THE EVOLUTION THROUGH EXPERIENCE OF CRIMINAL CLINICS:
THE CRIMINAL APPEALS PROJECT AT THE UNIVERSITY OF WISCONSIN LAW SCHOOL’S REMINGTON CENTER

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This article describes the Criminal Appeals Project, one of the clinical programs at the Frank J. Remington Center at the University of Wisconsin Law School. We first offer a brief

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The University of Wisconsin Law School has a tradition of focusing its scholarship and teaching on the “law in action,” the concept that in order to truly understand the law, one need not only know the “law on the books,” but also how the law plays out in practice. The emphasis on the “law in action” led to early recognition that clinical programs are a crucial element of legal education. For a discussion of the school’s history of supporting clinical legal education, see Keith A. Findley, Rediscovering the Lawyer School: Curriculum Reform in Wisconsin, Wis. Int’l L.J. (forthcoming 2006).

The Remington Center is the largest clinical program at the law school and represents one of the largest law school clinical programs in the country. The program is named after the late Frank J. Remington who was a distinguished professor at the University of Wisconsin Law School from 1949 until 1992. The Criminal Appeals Project is one of several clinical programs within the Remington Center. The other projects include: (1) Legal Assistance to Institutionalized Per-
overview of the project. We then give a short history and describe some of the missteps we have made along the way, and our efforts to correct them. We then set forth six core principles that have evolved over the years and explain how those principles are reflected in the design and implementation of the project. We hope that other law schools which currently have, or are contemplating creating a similar program will find it useful to learn about those aspects of the program that have been successful and avoid some of the missteps we have taken.

I. DESCRIPTION OF THE CRIMINAL APPEALS PROJECT

Each year, eighteen students at the University of Wisconsin Law School enroll in the Frank J. Remington Center's Criminal Appeals Project. The students commit to remain in the clinical program both for fall semester (four credits) and the ensuing spring semester (three credits). While in the program each student is teamed with a partner, and along with a clinical professor, they work on the direct appeals of two defendants recently convicted of criminal offenses.

Of the two clients represented by each team, one has been convicted pursuant to a guilty plea\(^2\) and the other convicted...
following a trial. All eighteen clients are appointed by the Wisconsin State Public Defender’s Office, which pays the project the standard rate allowed for appointed counsel. All of the clients are indigent, and have previously notified the trial court of their desire to pursue postconviction remedies. The cases are not prescreened except to ensure that half of the cases are guilty pleas and that none of the trials lasted more than one week.

3 The Public Defender currently pays $40 per hour for attorney time (both in-court and out-of-court), and $25 per hour for travel. For students, the Public Defender pays $30 per hour. The Public Defender also pays expenses for such items as travel, copying, and expert witness fees (when approved by the agency in advance). It is interesting to note that the state legislature has denied repeated requests to increase the $40 per hour rate for attorneys, and the current rate has been in effect since 1994 when the project began. This has made it increasingly difficult to fund the project, where salaries have increased to reflect experience and inflation. Not surprisingly, the lack of increased funding has caused many to worry about the quality of representation throughout the state, since many attorneys have found that they can no longer afford to accept appointments.

This article does not discuss budgetary constraints, in part because of the difficulty in determining with any precision what the project costs. Most of the project staff also work in other Remington Center clinical programs. The Remington Center provides administrative support, secretarial support, housing, and other miscellaneous costs (telephones, computers, mailing, etc.) that can not be easily distinguished from costs of the project. It is easier to calculate the income from the Public Defender’s office, which has averaged about $60,000 per year since we began accepting eighteen cases per year. As with virtually all clinical programs, the cost of the project exceeds its income. For a discussion of the relative costs of traditional and clinical legal education, see Margaret Martin Barry, et al., Clinical Education for this Millennium: The Third Wave, 7 CLINICAL L. REV. 1 (2004).

4 Others have written of the critical importance of carefully screening prospective cases. See Maureen E. Laflin, Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report, 33 GONZ. L. REV. 1, 9-10 (1998). However, we believe that it is not worth the effort. Part of the reason for this is that we find meritorious issues in a relatively large portion of cases without pre-screening. Moreover, it would require enormous amounts of time to attempt to determine in advance which cases might harbor meritorious postconviction or appellate issues. Beyond reading the transcripts, there are few effective and reliable ways to screen cases. One possible method would be to contact the trial attorneys from prospective cases and ask their opin-
During their two semesters in the project, the students perform all the tasks that are necessary to represent criminal defendants in the appeal of their convictions: they meet with the clients, study transcripts and other court documents, identify and research issues, write postconviction motions, present evidence and argument at postconviction hearings in the trial court, and write briefs to the Wisconsin Court of Appeals.\(^5\) Each student is closely supervised by clinical faculty, who meet at least once per week with each pair of students to monitor progress on the cases.

Once per week, throughout both semesters, the students attend a class designed to introduce them to general principles of appellate advocacy.\(^6\) In addition, students and their supervising attorneys attend one “small group” session each week.

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\(^5\) All persons convicted of crimes in Wisconsin have the right to appeal to the Wisconsin Court of Appeals. Wis. Stat. § 974.02 (2003). If the court of appeals denies the claim, defendants have the right to petition for review in the Wisconsin Supreme Court, which may accept or reject the case at its discretion. Wis. Stat. § 809.62 (2003). Because of the amount of time it takes to complete an appeal to the court of appeals, students are seldom involved in submitting a brief to the Wisconsin Supreme Court.

