proposed construction of a massive $700 million polyvinyl chemical plant.221 The site where Shintech sought to construct its plant, known as "Cancer Alley," was an area already populated with eleven chemical plants and the home of predominately low-income African-Americans.222 TELC's effort to prevent the construction of the Shintech plant served as a model for other such complaints filed with the EPA across the country on behalf of minority-populated communities who sought to prevent similar occurrences.223

Fed up with the TELC's environmental activism, large businesses and politicians sought the demise of the TELC by soliciting the assistance of Louisiana Governor Murphy "Mike" Foster.224 Governor Foster, along with the Secretary of the Louisiana Department of Economic Development Kevin P. Reilly, Sr., publicly criticized the work of the

216. Id.
218. Id.
219. Id. at 240.
220. Id. at 243.
221. Id.
222. Id.
223. Id.
224. Id.
Mr. Reilly threatened to “use every legitimate method at [his] command to defeat [the clinic].” Governor Foster promised to “yank the school’s tax breaks” and to withhold financial support to the law school. After these threats failed to persuade the Clinic to retreat, the TELC’s opposition turned to the elected members of the Louisiana Supreme Court for relief. In letters to the court, the opposition requested investigation of the TELC, arguing that the clinic’s activities were in “direct conflict with business positions” of the state. Amendments to the student practice rule were also sought because it was alleged that the students were using “court rules to fight, harass and interfere with Louisiana’s interest to attract new business.” Interestingly, none of the letters to the court cited any specific instances of violation of the student practice rule or other misconduct by law students or faculty.

Without the benefit of an open hearing or an opportunity for public debate, the Louisiana Supreme Court succumbed to the corporate and political pressure placed upon it by amending the state’s student practice rule, making it the most restrictive in the country. More fundamentally, the amendments severely limited the TELC’s scope of work. The supreme court’s amendments to the student practice rule prompted the TELC, along with clients, law school organizations, law faculty, and

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225. Id.
226. Id. at 243–44.
227. Id. at 244–45.
228. Id. at 246.
229. Id.
230. Id.; see also Mark Ballard, *U.S. Court Upholds Law Clinic Limits*, NAT’L. L.J., Aug. 9, 1999, at A7 (discussing the United States District Court’s ruling that the Louisiana Supreme Court has the authority to define third-year law student’s role in clinical programs).
231. The amendments to the Louisiana student practice rule prohibit law school clinics from representing a group or organization unless at least 51% of the individuals who make up the group have individual incomes below 200% of the federal poverty guidelines. Mark Kozlowski, *Clipping a Law Clinic’s Wings, Chemical Companies Cash In On Judicial Campaign Contributions*, RECORD, Aug. 11, 1999, at 5.
232. *Political Interference, supra* note 49, at 238–39; Several interested groups submitted written comments opposing the proposed changes to the Louisiana student practice rule. These groups included the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and Society of American Law Schools (SALT). A resolution passed by the deans of American law schools declared that the changes “would cripple both clinical education in Louisiana and the use of law students to help meet the obligation of the bar to provide legal assistance to those unable to pay.” Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 Tulane L. Rev. 235, 250 (1999) (quoting the law school Deans’ resolution). Interestingly, a business organization in Louisiana called Louisiana for Business and Industry (LABI) and its members donated at least $100,000 to judicial candidates in the 1996 election. One Justice, Chet Traylor, received more than $250,000 in contributions for the 1996 election from LABI and the oil and gas industry. Kozlowski, *supra* note 231, at 3.
students to file a request for an injunction in federal district court. There were eight claims outlined in the complaint, which alleged both federal and state constitutional violations. The Louisiana Supreme Court, the named defendant, filed a motion to dismiss which was granted by Judge Eldon E. Fallon. In his written opinion, Judge Fallon declared that the Louisiana Supreme Court’s actions in amending the state’s student practice rule were not illegal or unconstitutional. He further stated that “[n]onlawyers have no constitutional right or legal right to represent individuals or organizations in courts. . . . [the Louisiana Supreme Court’s actions] in amending the student practice rule are an appropriate exercise of [its] duty, responsibility, and power.” Interestingly, Judge Fallon recognized the impropriety that resulted from the pressure that was on the Louisiana Supreme Court, commenting that “in Louisiana, where state judges are elected, one cannot claim surprise when political pressure somehow manifests itself in the judiciary.” On appeal to the United States Court of Appeals for the Fifth Circuit, Judge Fallon’s decision was affirmed.

