A MODEL PROGRAM FOR ESTABLISHING
A 1993 CRIMINAL APPEALS CLINIC AT
YOUR LAW SCHOOL: MORE BANG FOR
THE BUCK

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I. INTRODUCTION

“No [one] can be a complete lawyer by universality of knowledge without experience in particular cases, nor by bare experience without universality of knowledge . . . for the science of the laws, I assure you, must join hands with experience.” If this statement in support of instruction of the law by practical experience sounds like a modern-day argument for clinical legal education, then the reader may be surprised to find that the noted English jurist, Sir Edward Coke, made this statement in 1614.¹

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² Leonard D. Pertnoy, Skills is Not a Dirty Word, 59 Mo. L. Rev. 169, 185 (1994) (quoting Sir Edward Coke, Preface to a Book of Entries (1614)).

³ Id.
Most, if not all, law schools in the United States today have clinical programs in their courses of study. Many of the leading institutions have diverse clinical course offerings that instruct upper-level law students on skills subjects from taxation to elder law. The popularity of clinical programs has been, in part, driven by the demand of upper-level law students desiring an educational experience that imparts the practical skills that will be immediately useful as they begin their careers, thereby making the law school graduate more “marketable” in seeking that first position with a private law firm, governmental entity, or public interest institution. The study of law has been, in recent decades, viewed “as an academic science with the development of theoretical skills and methodology being the objective of a legal education.” However, with the initial scattered institution of clinical courses in the general legal curricula in the 1960s, law schools that had exclusively employed the Socratic, analytic methods of instruction have slowly adapted to the educational activity of “learning from experience.”

The clinical approach to legal education allows for a more intense academic experience, as most clinical programs are designed to teach in a “one-on-one” setting with students being responsible for the case of a client whose life or property, in one way or another, hangs in the balance. “Live-client” methodology incites problem-solving to an end of competent and often outstanding representation, providing the student with an incentive to excel in this type of course of study which is not present in other traditional law school lec-

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3 An informal Internet survey of the home web pages of all of the 166 member law schools of the American Association of Law Schools revealed that all member schools have at least one clinical offering or an externship that is characterized as a clinic in their curricula (the individual web sites visited June 15-17, 2005).


ture/examination classes. The goal of this article is to put forth the range of instructional opportunities that a criminal appeals clinic brings to a legal education curriculum in an attempt to persuade other law schools of the value of such programs, thereby inducing them to consider adopting one of the criminal appeals clinic models set out here. The following symposium articles contained in this issue, written by experienced professors in clinical, theoretical, and analytical disciplines, are intended to be viewed as chapters in a "how-to" primer on the day-to-day operations of a criminal appeals clinic. The combined experience will impart a level of cognition of the inherent problems associated with the establishment, functioning, and maintenance of such a clinic.

II. A VERY BRIEF HISTORY OF ANGLO-AMERICAN LAW STUDENT INSTRUCTION

Prior to 1272 A.D., English law consisted of a mix of Roman secular traditions and the canon law of the Catholic Church; the reign of Henry II marked the origination of the English common law for the establishment of a national system of royal courts. Education in the law of Roman and canon law was for centuries based in the oral tradition for use in the practice before the English ecclesiastical courts, and this "spoken word" teaching, based on methods employed by European medieval universities, was eventually adapted to the instruction as to the common law. Although the exact date of creation is lost in antiquity, between 1340 and 1422, edu-

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9 Id. at 55.
11 See id. at 1 (asserting the earliest surviving records from the inns are in 1422); Brand, supra note 8, at 52 (estimating 1340 was the year the inns were created).
cations in the common law of England began at The Inns of Court, four legal societies in London that for centuries held the "valuable monopoly" of training lawyers for admission to practice before the bar.\textsuperscript{12} There, aspiring attorneys lived in residence and were instructed by the "aural" (oral) methodology consisting of scholastic exercises of "case-putting" and "moots" where students argued their interpretation of the law in either informal conferences culminating with a critique by senior members or in elaborate case arguments in the form of a mock trial.\textsuperscript{13} Another component of the societies' aural method that rose to prominence in the mid-sixteenth century was "readings," or twice-yearly, daylong formal lectures by leading jurists on selected topics that stretched at times into three weeks.\textsuperscript{14} The eventual growth of printed legal literature made the aural method of instruction in the societies all but obsolete by the beginning of the eighteenth century.\textsuperscript{15} With the availability of written material on the cases and statutes of the day, the practice of self-education ("two or three years of solitary study" of legal treatises and reporters) came to be expected of all who studied at the Inns of Court, along with the process of creating a "commonplace book," an indexing of short summaries of the legal principles that seemed to be most relevant to the student for easy retrieval later of various precedents relating to different points of law.\textsuperscript{16}

Legal education by apprenticeship became popular by the late seventeenth century "because the close supervision which was possible in an attorney's office was regarded as an antidote to the complete lack of guidance given to the student at the inns of court."\textsuperscript{17} Unlike the learning experience at the inns, a general education at one of the universities of the day was not considered to be a prerequisite of legal training by apprenticeship, but rather an alternative approach to an edu-