\(^6\) In the fall semester, there are ten weekly large group class sessions, each lasting eighty minutes. The topics are, in order of presentation, as follows: (1) Introduction to Client-Centered Representation and Preparation for Client Visits; (2) The Importance of Facts on Appeal: “The Thin Blue Line;” (3) Obstacles to Appellate Success: the Record, Waiver, Standard of Review, and Harmless Error; (4) Brainstorming and Issue Spotting; (5) Theory of the Case and Postconviction Motions; (6) Ineffective Assistance of Counsel Claims; (7) Challenging a Sentence on Appeal; (8) The No-Merit Process; (9) Appellate Attorney/Client Relations: Who Decides What Issues to Raise on Appeal; (10) Persuasive Writing.

In the spring semester, there are large group class sessions on the following topics, some of which cover two class periods: (1) Storytelling, Theory and Theme; (2) Writing the Statement of Facts; (3) Writing Issue Statements and Point Headings; (4) Trial Advocacy Skills; (5) Conducting Ineffective Assistance of Counsel Hearings; (6) Writing the Argument Section of a Brief; (7) Using Persuasive Storytelling in Oral Argument.
Each small group is made up of six students and their supervising attorneys; hence, there are three different small groups. During the fall semester, the small groups meet to "brainstorm the facts for each of the six cases assigned to group members. In the spring semester, the small groups again meet weekly to offer suggestions and constructive criticism on drafts of briefs submitted by each student, and on mock oral arguments.

As can be expected, not every case is litigated. In some cases there are no issues of arguable merit, and the client either accepts that assessment or requests an *Anders*\(^7\) (or "no-merit") brief, to be filed with the court of appeals. In other cases, there may be issues of arguable merit, but the client requests that no appeal be filed in order to avoid the risks of retrial or resentencing.

Litigation comes in two forms: postconviction motions to the trial court, and appeals to the court of appeals. In Wisconsin, before an appeal is taken to an appellate court, defendants have the right to file postconviction motions in the trial court to address issues that have not been previously raised.\(^8\) This includes evidence relating to ineffective assistance of counsel claims; whether a plea was made in a knowing and voluntary manner; the introduction of newly discovered evidence; and many other possible claims.

A majority of the project’s cases proceed to litigation. In part, this is due to Wisconsin’s scheme of allowing postconviction claims to the trial court before the cases proceed to appellate courts. But there are at least two other reasons for the relatively high litigation rate. First, we place a

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\(^7\) *Anders v. California*, 386 U.S. 738 (1967). During the four-year period from 2002 to 2005, only two no-merit briefs were filed out of seventy-two cases in the project. Generally, when we find insufficient merit to justify litigation, the client agrees without requesting that a no-merit brief be filed. These cases are not counted as "litigated cases" in the project’s statistics because in such cases we are no longer operating as an advocate for the client.

\(^8\) See *Wis. Stat.* § 809.30(2)(h) (2003). However, the trial court may deny the defendant’s request for an evidentiary hearing when the defendant fails to allege facts which, if true, would entitle him to relief. See *State v. Bentley*, 548 N.W.2d 50 (Wis. 1996).
high emphasis on collaboration through which several students and attorneys are involved in each case, making it less likely that issues will be missed. Second, we follow a client-centered model of representation which is attentive to clients’ frequent desire to litigate their cases. Consequently, in the four years between 2002 and 2005, the project litigated twenty-four out of the thirty-six cases (67%) in which there was a trial, and eighteen out of the thirty-six cases (50%) in which there was a guilty plea. The project has been successful in obtaining relief in many of these cases. In the same four years (2002 to 2005), clients obtained relief of some sort in 71% of those guilty plea cases litigated (34% of all assigned guilty plea cases) and 65% of those of trials litigated (38% of all assigned trial cases).

Regardless of the outcome of the cases, the students gain a solid foundation in many of the areas considered important in legal education, including problem solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication, counseling, negotiation, litigation, and other skills that should serve them well in their future careers.

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9 See infra Section III (discussing the project’s emphasis on collaboration).
10 Id. (discussing also the project’s use of client-centered representation).
11 This appears to be a higher rate of litigation than attorneys employed by the State Public Defender, or private bar attorneys appointed by that office. Although statistics from the same time period were not available, that office reported that in 1997-99, their staff attorneys litigated (or filed a no-merit report) in 36% of all cases, and private bar attorneys litigated (or filed a no-merit report) in 53% of their cases.
12 Cases were deemed “successful” in the following situations: (1) the clients’ convictions were vacated, and the charges dismissed with prejudice (9% of successful cases); (2) the clients’ convictions were vacated entitling the client to a new trial (64% of successful cases); (3) the clients’ sentences were vacated, leading to the right to be resentenced (9% of successful cases); or (4) the clients’ sentences were modified to a shorter term (18% of successful cases).
13 These are all skills identified in the “MacCrate Report,” named after Robert MacCrate, chairman of the task force that produced the report; its formal title is: AMERICAN BAR ASSOCIATION, SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MacCrate Report]. For a summary of the
II. CREATION AND GROWTH OF THE CRIMINAL APPEALS PROJECT

In 1993, a clinical professor at the Remington Center and the director of the State Public Defender's Appellate Office together proposed the creation of the Criminal Appeals Project. Law school administrators approved of the project for a variety of reasons. First, the MacCrate Report, released in 1992, called for the development of clinical programs emphasizing skills and values, which the project's emphasis on the development of analytical and writing skills accomplished. Second, the project fit within the existing structure of the Remington Center and could be housed in the same building. Third, the State Public Defender assured the project that a sufficient number of cases could be appointed at the appropriate times. Fourth, and finally, the project did not require full law school funding, since a portion of the budget could be supplied by income from the State Public Defender, which paid the standard rates for other appointed attorneys.

The project began in 1994. Twelve years later, some of the features of that early program survive, but many have been modified. The revisions came about through reflection by clinical faculty, feedback from students, and the infusions of new ideas from others. A brief description of the structure of the early program, and why modifications were deemed necessary, follows.

ABA reports, symposia, and scholarly articles directly responding to the MacCrate Report in the years following its publication, see Russell Engler, The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow, 8 CLINICAL L. REV. 109, 116-17 nn.33-37 (2001).