In the years since the TELC controversy culminated, the Clinic has continued its mission of environmental activism, but not without further challenges to its legitimacy and its authority to litigate matters under the newly amended student practice rule promulgated by the Louisiana Supreme Court. In a case filed in federal district court by the TELC, Concerned Citizens of New Sarpy v. Orion Refining Corporation, the Clinic sued Orion, an oil refinery, for alleged violations of the Clean Air Act. In the suit, Orion filed a motion requesting disqualification of the TELC students from participation in the litigation on the basis that the

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233. S. Christian Leadership Conference, Louisiana Chapter v. Supreme Court of Louisiana, 61 F. Supp. 2d 499 (E.D. La. 1999), aff’d, 252 F.3d 781 (5th Cir. 2001), cert. denied, 534 U.S. 995 (2001); see also Political Interference, supra note 49, at 241 (discussing the Louisiana Supreme Court amendment to the student practice rule).

234. Id. at 513-14.

235. Id. at 511-13.

236. Id. at 513.

237. Id. at 513.

238. While most scholarly commentary has been critical of the Louisiana Supreme Court’s actions in the TELC controversy, one writer asserts that the supreme court’s amendments to Louisiana’s student practice rule conforms with the original intent of the court in adopting the rule. Sam L. LeBlanc III, Debate Over Law Clinic Practice Rule: Redux, 74 TUL. L. REV. 219 (1999).


241. Id.
clinic had failed to comply with the income guidelines as required in the state’s student practice rule. The attorneys representing Orion argued that the newly amended state student practice rule, which would prohibit the clinic’s participation, also applied to the local federal court. The Magistrate who reviewed Orion’s motion held that the federal court had not adopted the state supreme court’s amendments to the student practice rule and therefore denied Orion’s motion to disqualify the clinic. Based on this ruling, the TELC is allowed to litigate matters in federal court without complying with the state’s amended student practice rule. More significantly, it seems that the TELC might have finally received the justice it rightfully deserves.

V. CONCLUSION

The trials of the Tulane Environmental Law Clinic and the tribulations of the Center for Wrongful Convictions at the Northwestern University School of Law illustrate the accomplishments of many hardworking law students and faculty members who are driven and focused on seeking legal and social reform in America. Not long ago, clinical legal education was but a mere aspirational concept in which proponents sought its implementation into law school instruction. While traditional course work undoubtedly has its value in the education of lawyers-in-training, the theoretical pedagogy of the case-Socratic method is lacking somewhat because it ignores the contemporary legal issues that lawyers are currently litigating. As such, many of today’s law students are left to ponder the relevancy of studying “cadavers,” i.e. appellate opinions, rather than participating in “legal operations,” i.e. trials. Participation in litigation-based clinics exposes students to actual “legal operations” which help contextualize the law in a more realistic fashion.

Clinical legal education has not only established itself as a critical component of legal education, it has in some instances, taken foothold on the legal system by providing quality legal services to many different types of clients in diverse areas of the law. While some law school clinics across the country continue to focus on mass litigation or impact litigation efforts in attempt to secure positive social and legal reform, all

242. Id.
243. Id.
244. Id.
245. Id.
246. Casad, supra note 131, at 53 (referring to the medical analogies presented by Judge Jerome Frank is his work, Courts on Trial, which can also be found in Jerome Frank, Why Not a Clinical Lawyer-School, 81 U. PENN. L. REV. 907, 916 (1933)).
legal services provided by law school clinics should be recognized. Law school clinics contribute enormously to the legal system and the education of law students. All law school clinics should be hailed.