\textsuperscript{12} See generally PREST, supra note 10, at 50.
\textsuperscript{13} Id. at 116-19.
\textsuperscript{14} Id. at 120-24.
\textsuperscript{15} Id. at 124.
\textsuperscript{16} DAVID LEMMINGS, GENTLEMEN AND BARRISTERS 101-03 (1990).
\textsuperscript{17} Id. at 95.
cation in the law.\textsuperscript{18} The universities at Oxford and Cambridge did not seek to establish strong seats of instruction in the law until the mid-nineteenth century, but in 1826, London University was founded and sought to use its strategic location by almost immediately creating chairs in English law and jurisprudence.\textsuperscript{19} A legal education by apprenticeship being preferred at that time, the London University program faltered due to low enrollment and a brief revival of the instruction at the Inner Temple and the law institute ensued.\textsuperscript{20} By 1854, formal studies in the law were offered at both Oxford and Cambridge, but the societies still held control of admission to the bar; therefore, even if their methods of teaching were in disfavor, their wealth and considerable influence were still very closely held by their institutional hierarchy.\textsuperscript{21} There was a debate during this period that the societies should open a legal university, but a question of “the effectiveness of lecturing as a pedagogic technique still remained in doubt during the 1850s.”\textsuperscript{22} By 1861, the Inns of Court, in an effort to resist government regulation of admission to the bar, instituted a new rule that stated in order to be “called to the bar,” a student must have either “attended two courses of lectures in one year,” taken an examination for admission, or have been an apprentice in a reputable law office for a year.\textsuperscript{23}

In the late nineteenth century, Christopher Columbus Langdell became the dean of the Harvard Law School, and is

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\item \textsuperscript{18} \textit{Id.} at 97-98.
\item \textsuperscript{19} Christopher W. Brooks & Michael Lobban, \textit{Apprenticeship or Academy?: The Idea of a Law University, 1830-1860, in Learning the Law: Teaching and the Transmission of Law in England 1150-1900,} at 353, 359 (Jonathan A. Bush & Alain Wijffels eds., 1999).
\item \textsuperscript{20} \textit{Id.} at 360.
\item \textsuperscript{21} \textit{Id.} at 374-75.
\item \textsuperscript{22} \textit{Id.} at 376. In fact, the authors quote a passage from the \textit{Law Times}, published in 1854, which states, “‘Law’ . . . ‘is not to be taught by Professors, like Mathematics, but can be learned only by actual practice.’” \textit{Id.} (quoting 23 \textit{Law Times} 65 (1854)).
\item \textsuperscript{23} \textit{Id.} at 381-82. The authors illustrate which one of these three options was most disfavored by law students by stating, “It is hardly a matter of surprise that, by the late 1860s, audiences at the lectures had dwindled.” \textit{Id.} at 382 (citing 13 \textit{Solicitor’s Journal} 262 (1869)).
\end{itemize}
best known as the innovator of the “case method” in the institutional study of the law.\textsuperscript{24} The “Langdellian” or Socratic methodology of legal education has continued today as the standard for law school classroom instruction on both sides of the Atlantic for more than a century.\textsuperscript{25}

Around the turn of the twentieth century, the first law-school based legal aid “dispensaries” began to appear; the first was established at the University of Denver in 1904.\textsuperscript{26} Harvard Law School’s Legal Aid Bureau began operation in 1913.\textsuperscript{27} In 1917, the first scholarship, in the form of a law journal article on the subject of clinical legal education was published, arguing that skills training and practical, experiential learning before graduation from law school was not a waste of resources, but a “necessity.”\textsuperscript{28} However, law schools continued to resist any form of skills training in their curriculums.\textsuperscript{29}

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\textsuperscript{24} Alan A. Stone, \textit{Legal Education on the Couch}, 85 Harv. L. Rev. 392, 406 (1971).
\textsuperscript{25} Id.
\textsuperscript{26} Quigley, \textit{supra} note 6, at 466; see also Gary Bellow & Bea Moulton, \textit{The Lawyerly Process: Materials for Clinical Instruction in Advocacy} (1978).
\textsuperscript{27} Quigley, \textit{supra} note 6, at 466 (citing Tilford E. Dudley, \textit{The Harvard Legal Aid Bureau}, 17 A.B.A. J. 692 (1931)).
\textsuperscript{28} William V. Rowe, \textit{Legal Clinics and Better Trained Lawyers-A Necessity}, 11 Ill. L. Rev. 591, 616-18 (1917).
\textsuperscript{29} For example,
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In 1921, the Carnegie Foundation for the Advancement of Teaching funded a study on legal education, commonly called the ‘Reed Report’ after its nonlawyer author, Alfred Z. Reed. The Reed Report identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training. The emphasis on legal analysis in the casebook method fulfilled only one of these three objectives by providing students with a theoretical knowledge of the law. To satisfy the requirement of a general education component, the Reed Report called for at least two years of pre-law college training—a proposal the ABA promoted, starting in 1921. At that time, not a single state required a university-based law school degree as a precondition for admission to the bar, proprietary law schools were still prevalent, and apprenticeships still provided the basic legal training for many entering the legal profession. In the midst of this highly unregulated climate for entry to the legal profession, the Reed Report’s recommendation of practical skills training was not vigorously pursued by law
The debate over the pedagogical value of clinics continued and then in 1933, an important call for the creation of legal clinics to impart practical skills went out to the law schools of the day;\textsuperscript{30} but it was not until the 1960s that clinical programs began to appear regularly as a part of the curriculum of law schools in this country.\textsuperscript{31} This movement was in large part based on the scholarship of Professor Frank, which expressed a lack of confidence in the educational value of the exclusive use of Langdellian case method in law school instruction and proposed that law schools use the “apprentice” or “internship” systems employed by medical schools to prepare the upper-level student’s transition into the practice of law.\textsuperscript{32} Although substantial funding for legal clinics was put in place in 1959,\textsuperscript{33} Frank’s call for “legal dispensaries” did not take any substantial form until the 1960s and 1970s when a relatively small number of law schools established clinical course offerings, which met varied quantities of both success and resistance from the traditional faculty, administration, and state governments.\textsuperscript{34} The utilization of legal clinics by

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American law schools as a widely accepted, pedagogically sound teaching method picked up momentum in the 1980s, and, with the promulgation of the so-called “MacCrate Report,” accelerated in the 1990s with most major institutions offering at least one experientially-based course in their curriculum.