14 The clinical professor was Katherine Kruse, who is now a law professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas.

15 Ken Casey, now a clinical professor at the University of Wisconsin, currently supervises students in the project.

16 See MacCrate Report, supra note 13.
The First Two Years

In its first semester of operation, Spring 1994, ten students enrolled. Each student was assigned to work on one appeal under the supervision of a single Remington Center faculty member. All students were required to continue work in the project through the ensuing summer semester while they were enrolled in one of the Remington Center's other clinical programs, the Legal Assistance to Institutionalized Persons Program (LAIP).

As they worked on their cases, project students attended a weekly class designed to teach general principles of appellate advocacy. There were no structured opportunities for students to discuss their cases with other students or staff.

It soon became evident that there were a number of problems with the structure of the program. The lone supervising attorney had other clinical duties, leaving insufficient time to review all the transcripts from each of the cases while closely supervise the students. While some of the students performed well, others had difficulties performing many of the tasks that are necessary in representing clients—understanding the complex appellate procedure, spotting issues, analyzing and researching the law, and writing briefs. Some of the students had simple cases which were quickly resolved, leaving little to do for the rest of the year. Others were mired in huge cases with multiple issues, leaving them feeling overwhelmed.

Perhaps because of these problems, the project had trouble finding enough students in its second year of operation. Out of the ten spots available, only four students enrolled. Worse yet, two dropped out after the first semester leaving only two students to complete the course. It was obvious that changes had to be made to keep the program alive.

The First Wave of Modifications

Knowing that changes were necessary, the clinical faculty restructured the project. Given the difficulties of recruiting students, the project tapped into the already available well of
students who were enrolled in LAIP. Through LAIP, students had experience visiting inmates in prisons and helping them solve various legal problems; consequently, it was not a difficult adjustment to work on an appeal.

Thus, we required each of the fifty LAIP students to take an appeal. Some of the students worked on a case without a partner; others were partnered with another law student. A total of thirty cases were assigned. The following year, even though LAIP students were no longer required to take an appeal, twenty-five students volunteered.

Seven different LAIP clinical staff supervised the cases. As before, all students took a weekly class in appellate procedure, but there were still few structured opportunities for students to collaborate with others.

By spreading the workload around to many supervisors, the modified design allowed closer supervision than was previously possible. However, there were decided disadvantages. First, none of the supervisors had significant experience working on appeals. Although the supervisors gradually gained experience with each passing year, the learning curve was somewhat slow since each attorney only had a small number of cases. Second, it was difficult for students and attorneys to balance the work on the cases with their regular LAIP work, causing them to prioritize some cases to the detriment of others. Third, and finally, the students still did not have a regular forum to discuss their cases with others besides their supervisors.

III. THE MODERN PROJECT AND THE DEVELOPMENT OF CORE PRINCIPLES

In 1997, the clinical faculty addressed the above noted problems and redesigned the project. The hiring of an experienced attorney from the State Public Defender Appellate Office, who could provide new ideas and leadership, stimulated this effort. At that time, efforts were made to identify and ar-

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17 See supra note 1 for more information on the LAIP program.
ticulate the core principles of the project. Eventually, six core principles emerged. The project was then redesigned to reflect those principles. The result was the formation of the modern project, which has remained mostly intact since 1998. The six core principles are:
1. The representation of clients should be of the highest quality possible.
2. Although closely supervised, the students should take primary responsibility for their cases.
3. Both the educational benefits of the program and the quality of the representation are enhanced when students work in a collaborative environment.
4. A client-centered approach to representation provides the best model to achieve maximum educational benefits and the highest quality of service.
5. The ability to use facts to tell a persuasive story, guided by a clear theory of the case, is crucial to effective appellate representation.
6. Students should be encouraged to reflect on their work and on the criminal justice system.

The following is a discussion of each core principle along with a description of how we attempted to infuse those principles into the program.

Core principle #1: The representation should be of the highest quality possible.

This core principle is probably assumed, but it needs to be made explicit because of constant pressures that, if left unchecked, can erode the basic commitment to quality representation. These pressures include the need to educate law students and the need to stay within reasonable budgetary constraints.

Our desire to teach law students to become excellent lawyers requires that we set high standards for the quality of work. But there are other compelling reasons. First, stakes are high for clients. Almost all have been sentenced to prison,
and many are serving long sentences.\textsuperscript{18} It is imperative that the quality of representation not be sacrificed by the fact that students are involved in the case. Second, the development of new case law affects future clients and the administration of justice throughout the state. That case law is best developed when appellate attorneys, both for the prosecution and defense, are able to articulate cogent arguments defending their position, and identify and properly analyze public policy considerations that are raised in the cases.

There are many ways to ensure the highest possible quality representation, but we discuss two here: the decision to hire adequate numbers of staff who specialize in criminal appeals cases and the importance of recruiting and motivating students.

\textit{Staff Considerations}

In order to ensure high quality representation it is important that supervising attorneys not be overburdened by having too many cases or students. Given past experiences in which many clinicians supervised cases we decided that a full time supervising attorney for the project should work on no more than twelve appeals at any given time. This is especially important because all eighteen cases are commenced at the same time, which often means that there are certain times of the year that are especially busy.\textsuperscript{19}

\begin{footnotesize}
\textsuperscript{18} Wisconsin does not have capital punishment, so the project does not have any death penalty cases. Also, since the project only takes cases in which the trial lasted one week or less, there are few first degree murder cases. However, most of the cases are felonies. In a typical year, out of the eighteen cases, there are usually several involving lesser degrees of homicide, sexual assault, armed robbery, burglary, and delivery of illegal drugs, with sentences ranging from probation to over 100 years.