It can be successfully posited by some legal educators that the traditional Socratic method is an effective tool for teaching basic legal principles and doctrinal pedagogy in first-year law courses. A new attitude in the legal instruction of second and third-year students is evolving that expands the pedagogic basis, curricular content, and the student’s cognitive process of these upper-level clinical courses to “bridge the gap” between the doctrinal theory of law school and the practice of law in the “real world.” In fact, student demand of these experiential course offerings has, at least in part, driven this expansion of the law curricula. The American Bar Association’s curriculum standards now require that law schools furnish upper-level students opportunities to participate in “live-client” or other real-life practice experiences, although it is not necessary that all students be provided these opportunities.

III. “LIVE-CLIENT” CLINICS VS. SIMULATION COURSES

Simulation courses (moot court, research and legal writing, trial advocacy, intra- and inter-law school competitions,

Law were reestablished in 1997 when popular author and University of Mississippi Law graduate, John Grisham, made a grant to establish the Poverty Law Clinic (commonly known as the “Street Clinic”). Michael Landon, University of Mississippi Law School Sesquicentennial History (Oct. 18, 2005) (unpublished manuscript, on file with the Dean’s Office at The University of Mississippi School of Law).

35 Task Force on Law Schools and the Profession: Narrowing the Gap, ABA, Legal Education and Professional Development: An Educational Continuum 239 (1992). The report was named after the chairperson of the task force, attorney Robert MacCrate. Id. at v.

36 Stone, supra note 24, at 406-07, 431. See Fell, supra note 4, at 280.

37 Fell, supra note 4, at 280.

etc.) that require the law student to role-play the part of an attorney and then receive a critique of their performance from professors, other students, and sometimes outside practicing attorneys and judges, begins the process of the student finding the professional persona within and brings the student's doctrinal learning into fluid scenarios that begins the process of analysis and problem-solving "on the fly." These simulations are most effectively utilized in second-year courses that prepare the student for participation in third-year "live-client" clinical programs."  

39 This type of simulation preparatory process is analogous to the moots of the Inns of Court, which sought to develop the student's ability to spontaneously analyze, problem-solve, and successfully argue points of the law to the upper-level students. These discussions were invaluable in the preparation for the eventual apprenticeship placement in the office of an experienced practitioner to complete the training of the prospective barrister.  

40 Armed with the skills simulations give to the participants, the third-year law student of today is ready for the actual representation of the clinical client under the supervision of a staff of professors who "should consist of lawyers who already had varied experience in practice."  

41 Actual client representation is necessary to involve students in what Professor Frank S. Bloch, then Director of Clinical Programs at Vanderbilt University School of Law, described as "andragogically sound active, experiential learning," which he argues cannot be accomplished through simulations.  

42 His article also maintains that a "co-counsel relationship" must be established between the student and the teacher in live-client clinical settings.  

43 The balance between this "co-counsel" and the traditional law professor/student relationship can be difficult to strike because of the very nature of the clinical setting. The clinical professor must be

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39 Pertnoy, supra note 1, at 184.
40 See Quigley, supra note 6, at 465.
41 Frank, supra note 30, at 917.
43 Id. at 346.
willing to not only allow the student/lawyers the freedom to engage in independent thought and action in the case, but must also be willing to mentor and evaluate the performance in the clinical supervision portion of the course.\textsuperscript{44} None of these inter-professional dynamics between client, professor, and student can be confronted in simulation exercises outside of the in-house live-client clinical setting.\textsuperscript{45}

The supervisor should also make a conscious effort to develop the student/lawyers’ sense of professionalism through the mentoring and evaluation process in the clinic.\textsuperscript{46} This attempt to expose the student to these issues will “bridge the gap” in the transition of the law student to practicing attorney and will insure that the educational experience in the clinic includes learning to recognize and effectively deal with ethical, moral, and adversarial problems in a professional manner.\textsuperscript{47}

IV. WHY A CRIMINAL APPEALS CLINIC?

The practice of criminal law provides the highest possible stakes in the legal profession: a citizen’s life or liberty. Representation of the accused citizen in the criminal appeals clinical setting allows the student/lawyer to become absorbed in the sometimes deplorable life of the client, to see the practical application of the legal principles and precedents laid down by generations of appellate courts, to witness the reality of the trial court’s proceedings through the trial transcript, to experience the consequences of the jury’s verdict, and to recognize the possibility of protecting the client’s rights and providing justice. Criminal appeals clinics provide a vehicle for the stu-

\begin{addendum}
\item See Quigley, supra note 6, at 484-90.
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dent/lawyer to be a part of the justice system without the immediate, irreversible, and overwhelming responsibility that representation on the arrest/trial level requires of defense counsel.\textsuperscript{48}

Criminal appeals clinics also serve a public-interest purpose; the cases are usually obtained through some type of court-appointed assignment and the clients are represented by the clinical team \textit{pro bono}.\textsuperscript{49} Indeed, the social justice mission of most clinical programs causes the plight of the poor to become a central point in the supervision of the student/lawyers.\textsuperscript{50} The program's core ultimately seeks to provide the client with the best representation possible in any setting and succeeds or fails based on the student's efforts in the course of study (under the supervision and guidance of the clinical professor). Within this duality of purpose lies the tension between ethically sound and competent representation and the priority of providing the student with the most meaningful learning experience possible in a clinical setting.