\textsuperscript{19} We request the cases from the State Public Defender’s Office in mid-July of each year so that the transcripts are prepared by the first part of September, when the class begins. After the transcripts are received, we have sixty days to file a post-conviction motion or notice of appeal. See Wis. STAT. § 809.30(2)(h) (2003). Needless to say, the first few weeks of November are generally very busy. Beyond that the cases tend to spread out as each case begins its course through the system.
\end{footnotesize}
Even though the students are encouraged to take responsibility for their cases, the supervisors still have much to do to assure the quality of representation. They read the entire transcript and prepare their own digest. They rely to varying degrees on student research but they frequently conduct their own research (if for no other reason than to make sure that the students have not missed relevant authority). Of course, the supervisors heavily edit student briefs, a task which frequently takes more time than it would to simply write the brief without assistance.

Besides limiting the number of cases we also decided to limit the size of the cases we accept. We implemented a policy of not taking any trials lasting more than one week in length; most trials are between one and three days. This cut down on the workload and helped make the distribution of cases to students more even in terms of complexity.

In addition, we decided that half of the cases should be those in which the client pled guilty or no-contest.\textsuperscript{20} Pleas produce fewer transcripts that must be studied. Pleas are also less likely to lead to litigation, and when they do, they involve a narrower range of issues.\textsuperscript{21}

We also decided that the supervising attorneys should be clinical faculty without significant competing job responsibilities. We no longer have supervising attorneys from other clinics (such as LAIP) working on one or two cases. Instead, each of the supervising attorneys is an integral part of the project and becomes a specialist in criminal appeals. The current staff has four supervising attorneys. Two are half-time who supervise students on six appeals cases each (three trials

\textsuperscript{20} See supra note 2.

\textsuperscript{21} However, guilty plea cases still can contain interesting issues that require research and investigation. In Wisconsin, a defendant can plead guilty but still preserve the right to appeal the trial court's denial of a motion to suppress evidence or a motion challenging the admissibility of a defendant's statement. Wis. STAT. § 971.31(10) (2003). In addition, guilty plea cases often have other viable issues, including: claims that the prosecutor violated the plea agreement; ineffective counsel; the plea was not made in a knowing and voluntary manner; or the sentence was illegally imposed.
and three guilty plea cases). The other two clinicians, who divide their time with the Remington Center’s Innocence Project, are assigned to three cases per year. All four clinicians also help with teaching the classroom component and attend most, or all, of the weekly small group sessions.

With relatively low caseloads the supervising attorneys are able to immerse themselves into each case. The attorneys read and digest all of the transcripts and review all other court documents. The attorneys approve all student correspondence and other communication with the clients, prosecutors, judges, and others associated with the case. The attorneys meet in-person with the clients, although generally not at the beginning of the case. The attorneys carefully review all motions and briefs that are produced. Of course, the attorneys need to be careful not to “take over” the cases from the students by doing all of the work, or using students simply as law clerks. However, in the end, it is the attorneys who are ultimately responsible for making sure that the work on the cases is the highest possible quality.

Student Considerations

The project attempts to attract law students who are highly motivated. This is the most important quality affecting successful representation. In order to find those students we visit all first year criminal law classes. We describe the project and invite interested students to apply. The application consists of a resume and a one or two page statement of interest. This, along with word-of-mouth from former students, is generally sufficient to generate more applications than we have positions. We then make our selection based solely on reading the applications. Since most of the applicants are first year students, we do not use grades in the selection process or

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22 See Philip G. Schrag, Constructing a Clinic, 3 CLINICAL L. REV. 175, 185-86 (1996) (discussing student recruitment in clinicals).
23 See id. at 210 (noting that although few clinics use grades in their recruitment, some require applicants to have a minimum grade point average to protect them from receiving poor grades in other courses under the increased work load.
conduct personal interviews. Instead, we look for those students who have taken the time and effort to write a thoughtful statement and those who have a variety of past experiences and backgrounds.

There is good reason for the students to remain highly motivated once they begin work in the project. Most of this that the clinic will impose).

A number of students who have excelled in the project performed poorly in the first semester of law school, and might not have been admitted had grades been considered. By admitting these students they were given an opportunity to distinguish themselves in another area that may be more indicative of future success as an attorney. To evaluate whether law school grades predicted success, we obtained the first semester grade point averages of all fifty-six students who enrolled in the project during the past three years. We then compared these grades with the grades the same students received in both the fall and spring semesters of the project. The students who had the highest law school grade point averages generally performed above average in the project, and those who had the lowest grade point averages generally performed below average in the project. However the correlation was weak. Of the twenty-eight students with the highest (i.e. above average) law school grade point averages, eighteen received the highest grades in the project and ten received below average grades in the project. We also looked at what happened to students who had extremely low law school grades because these would most likely become the students who would be not accepted into the project if grades were considered. We found that when the students' law school grades were extremely low, these students usually ended up having the most trouble in the project. However, there were notable exceptions. In one case, the student with the second lowest grade point average turned out to earn the second highest grade in the project. While no one else did this well, many others at least performed at an average level.

Although the Criminal Appeals project has never used personal interviews, the LAIP program did so in the past. At one point, LAIP conducted an informal study to determine whether personal interviews were predictive of obtaining the best students. Each applicant was interviewed after which the interviewer assigned a "grade" based on the interview and the application. This "grade" was then compared with evaluations of the same students by their supervisors after one year in the program. The results showed no correlation between the two scores so the program abandoned the process of individual interviews.

In our small group meetings, students' experiences often shed light on some issue that comes up in a case, making it desirable to select students who have worked in various fields. Obviously, it is very helpful to have students with prior experiences in law enforcement, such as former police officers. However, it has also been helpful to have students with other experiences. For example, a student with experience as a convenience store clerk likely has knowledge that could be useful in representing a person convicted of robbing such a store. Similarly, experience as bartenders, taxi-cab drivers, social workers, nurses, medical doctors or a wide variety of other fields can be invaluable.
comes from the fact that it is the students who form the primary relationship with the clients by visiting them and contacting them about the case. The students are keenly aware that their clients rely on them to work diligently. Often, students find their clients both likeable and deserving of some sort of relief which further motivates them.