Although institutions of higher learning appear on the surface to get "more bang for the buck" in approving and funding courses designed to serve a large percentage of the students enrolled in the department's course of study, this simplistic cost/benefit assessment may be misleading.\textsuperscript{51} This assessment has been found to be true in law schools where class size has increased in the overall numbers of students admitted year after year. This translates into a classroom where large sections of students, as many as 100 or more, are instructed by a single professor, utilizing the Langdellian method, culmi-

\textsuperscript{48} For an overview of how criminal appeals clinics provide student/lawyers these valuable educational opportunities, see generally Maureen E. Laflin, \textit{Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report}, 33 GONZ. L. REV. 1 (1997-98).

\textsuperscript{49} See id. at 53.


\textsuperscript{51} Barry et al., \textit{supra note 29}, at 21-26.
nating in a final examination that is intended to measure the student's learning experience in the course. This methodology has never been exclusively reserved to the first and second-year law students; many upper-level courses seek to teach very highly abstract subjects, such as the Rules of Evidence, trial and appellate advocacy, and lawyering skills in the same manner, through reading cases, resource materials, and textbooks, then engaging the students in a question and answer exchange in class designed to apply, analyze, and interpret the specific theory in the case scenario involved in the day's reading assignment. Use of hypotheticals in these Socratic exchanges are common, of course, but offer little, if any value to the students' development of the problem-solving skills that are essential to the practicing attorney. Clinical programs, on the other hand, appear on the surface to be very cost/benefit inefficient, serving only a small number of students, usually only eight to ten clinical students per supervising professor per semester.52 However, the numbers game is misleading when the overall educational experience for upper-level law students is analyzed. A criminal appeals clinic not only provides advanced instruction in appellate practice and procedure, but also demonstrates the application of the Rules of Evidence to a myriad of factual situations, shows how the particular rule affects the case facts, and improves the student's analyzation skills in the application of the rule in the clinical setting. This type of instruction is much more effective in imparting advanced application of such abstract subjects, the skills of writing, and applied analysis.53 Appeals clinics also enhance client interview skills, improve analytically-based problem solving, hone advanced focused research and concise writing abilities, and develop the student's perception of ethical responsibilities, the obligations as an officer of the court, along with an understanding of the concept of professionalism.54 Since the classroom component of the course will

extend to other practical skills training, such as fact gathering, client interaction simulations and role-playing, it may be helpful for the student to grasp the method to be applied during the client interview.55 The “active listening” technique is very effective during the initial client contact,56 and should be made a part of the classroom component to ensure that this part of the fact-gathering process not only gives the student/lawyer a narrative from the client, but also instills confidence in the client of the skills of the team.

Although it is not a course in writing styles, the very nature of the criminal appeals clinic requires the student/lawyer to effectively communicate and persuade through the written word.57 The National Legal Aid and Defender Association’s Appellate Defender Training formulated, advances, and teaches the “fact-intensive” method of brief writing, which employs the narrative style of writing in the statement of facts and carries this technique into the argument section of the brief by eliminating the “legalese” that clutters an otherwise sound issue argument.58 These skills, along with the pedagogical goal of teaching effective appellate practice, will

Vigorous, Yet Respectful Advocates: The Value of Simulations in Preparing Clinical Law Students for Ethical and Effective Client Representation, 7 T.M. COOLEY J. PRAC. & CLINICAL L. 91, 94-103 (2004). “It has been suggested that ‘effective learning or excellence in legal ethics occurs only by acting in the role of a lawyer’, and that ‘perhaps [professional responsibility is not necessarily better taught in the clinical setting but it may be better learned.’” Id. at 108 (alteration in original) (excerpt quotation marks and footnotes omitted) (quoting Ian Johnstone & Mary P. Treuthart, Doing the Right Thing: An Overview of Teaching Professional Responsibility, 41 J. LEGAL EDUC. 75, 94-95 (1991)).


56 Steven Zeidman, Sacrificial Lambs or the Chosen Few?: The Impact of Student Defendants on the Rights of the Accused, 62 BROOK. L. REV. 853, 896 (1996).


likewise aid in the transition from student to lawyer, arming the law school graduate with tangible, practical, and fungible expertise that will make them more knowledgeable and marketable than their counterparts with no clinical experience.

Physical space for a criminal appeals clinic requires only a seminar-size classroom for lecture, discussion of clinical techniques, and case progress reports (sometimes referred to as "rounds") and computer work stations for the case teams to conduct research and writing. These work stations necessarily must be close together and the area should be private enough to allow the case team to meet with the supervising attorney/professor without others overhearing confidential matters or disturbing others. Most, if not all, law students today have access to such computer work stations either in the library or a personal laptop computer, so a dedicated clinical space within the law school with the purchase of workstations in the start-up phase of the clinic would not be absolutely necessary, but optimally advisable, if possible. Since the clinical supervision hours are not sufficient to complete the weekly assignments, the law library computer room, laptops, and home computers are essential to the work conducted outside of the clinical supervision area.

Third-year students who have completed enough of their course work to commit a substantial quantity of time to working in a criminal appeals clinic should be dedicated to the case, but the clinical professor must be aware of the total amount of hours during the week the student is devoting to the case in the clinic. The use of timekeeping materials, whether electronically through computer programs such as TimeMatters® or simply by way of a paper time sheet, will allow the supervisor to track the time, whether too much or too little, the student/lawyer spends completing the weekly assignments. These time sheets should be turned in every two weeks and should a student be out of line with the recommended time (usually eight to ten hours per week including class and clinical supervision hours), the supervisor may wish to meet with the student before the mid-semester review to get the time spent back in balance.
The two-hour seminar lecture and the two-hour clinical supervision period in the Criminal Appeals Clinic at The University of Mississippi School of Law's curriculum awards four hours credit for successfully completing the course requirements. Less credit hours per semester would not reflect the amount of time and effort necessary to wholly and competently participate in the clinic. Workloads must be balanced in such a way as to allow the student to keep up with other obligations both inside and outside of the law school. The University of Mississippi's Criminal Appeals Clinic assigns each of the case teams one brief and one oral argument, and motions for rehearing and reply briefs are assigned to students who either want extra credit or excel in the process of the clinic.

V. FUNDING

Whenever a law school is considering adding programs to the existing curriculum, the first thought in a dean's mind is likely: "How are we going to pay for this?" Unless a grant is obtained that will at least partially fund the new clinical offerings, the money to start up the program will have to be taken from an ever-shrinking fund that is not sufficient to even maintain current courses of study and programs. The realities of the budget shortfalls in today's public and private institutions of higher learning have forced administrations to make hard choices in the expenditure of the money available for the operation of law schools and many deans are reluctant to divert established line items to start-up programs such as a clinic. When faced with these hard choices, the faculty and administration will often resist shifting resources from other parts of the law school budget that would be adversely affected in order to start a new clinical program.59

In addition to the difficulties faculties and administrations have with funding clinical programs, many law schools also have issues with the physical space available on-site to house these new courses of study.60 These law school build-
ings were designed years, if not decades ago; therefore, with current student enrollment at an all-time high, available space is at a premium within the existing structure. Office space for faculty and staff is not readily available, and there is even less existing space for the required clinical supervision hours needed to complete the student's weekly assignments. Many law schools, faced with the prospect of an enormous capital improvement costs to the existing structure in addition to the new program's additional funding, have chosen to house the clinical programs and other space-intensive aspects of the institution in another existing building on campus.\textsuperscript{81} This solution not only presents logistical problems for students, but also separates the clinical faculty even further from the traditional faculty, thereby potentially resulting in less contact, collegiality, and exchange of ideas and information between different branches of the law school.

Therefore, new funding sources necessarily are required to start up any new program within the law school, and university rules and regulations concerning faculty independently seeking grants, endowments, or dedicated gifts as seed money to get such programs off the ground may be violated if the administration is not first consulted before beginning a funding search. These new sources of funding do not have to take the traditional forms as set out herein; finding sufficient capital may require new and innovative fund-raising techniques.

In writing about funding mechanisms for more effective skills and values education, Professor David Barnhizer identified five sources of potential new funding: 1) preparing law students for the bar exam in special summer institutes taught by volunteer law faculty and practitioners (projecting a fund of $40 million per year based on $1,000 per student and 40,000 law graduates each year); 2) charging all law students a skills training fee; 3) changing the educational funding formulas for

\textit{the Research University, and the Professional Reforms of Legal Education, 60 OHIO ST. L.J. 1965, 1994 (1999).}

state law schools to reflect the resources necessary to provide live-client clinical programs for all students; 4) increasing national and state bar dues by $100-200 per year and earmarking the funds for live-client clinics (producing between $70 and $140 million per year, assuming an average of 700,000 dues-paying bar members in the United States); and 5) designating new law school funds from fund-raising or tuition increases for live-client clinics.\footnote{Barry et al., supra note 29, at 29.}

These sources take advantage of systems already in place and would not substantially affect the existing institutional funding that the law school and the university has in place and will not allow to be disturbed.

If the law school has substantial in-house clinical programs in place, the re-allocation of these existing resources will allow the establishment of a criminal appeals clinic. Without effectively taking one cent of funding from these existing courses of study, the sharing of physical space, support staff, and office supplies may permit the law school to begin an appeals program and later grow it when other resources become available. Much of the infrastructure necessary for an appeals clinic is present in law schools that do not have substantial clinical programs; libraries can serve as clinical supervision space and the clinic files may be digitized and maintained on internet web courses\footnote{See, e.g., LEXIS & BlackBoard Web Courses.} offered by the two law school legal research giants present in every law school. Finding qualified clinical faculty within the law school with the contacts to collect the cases and the knowledge to conduct the class lectures, lead the supervisory conferences, and guide the case rounds through the final brief is challenging, but not impossible. Legal research and writing (LRW) professors with a criminal law background may be expediently utilized in creating a criminal appeals clinic; their educational expertise is simply reassigned to another part of the school, with other LRW faculty taking their place. Clinical professors suitable for a criminal appeals clinic may also be identified in-house from adjunct faculty whose
practice includes this specialized area of practice. More challenging, however, is converting these existing faculty into clinicians who are capable of practicing before the appellate courts, working closely with student/lawyers, and effectively administering a new program. Leveraging existing faculty into clinical positions may not be a workable solution in some institutions, because it may require the clinical section to add a professor to the faculty who will bring these disparate qualities to the position.