That is not to say that there are never problems with students. Some students lose motivation because of the client’s personality or the nature of the crime. Others find it difficult to invest the necessary time due to outside commitments. These types of problems usually become quickly apparent and we try to correct the problem by talking to students about the importance of their duties to clients.

Grades are another possible way to motivate students, and we have experimented with different grading systems over the years: pass/fail, letter grades that do not affect students’ overall class rankings, and number grades that do count into class rankings. None of these systems have proved completely satisfactory. Pass/fail grades reduce competitive pressures and assist the “collaborative effort” which we try to encourage between students. However, some students feel that a “pass” is insufficient to reflect the considerable work they have put in the project and worry that the program will be viewed by employers as something other than rigorous.

At the other extreme, number grades which are counted into class rankings have proved to be a motivating force for some, and they allow instructors to differentiate more clearly between various levels of achievement. However, there are also clear drawbacks to this system. Student collaboration sometimes suffers; if a student is given a low grade he or she may become discouraged in the second semester and interest or motivation may suffer. Another problem in giving number

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26 See Schrag, supra note 22, at 201-04 (discussing the use of grades in clinical program); see also Jan Stiglitz, et al., The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education, 38 Cal. W. L. Rev. 413, 429 (2002) (discussing the fact that grades can motivate students to work harder but noting negative aspects as well).
grades is that it can be difficult to compare students' work: some cases are rich with legal issues, giving students ample opportunity to either excel or struggle; other cases are simpler and provide fewer opportunities to fairly evaluate their work.

For now at least, we have settled on a new grading option. We have decided to give four possible grades: S+, S, S-, and U. These grades will not count towards students' overall class rankings. Although it is possible that this might reduce one source of motivation, we hope the challenge and responsibility will otherwise be sufficient motivation.

Core principle #2: The students should, to the extent possible, take primary responsibility for the cases.

An important aspect of the project is that students take primary responsibility for their cases. Although it is easier to articulate this value than to put it into practice, it can never be forgotten that the students are not clerks in a law firm; rather, they are in a law school environment and it is critical that interactions with the students be designed to enhance their legal education. This is especially important at this stage of their development, before they face the real-world pressures of heavy caseloads, the demands of the adversarial system and need to make money, all of which can compromise the ability of attorneys to focus solely on a client's needs.

The educational experience of the students is enhanced by giving them primary responsibility for the case. From the first day of class, the students are challenged to accept this responsibility. They are told that it is their job to stay in contact with their client, keep track of all deadlines, come fully prepared to meetings with their supervisors, and do whatever is necessary to provide the best representation for clients. In addition, the students are required to track and record their time so that the project can receive payment from the Public

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27 See David F. Chavkin, Am I My Client's Lawyer? Role Definition and the Clinical Supervisor, 51 SMU L. Rev. 1507, 1531-32 (1998) (concluding that students get the most educational benefit out of client representation where the student's autonomy is maximized).
Defender. Following the first week of class, the students visit both of their clients, who are usually at one of the prisons situated throughout the state. In past years, the supervisors accompanied the students during this first visit, but this caused problems. Commonly, the clients turned their chairs toward the “real” attorney, relegating the students to spectator status. Therefore, supervisors no longer accompany students on the first client visit.

As the cases progress the students continue to maintain a high level of involvement. Each student must read and digest all transcripts from their two cases. They come to meetings with their supervisors with ideas regarding issues and follow up with research memos discussing them. For both postconviction motions and appellate briefs, students write initial drafts and then make revisions suggested by supervisors and other students. If a hearing or oral argument is required the student may present the argument if appropriate.

During weekly meetings, supervisors do not simply answer students’ questions relating to case research or make the important decisions. Rather, they motivate and challenge

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28 While the Public Defender pays $30 per hour for student work on the cases, it should be noted that when the bill is submitted for payment the students time is usually reduced by the supervising attorney to more accurately reflect the value of the student work. For example, if the student spends time preparing a memo on an issue that the supervising attorney already knows well, it is not included in the bill.

29 Under Wisconsin’s Student Practice Rules, law students are authorized to appear in court with supervision when they have completed one-half of their law school credits. See Wisconsin Supreme Court Rules § 50.03. Second year students then must wait until the spring semester for this opportunity. Students frequently conduct post-conviction motion hearings that occur in the spring semester but only after the supervisor is satisfied that the student is fully prepared, and only after the client consents in writing. The Wisconsin Court of Appeals rarely grants oral argument so this is generally not available to students.

30 The question sometimes arises as to whether students should be sent on research missions concerning issues in which the attorney is already well-versed and may already know the answer. From an educational angle there certainly is value in such an assignment. Indeed, if the supervisor is an expert on the topic, there is even more value because it creates the opportunity for more astute obser-
students to think about what they are doing and why they are doing it.

Every case requires decisions. Some belong to the client; such as whether to take the risk of proceeding with an appeal. But most decisions fall to the supervisor and the students: how to deal with clients at interviews and in correspondence, whether certain issues are frivolous, which issues should be primary, how to frame the theory of the case, and many more. We stress to the students that we are all on the same team, and that the students are not only welcome to give their opinions, but required to weigh in on important issues. After all, students have certain advantages over the supervisor in their ability to take more time with the transcripts and conducting the research on the law.

On the other hand, the supervisors are the attorneys-of-record, and ultimately, are duty-bound to make the final decisions as to some issues. These decisions are usually consistent with the advice of the students, but there are times when they are not, requiring that the supervisor defend those decisions. At other times, there is no clear “best” decision, and either of two or more courses of action would be equally acceptable. In such instances, supervisors often allow the students to make those decisions. This not only relays to the students that they are an important part of the team but also that the law is full of ambiguities and shades of gray.