Finally, grants from the federal government and private sources that the university may access are always fertile sources of funding law school programs that fall under the umbrella of training and instructing students on issues dealing with criminal law. These grants include the Higher Education Act,\textsuperscript{64} Bureau of Justice Assistance,\textsuperscript{65} The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program (Byrne Formula Grant Program),\textsuperscript{66} Office of Justice Programs,\textsuperscript{67} The Carthage Foundation,\textsuperscript{68} The Impact Fund,\textsuperscript{69} and countless other funding resources available from public and private sources. Grant writing is an art form and any attempt to obtain this type of funding requires detailed, fluid, and creative proposals; also multiple applications are usually required before the grant is awarded. Running a new program on a grant at a law school has its own sets of problems, including the reporting required to maintain the grant, the uncertainty of continued funding to sustain the program, and the university’s own rules concerning allocation of funds through a

\textsuperscript{65} See Bureau of Justice Assistance: Guide to Grants, http://bja.ncjrs.org/g2g/ (last visited Nov. 10, 2005).
\textsuperscript{66} See Bureau of Justice Assistance, Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne Formula Grant Program), http://www.ojp.usdoj.gov/BJA/grant/byrne.html (last visited Nov. 10, 2005).
\textsuperscript{67} See Department of Justice, Office of Justice Programs: Funding Opportunities at OJP, http://www.ojp.usdoj.gov/fundopps.htm (last visited Nov. 10, 2005).
VI. THE PROPOSAL: THREE CLINICAL MODELS

This paper seeks to put forward to law schools a choice of three models of criminal appeals clinical programs to modify, follow, or adopt outright in their curriculum: the One-Semester Model, the Academic School Year Model, and the Rotating Case/Student Model. The choice of the model program will be determined by the individual law school’s resources, the pedagogical goals of the school in creating such an appeals clinic, the willingness of the courts within the jurisdiction to cooperate and promote the program, and the potential number of students willing to participate in such a program. Each model has advantages and disadvantages that must be considered when adopting a program.

A. The One-Semester Model

The One-Semester Model seeks to complete the representation in the client’s case with the student’s participation in the course within a single academic semester. This model is rarely a totally “in-house” program, but rather in the nature of a field placement externship with student supervisory oversight provided in part by a clinical professor, adjunct faculty, and/or practicing attorneys within appellate defender institutions where the student/lawyer is assigned. As a result, the students are not closely supervised in the “in-house” clinical sense during the brief-writing process, only doing piecemeal research and writing that will be incorporated into the brief as the product is finished by the supervising attorney in charge of the case. Although many law schools describe them as “appeals clinics” since a classroom component of appellate instruction is included in the course of study, this type of model is more

closely akin to an externship. This "hybrid in-house externship program" has clear advantages in providing clinical opportunities to students in an actual law office at a fraction of the cost of full-time in-house programs.\textsuperscript{72} A law school with limited funds, little physical space, and few qualified clinical faculty may wish to utilize the existing institutions in the jurisdictional community (usually public defender appellate offices) to provide this type of educational experience.\textsuperscript{73} Outsourcing clinical students to these existing institutions also has advantages for the community; the under-funded public interest offices welcome the additional help, often offering supervision that is valuable in other areas of practice other than criminal law and procedure. The real danger of this model is failing to provide enough oversight to the student/lawyer to make certain that their experience in the clinic pedagogically is sound and creditable.

\textbf{B. The Full Academic Year Model}

This model requires the student to devote their entire third year to criminal appeals (usually eight hours credit) in order to participate in the clinic. Much of this time is spent in simulation sessions, appellate practice instruction, extensive legal writing exercises, and interview role-playing. These mini-seminars prepare the student/lawyer to ultimately reach the actual live-client clinical experience of fact gathering, issue identification, and development through focused research and brief writing/editing in clinical supervision hours. If the law school offers other clinical opportunities, the student may have to forego taking part in different experiential disciplines because of time necessary to dedicate to this model, causing curricular constraints to the student. Full-time clinical faculty in sufficient numbers to conduct an ample number of student/lawyers that is both cost-effective and provides an essential \textit{pro bono} service to the community at large is essential in this model. While the

\textsuperscript{72} Barry et al., supra note 29, at 28.
\textsuperscript{73} Id.
full semester model provides plenty of time for the student/lawyer to hone their skills in the inestimable areas of criminal appellate practice, the time may be better spent in a single-semester model. Much of the time expended in this model is dedicated to preparation through simulations, thereby diminishing the emphasis on live-client representation in a pending appeal. Although preparation is key in any pursuit, starting the third-year student in the clinical setting, rather than continuing the simulation experience best reserved for second-year students, is preferable and a more profitable educational experience for the top-level law student.\textsuperscript{14}

C. The Rotating Case/Student Model

Many of the positive and the negative points of the semester models are optimized in the Rotating Case/Student Model. In practice, clinics operate in the same way as does a law office, the cases continue their paths through the judicial system, even when the students move on to other classes or graduate. Using this model, the student/lawyers have the opportunity to work on and appear as an attorney of record not only for the appellate brief assigned to the case team, but also for another pending case, usually through oral argument, reply briefs, motions for rehearings, and/or petitions for writs of certiorari. In this way, the clinic will operate and the student/lawyers will be exposed to the same multitasking experience as practicing attorneys, without over-burdening the student with more cases than they can handle during a single semester. Case teams will work on a main appellate brief, prepare motions for rehearings and reply briefs, along with getting ready for an oral argument in a case from the previous semester. Clinical assignments scheduled over the course of the semester in this way ensure that the student/lawyer will be able to participate as counsel of record in multiple cases, but will not be overburdened with more work than they can handle.

\textsuperscript{14} Andrea M. Seistad, Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education, 8 CLINICAL L. REV. 445, 449 (2002).
VII. CLASS AND CLINIC: THE COURSE STRUCTURE

Before a student enrolled in the criminal appeals clinic may begin work on a case, training in the form of both a general clinical orientation and specialized appellate instruction must be accomplished. In order to maximize the time available in the semester, this orientation training should be completed before the semester classes begin, so that time spent in the clinic may be utilized in fact gathering, identifying issues, researching, writing and editing, not in determining how to complete these elements of the process. Professionalism and ethical considerations should also be presented in the orientation sessions so that the student/lawyers may be able to at least recognize that a problem exists when confronted with such an issue. Once a student successfully completes the orientation training, the clinic then should petition the courts to admit the participant in the clinic to the limited practice of law and to specially appoint the student lawyer as counsel of record in the case. The clinical supervising professor should consider whether to make an appellate advocacy course a prerequisite for participation in the clinic, along with evidence, litigation, criminal procedure, and other preparation courses that would be helpful for the student/lawyer to make the most of their

15 See Laflin, supra note 48, at 12.
16 See Laflin, supra note 48, at 12 & n.57. The Criminal Appeals Clinic at The University of Mississippi School of Law also employs a clinical handbook to assist students in the pre-semester orientation. THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW: CRIMINAL APPEALS CLINIC HANDBOOK, http://www.olemiss.edu/depts/law_school/ruleoflaw/CACHandbookrev.pdf (last visited Nov. 11, 2005).
18 “In 1969, the American Bar Association (ABA) promulgated a Model Student Practice Rule with the express purpose of assisting the bench and bar in providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction.” Justine A. Dunlap & Peter A. Joy, Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians, 11 CLINICAL L. REV. 49, 51 n.3 (2004) (quoting Proposed Model Rule Relative to Legal Assistance by Law Students, 94 REP. OF THE A.B.A. 290, 290 (1969)). “Since that time, every state, the District of Columbia, and most federal courts have adopted student practice rules, usually based on the Model Student Practice Rule.” Id.
experience in the clinic.

It has been stated hereinabove that eight students in each section of the clinic is an ideal number by both academic scholarship and advocacy institutes such as the National Criminal Defense College, the National Legal Aid and Defender Association, and the Western Trial Advocacy Institute.\textsuperscript{79} It would be possible to employ a group of twelve students (working in pairs) with six clinical supervision sessions during the week, but these larger clinical classes necessarily require more staff to adequately supervise the students on an individual basis.\textsuperscript{80} Some teaching models allow the students to work more independently in larger groups, but ongoing team brainstorming, researching, writing, editing, and critiquing of the work product is sacrificed in this model and the work necessary to “clean-up” the first and the last draft of the brief is considerable.

Another feature of the Criminal Appeals Clinic at The University of Mississippi School of Law, although not unique, is assigning each pending appeal two student/lawyers who work as a team on the brief as the main assignment in the clinical semester.\textsuperscript{81} Two student/lawyers working together on a single case allows for collaboration and brainstorming together when working independently and in the dynamic of three when being supervised by the clinical professor.\textsuperscript{82} This collaborative process not only promotes Professor Bloch’s “co-counsel relationship between the student and the teacher,”\textsuperscript{83} but also encourages the student/lawyers to work within a hierarchy of their

\textsuperscript{79} “[A]n average ratio of eight students to one full time faculty member (8:1)” in live client, in-house clinics was reported as typical by the MacCrate Report. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, supra note 35, at 250; see also Sullivan, supra note 7, at 1306.

\textsuperscript{80} Id.


\textsuperscript{82} Catherine Gage O'Grady, Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer, 4 CLINICAL L. REV. 485, 514 (1998).

\textsuperscript{83} Bloch, supra note 42, at 348.
peers.\textsuperscript{84} This student collaborative process is carried through in oral arguments, motions for rehearings, and reply briefs where case teams are reassigned to allow the students to work with other members of the clinic on other projects, thereby expanding the opportunity for learning through collaboration.

The problem of attempting to increase class size and the number of briefs produced in a single semester without sacrificing individual attention to the students may be solved by to employing the assistance of legal writing faculty as additional clinical supervisors, seek out adjuncts from local practitioners with specialized skill in appellate advocacy, or utilize fellowships to be awarded to recent graduates who participated and excelled in previous semesters of the clinic.\textsuperscript{85} In this way, this 8:1 ratio can be maintained and greater numbers of both students and clients may be served by the clinic.

The classroom component of the criminal appeals clinic should be front-loaded with lecture and discussion of the practical aspects of procedural and substantive law that governs the jurisdiction where the cases will be accepted by the clinic. Lecture sessions should incorporate seminar type discussions of these topics, as some students will be more familiar than others in the local appellate practice and procedure of the jurisdiction, and they will be able to lead these seminars in such a way that the others may gain insight into the topic at hand. The goal should be to impart advanced research and writing techniques to the students so that they may carry those methods into the clinical assignments.\textsuperscript{86}

In addition to the classroom component of the course, clinical supervision hours with each case team will provide individual attention in identifying the students' strengths and weaknesses and will provide feedback in both areas.\textsuperscript{87} The clinical professor will find this time-intensive supervision to be taxing, but this superintendence will lessen as the case team identifies

\textsuperscript{84} O'Grady, \textit{supra} note 82, at 520-28.
\textsuperscript{85} See Barry et al., \textit{supra} note 29, at 27.
\textsuperscript{86} Fell, \textit{supra} note 4, at 292.
\textsuperscript{87} Quigley, \textit{supra} note 6, at 489.
the issues in the case, finds case law through research, and begins the writing and editing process. Although there exists considerable variance among clinicians about how much "interference" with the work of the student/lawyers should occur during the supervision, the clinical professor must strike the balance between independence and guidance of the students and the obligation to the client that works for their program.88