Clearly, the first two core principles (providing high qual-

vations and feedback. Therefore, we generally do assign such research. However, there are times when we tell the student that research is not needed on a particular issue because the answer is well-known and that the student’s time would be better spent on other issues.

31 In a 1990 article, George Critchlow explores when and why the clinical teacher should intervene between student and client, and concludes that teachers must balance a variety of client-centered considerations which focus on client expectations, student competency, teacher competency, and the interest of the client and others in minimizing delay, financial costs, and emotional discomfort. George Critchlow, Professional Responsibility, Student Practice, and the Clinical Teacher’s Duty to Intervene, 26 GONZ. L. REV. 415 (1990); see also Peter Toll Hoffman, The Stages of the Clinical Supervisor Relationship, 4 ANTIOCH L. J. 301 (1986) (arguing that as the student becomes more competent the amount of supervision should decrease).
ty representation and requiring students to take responsibility for the case) can collide. There are times when the best quality representation requires the attorney to emphasize service over education. But such situations are rare and usually these principles complement one another. That is, the best representation occurs when the attorney provides steady and competent guidance to students who have fully accepted our invitation to take responsibility for the case.

*Core Principle #3: Both the educational benefits of the program and the quality of the representation are enhanced when students work in a collaborative environment*

Most successful appellate attorneys do not work in a vacuum. They may perform the bulk of the research and analysis for their cases but it is important that they have others with whom they can consult—to generate new ideas, provide a different perspective, or serve as devil’s advocates. Having such colleagues is especially important when one is inexperienced, as are all of the students in the project.

Therefore, the project is structured to provide students with plentiful opportunities for collaboration. By pairing students into teams, they work together on two appeals, one trial and one guilty plea. They are supervised by a different attorney for each case.

This structure has several advantages over the single student/single case model. First, it gives each member of the team the chance to learn from each other. Since more minds...

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32 Some clinicians resolve this question differently, finding that when the educational mission conflicts with the duty to provide quality representation to clients, the clinician must give priority to educational value, given the fact that the essential purpose of a law school clinic is to educate future lawyers. See Maureen E. Laflin, *supra* note 4, at 15-16 (1998).

are working on the case, it is more likely that meritorious issues will be spotted, and the litigation will be finer tuned. Second, it is unlikely that both of a team’s cases team will have no merit. Since, historically, the project has litigated well over half of its cases, most teams will have at least one case that will proceed to litigation. 34 Third, this structure exposes students to more cases, issues, and supervising attorneys, thereby broadening their experience.

The project also encourages collaboration through the use of “small groups” that meet weekly with supervisors throughout both semesters. The small groups are made up of six students (three pairs of partners), and the supervisors of those students. 35 The focus of the meetings is always on the individual cases that come out of that group. At the beginning of the year, the groups “brainstorm” one case each week. The purpose is to think expansively to identify alternate ways to understand the facts and the story of the case. 36 Later in the year, the small groups provide feedback to students on their drafts of briefs and critique students’ oral arguments.

34 Of course, sometimes both cases for a given team fizzle out quickly. When that happens, the project has done one of two things. First, the students can be moved to work on other cases currently in the project. This can prove to be very helpful when a team is working on a particularly complex case, and can use the additional assistance. Second, the supervising attorney can manipulate the facts of the case to create a hypothetical case that has merit. Although this solution does not change the outcome for the client, it does give the students a chance to still write a brief, albeit on made-up facts. Of these two solutions the first is preferable for obvious reasons.

35 Usually, this means that there are three supervising attorneys attending each of the small group meetings. Obviously, this is a very low student-attorney ratio and it takes real restraint for the attorneys to not “take” over the discussion, but allow the students to express their thoughts. We have thought about reducing the number of attorneys in each small group for this reason but we have not done so because it is important that the attorneys be there when their own cases are being discussed, and they also inevitably bring good ideas to the discussion of other cases.

36 In these sessions, one pair of students prepares and distributes to the others a memo on the facts of the case to be discussed. After a period of time when the group clarifies any factual questions the group throws out ideas (“brainstorms”) about possible issues in the case, different ways to view the case, or lists things that they would like to know more about.
Core Principle #4: A client-centered approach to representation provides the best model to achieve maximum educational benefits and the highest quality of service.

In general, the project follows a client-centered model of representation. We make no claim that this model is necessary for effective representation, and we do not always strictly adhere to its tenets. Nevertheless, we include readings on the topic in our class materials, devote class-time to it, and attempt to utilize it in our work on cases.

Under a client centered approach the lawyer helps identify problems from a client’s perspective and actively involves the client in exploring potential solutions to their problems. In contrast to the traditional model that makes clients responsible for overall “objectives” and lawyers responsible for “strategies,” client-centered representation recognizes that there is no clear line between goals and strategies and that client input into both is essential. Under this model lawyers should not view themselves as expert technicians who, once a problem is identified, should focus on solving the problem without regard to communicating with the client and seeking the client’s input. Instead, communication with, and input from, the client are essential to achieve optimal results and client satisfaction.

We have found that client-centered representation is especially challenging on appeal because there are few, if any, required court appearances at which the lawyer will necessarily interact with the client. Instead, the lawyer must make a conscious effort to communicate with the client and obtain the client’s input. As with most lawyers, once a student becomes absorbed in an intellectually engaging research or writing task, it can be easy to forget that the client’s interests are central. It is for this reason that we emphasize client-centered representation from the start. Students visit their clients even before reading the transcripts or learning much about the

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case. This frees them from the burden of having to give information to the client and they can use the visit to simply listen to their client’s concerns. The clients are given copies of the transcripts,\(^{38}\) and their ideas about how to approach the case are actively solicited. The students are required to keep in frequent communication with their clients.