VIII. CHOOSING THE CASE FOR USE IN THE CLINIC

One of the most important aspects of starting up a criminal appeals clinic is the ability of the clinical supervising professor to obtain cases awaiting review by the appellate courts of the jurisdiction for use in the clinic. Pending criminal appellate cases may be accessed in many different ways, but relying on the courts to assign them to the Clinic implicitly means that the supervisor may not pick and choose cases for the most potential educational value. However, obtaining the cases from public defenders who originally handled the trial, from appellate defender institutions charged with taking over the case after conviction or from trial courts will allow case selection, rather than case assignment. A set of criteria for choosing the cases89 must be in place to guide the supervising attorney in choosing cases that will not only provide the students with the best educational experience possible, but will also serve those clients who would otherwise not receive representation from a specialized team of appellate lawyers who have the time and resources to devote to the client's case.90 Indigent appellants who are represented by such a team of lawyers receive, in most cases through the Criminal Appeals Clinic at The University of Mississippi School of Law, better representation than would otherwise be provided through the public defender system pres-

88 Laflin, supra note 48, at 15-18.
90 Laflin, supra note 48, at 9-11.
ently in existence in the state.91

Choosing the cases to be researched and briefed by the student/lawyers in a criminal appeals clinic is much like picking a jury to serve during the trial of a legal action: it is not so much about selecting those whom the lawyer wants to decide the case as it is a process of getting rid of the jurors with which one cannot abide. Appellate cases devoid of potentially viable issues from the record for research and briefing by the students are simply not suitable for use in the clinical setting. Additional negative factors implicated in case selection for criminal appeals clinics include claims of error that were procedurally defaulted by defense counsel, factual scenarios that do not lend themselves to distinction from contrary controlling case law, convictions that stem from exceptionally outrageous, loathsome, or shocking crimes (i.e., the rape and murder of a two-year old child). Also, logistical problems such as clients who are incarcerated more than a day’s drive from the law school make personal interviews with the client virtually impossible.92 Potential clients who are overbearing, uncooperative, or mistrustful of student/lawyers working on their case can also preclude representation by the clinic.

All cases and/or clients may not be ideal for the clinical setting, but the number of cases required to serve students interested in this clinical experience attending law schools situated in rural areas necessitate a more optional evaluation of the available pending appeals. The relatively small temporal window to solicit, identify, and assess cases for use during the academic semester only aggravates the problem of the deficiency of cases that meet the minimum standards for use in the clinic. These limitations in both the number and the quality of

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91 Mississippi has no formal, systematic organization of indigent defense; however, the Legislature created and funded the Office of Indigent Appeals during the 2005 session. S.B. 2960, 2005 Leg., Reg. Sess. (Miss. 2005). Although this bill was signed into law by the Governor on March 21, 2005, no director of the office has been named, nor has the office been put into place as of July 27, 2005.

92 See the symposium article herein entitled, “On the Value of Prison Visits with Incarcerated Clients Represented on Appeal by a Law School Criminal Defense Clinic.”
cases brings about a difficult process of making a choice among the appeals to utilize in the clinic that culminate in three conceptual dynamics: (1) how a clinic can select its cases, (2) how a clinic should select its cases, and (3) how a clinic does select its cases. Recognition of the way in which these dynamics come together will produce dependable answers to the question of which cases/clients to accept in the clinic each semester.

Therefore, as a result of the fluid nature of the choices to be made, the clinical professor must engage in “de-selection” of the cases available for use in a criminal appeals clinic to attain the relative balance of educational value for the students with the obligation to provide public service to the community of indigent clients awaiting appellate review of their convictions. Although the pool of cases from which to choose is relatively limited in most rural jurisdictions, law schools located in urban areas near multiple state and federal appellate court systems have the luxury of obtaining, evaluating, and rejecting more cases than it accepts for use in the clinic. This “de-selection” inquiry will ensure that the criteria established for discerning the ideal appellate case (identified in the scholarship referred to hereinabove) is effectuated, utilizing the practical, ethical, and pedagogical considerations involved in quantifying and eliminating the cases/clients that are unsatisfactory under the stated objectives of the clinic. This method of case “culling” will not guarantee that every case team will gain a reversal in their client’s appeal, but it will ensure that the student/lawyers will have the challenge of dealing with the unique facts, legal principles, and resulting analysis contained within the cause of action before the court. This outcome satisfies the mission of the criminal appeals clinic.

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92 This term has been advanced by Jennifer P. Lyman, Professor of Law and Director of the Federal Appeals Clinic, George Washington University National Law Center.

93 See Diane Courselle, When Clinics are “Necessities, Not Luxuries”: Special Challenges of Running a Criminal Appeals Clinic in a Rural State, 75 Miss. L.J. 721 (2006).

95 See Sullivan, supra note 7, at 1279-80.
IX. CONCLUSION

By adopting a criminal appeals clinic, a law school exposes third-year students to the world of criminal law and procedure and, in addition, gets a clinical program with all that it entails at a relatively low price. Since most law schools have dedicated clinical space already in place or have available library computer stations, the major issue will be finding a qualified clinical professor to direct, supervise, and sustain the program. This addition to the faculty can be a valuable asset in attracting and successfully recruiting students who want to have a wide range of choices in the upper-class curriculum, including advanced instruction in the area of criminal practice. In addition, the unique opportunities for pro bono service to indigent clients awaiting review by the appeals courts are of positive significance in the overall mission of the law school.

The following symposium articles are designed to give the new criminal appeal clinic professor the benefit of the experiences of the leading clinicians in the country in this area of legal education in an effort to guide not only the start up of such a clinic, but also in the endeavor to maintain the criminal appeals clinic without reinventing the wheel in the subjects presented by the authors. The combined experience of these professors will guide the new clinician in successfully establishing, operating, and sustaining a criminal appeals clinic at your law school.