The relationship established between the student and client is especially valuable when the client must decide whether to risk litigation. For clients found guilty after trial there is often a risk that the client could be convicted after retrial and receive a longer sentence. For those who plead guilty the stakes are usually higher because withdrawal of the plea generally voids the existing plea agreement. Charges that were dismissed can resurface and prosecutors are no longer bound to give sentence recommendations as required under the previous agreement. Whether to proceed can be a difficult decision for the client, but if a positive attorney-client relationship has been established, it may be very helpful to the client in making the final decision. Of course, when a client makes choices we feel are unwise, students (and attorneys) invariably ponder our role and the wisdom of client-centered representation. But we view this is a healthy reflection.

We believe that client-centered representation is particularly well suited for use in law school clinics.\(^{39}\) Student inexperience requires attention to ideas from others, including clients, about their cases. The client-centered model encourages the students to listen actively, a skill that will serve them well as attorneys of any kind.

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\(^{38}\) The Public Defender does not pay for the copying of transcripts to be provided to the client. The project provides the transcripts at its own cost because we believe it is a small price to pay for the valuable input that can come from the clients, as well as the benefit to the attorney-client relationship.

\(^{39}\) See Katherine R. Kruse, Biting Off What They Can Chew: Strategies For Involving Students In Problem-Solving Beyond Individual Client Representation, 8 CLINICAL L. REV. 405, 424 (2002) (recognizing that in the client-centered model, the client provides what the law student lacks in the background information necessary to solve the client’s problems).
Core Principle #5: The ability to use facts to tell a persuasive story, guided by a clear theory of the case, is crucial to effective appellate representation.

Rules for effective writing apply to brief-writing. For example, good writing requires both clarity and organization. We spend very little time in class on rules for effective writing. However, we do spend some class time on the conventions of appellate brief-writing—for example, how to write certain parts of a brief (Point Headings, Standard of Review, Statement of Issues, Conclusion, etc). We also spend time teaching such topics as how to properly cite the record and other authority, and strategies to deal with adverse caselaw.

But our fifth core principle embraces two aspects of effective appellate advocacy to which we pay particular attention. We believe they are both fundamental and often overlooked: (1) using facts to tell a persuasive story, and (2) following a clear, concise, consistent, and credible theory of the case.

We continually stress the importance of facts to an appeal. We emphasize that facts make law and that courts, in selecting the law to be applied in a case, can be moved by a fair but sympathetic presentation of those facts. This message must be constantly reinforced because it runs counter to the traditional notion ingrained in many students and attorneys, that in deciding appeals, courts simply apply set principles of law to a fixed and unchanging set of facts.

We illustrate this point by assigning students to watch Errol Morris’ 1988 documentary, “The Thin Blue Line.” It tells

40 In 1969, U.S. Supreme Court Justice Warren Burger opined that “[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.” Chief Justice Warren Burger, Address Before the ABA Convention Prayer Breakfast (Aug. 10, 1969) quoted in Dominick R. Vérité, Educating the Lawyer: Clinical Experience as Integral Part of Legal Education, 50 OR. L. REV. 51, 59-60 (1970).

41 See Sandra Craig McKenzie, Storytelling: A Different Voice for Legal Education, 41 KAN. L. REV. 251 (1992) (discussing the value of lawyers as thinking about themselves as storytellers); see also Lafkin, supra note 4, at 24-25 (discussing the need for storytelling in appellate briefs).
the true story how an innocent man, Randall Adams, came to be convicted of the murder of a police officer. After watching the movie, students read two decisions rendered by the Texas Court of Criminal Appeals in Adams' case, one issued in 1979,42 before the film was released, the other in 1989,43 after the film was released. In 1979, the court denied each of Adams' claims finding that Adams had waived his right to raise certain issues or that alleged errors were harmless. In 1989, many of the same claims were reconsidered. This time the results were different. Issues that previously had been found waived were now cognizable. Errors that had been labeled "harmless" were now "prejudicial." The implication is obvious: Morris' ability to craft a persuasive story, not legal doctrine, won Adams' freedom.

Although it is clear that Morris believes in Adams' innocence and that the trial was a sham, he remains unobtrusive and weaves the story in a way that appears objective and balanced. It's an illusion; he is actually persuading viewers to embrace his own conclusions about Adams and the trial. In part, he does this by "showing, not telling." The prosecutor, judge, and key witnesses are given the floor. They think they are describing the fairness of the process and the fact of Adams' guilt, but they are actually doing just the opposite. In class we stress describing actions and using the words of the actors persuasively. We let the reader draw their own conclusions but we try to "show" the story in a way that makes the conclusion obvious, even if left unsaid.

Morris uses many other techniques that can be used in brief-writing to create a persuasive story: attention to setting and context, character development, use of flashbacks, irony, humor, and many more. These devices are well known to storytellers; they are too often unknown to brief-writers. By studying Morris' use of them in the film, we hope to stimulate students to think of ways to tell their client's story persuasively in a brief. The aim is to make the court want to find ways

to rule in the client's favor.

The other aspect of our fifth core principle is an emphasis on developing a theory of the case. A good theory of the case must have several qualities. It must be clearly stated and avoid ambiguities. It must be concise; if it cannot be stated in a short paragraph, it is probably too complex. While there may be more than one theory in a brief (usually regarding unrelated issues) care must be taken that none of the theories undermines another. Finally, the theory must be realistic, given the facts, and the applicable law.

In formulating the theory of the case, we ask the students to devise a concise one paragraph explanation, intertwining facts, law, and emotions, of why the client deserves to win the appeal. We require students to say what they would say if they were trying to explain why the result is unjust to a person who knows nothing about the case or the law in general. Although this sounds easy, students find it difficult. Some have trouble distinguishing the important, legally relevant facts from irrelevant facts, leading to confusing, overly lengthy factual descriptions. Other students have difficulty summarizing legal rules in a concise, comprehensible manner. Some try to do the impossible by attempting to make the client appear to be sympathetic when the focus ought to be on some aspect of the process or someone other than the client. Still others fail to properly intertwine fact and law.

Because of these challenges we think it useful for students to practice formulating case theories in hypotheticals before they tackle their own cases. We ask all students to read the same "canned fact situation" and produce three separate explanations of the case each one focusing on a different theory. After the students have written their explanations, we show the class some of the various and creative ways the case can be framed.

After working on developing a theory of the case, we work on writing a Statement of Facts. Once again, using the same set of canned facts used in the "theory of the case" assignment, we ask students to write two different "Statement of Facts" for an appellate brief. One is written from the perspec-
tive of the prosecution, and one is written on behalf of the defendant. By requiring the students to take both perspectives, we hope they will see that writing a Statement of Facts requires making choices about which facts to emphasize and how to weave the facts together into a story that is fair, but sympathetic for a particular side. One observation that comes out of this exercise is the realization that, depending on which theory is chosen, the same facts might be viewed as both favorable or unfavorable.\footnote{A simple example of this: The defendant—Tom—has been convicted of an armed robbery, mostly on the eyewitness testimony of the victim who selected him out of a lineup. Although the victim does not know Tom, they both live in the same large apartment complex. This fact can be cast in two different ways. It can be a favorable fact for Tom because the victim may have picked him out of the lineup based on the fact that he looked familiar, but confused where he had seen him. Or, it might be unfavorable for Tom because it places Tom in the vicinity at the time of the crime.}

After the students have practiced writing case theories and fact statements, we assign them to apply their skills to one of their own cases. They explain (in writing) their theory of their case and then draft the first portions of an appellate brief (\textit{i.e.}, a Statement of Issues, Statement on Oral Argument and Publication, Statement of the Case, and the Statement of Facts). The students distribute copies to each student (and supervisor) in their small group. The group reads it and makes editing suggestions on the copy. Then the small group meets to discuss the student's work and offer constructive suggestions. We have found the group-editing process helpful because it exposes students to different writing strategies, forces them to think critically about what writing techniques are most effective, and gives them ideas for improving their own briefs.

Obviously, the group-editing process is time-consuming, and we seldom have sufficient time to be able to elicit everyone's opinion on all aspects of a brief. In practice, the supervising attorneys usually give most of the feedback at these sessions, in part because they have spent more time than the students reviewing the briefs, and in part because
the students tend to defer to their supervisors' expertise in the limited class time we have. To remedy that, we are considering breaking the class down into even smaller groups with one supervising attorney per group. But even as currently constructed, we believe the group editing sessions are valuable because they provide additional motivation for students to produce their best work, and much can be learned from criticizing and observing criticism of other students' writing. The students then use the feedback to rewrite another draft of this first portion of the brief.

After this round of writing, the students write a first draft of the "Argument Section." Once again, they provide copies to the other students and supervisors, and once again, the small group meets to offer suggestions and comments.

Finally, students turn in a final draft of their appellate brief by the end of the second semester. In some cases, this brief coincides with the brief that will be submitted to the court of appeals. In other cases, the brief will be used when, and if, the case reaches that stage. Either way, all of the students should have by the end of the program written a high quality appellate brief.

Core principle #6: Students should be encouraged to reflect on their work and on the criminal justice system.

Like any system, the criminal justice system constantly evolves. Some parts of the system were developed in reaction to circumstances that no longer exist. Other parts are vibrant and relevant and should be preserved. We hope to produce lawyers who reflect upon the justice system and their role in it.

We try to encourage students to reflect on ways the justice system serves or disserves the ends of justice. We have not done this in a systematic way, perhaps because of the breadth of the topic. But in our discussions and lectures, we

\footnote{For several years, we required students to write a reflective paper based on their experiences in the project. While this was successful in stimulating reflective thought, we later reluctantly abandoned this requirement in favor of a final ex-}
try to encourage reflective thought by posing provocative questions about whether certain aspects of the system make sense. When a student is assigned to draft a motion (e.g., a motion for bail pending appeal or a motion for an extension of time) we do not show them forms or prior examples of such motions. Rather, we ask them to think about what ought to go in such a motion and then tell them to state it concisely. If convention requires the addition of prescribed language, this can be added later. But the students should learn that motions are not an incantation of magical words, but—at their core—are simply a communication to the court requesting relief.

There is at least one other way we try to encourage reflection by our students. At the end of each semester we devote a class session to students’ observations on the course, and on the criminal justice system. For example, we ask: what about the criminal justice system has surprised you; what would you do to change the system if you could; and in what ways does the system work well? Students’ views of the system may be skewed by what occurred in their own two cases, but often their observations are insightful and are the product of their knowledge of other cases from the class combined with other prior knowledge. The point is not to move the students to come to any particular conclusions about the system, but to encourage them to think about what they are doing, and why they are doing it.

IV. CONCLUSION

After several years of experimenting, the Criminal Appeals Project has achieved a measure of stability, based on the core values expressed in this article. Although we believe the current project is largely successful, there are aspects that still can be improved. For example, we need to more fully engage all of the students. We may need to tinker with the case selection procedure to ensure that none of the cases fold

amination that covered class materials and lectures. It would be possible to maintain the paper requirement, but time spent on the paper likely detracts from time that would have been spent on the case.
within days or weeks of our receipt of them. Finally, we need to think of ways to relieve the pressures to adequately fund the program. By continuing to scrutinize the project through our own reflection, through feedback from students, and through the experiences of other clinical programs, we will continue the search for creative new ways to achieve our goal of providing quality service to both students and clients.