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Prefatory Remark

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HAVING BEEN CREDITED MANY TIMES WITH BEING THE "father of clinical legal education" I am proud on this occasion and also worried, which I suppose is a traditional and prototypic parental reaction. It is easy to record my pride at the fact, twelve years after the beginning of CLEPR's program, that clinical legal education is so widely talked about and so frequently referred to as the most significant reform in legal education in the last hundred years. In contrast to the situation only a dozen years ago, when law faculties were loath to discuss clinical education and resistant to the introduction of even one clinical course as an experiment, it is more pleasant for me to be writing at a time when every law school has something it calls clinical, and when as many opponents of clinical legal education as friends of clinical legal education insist that clinics have been accepted and permanently established in law schools.

I am worried, however, because clinical legal education actually is severely restricted and discriminated against by law school faculties. I know that if special attention is not given to clinical legal education in the forseeable future it is likely that clinics in the law schools will continue to be a fringe activity without recognition of their educational value and importance, and that clinics will eventually decline in numbers and significance from their present status. Too much of the talk about the fight for clinical legal education having been won is based on a disregard of the political realities within legal education. Much of this kind of talk is really a campaign to do away with special attention and support for clinical legal education from outside the law schools, thereby making it easier for the campaign of attrition against clinics by law school faculties to succeed.

Let me be specific about negative law faculty attitudes and actions. First, many classroom teachers openly decry the existence of clinics in law schools and discourage students from enrolling in clinic courses by telling students they are wasting their time in clinical education. Students who enroll find that such attitudes on the part of these classroom teachers are not limited to oral declarations. They are also expressed in faculty actions giving students few credits per clinic course in comparison to the amount of time clinics require from the student, and in strict limitations on total clinic credit allowed each student.

By sending students outside the law school for clinical work, law schools often reduce or eliminate their own supervision of students and the need to include clinical teachers in their own faculty. When clinic teachers are hired by the law school they are discriminated against. All too often they have no right to participate or to vote in faculty meetings

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on clinic matters. Strange as it may seem, there have been faculty committees deciding the fate of clinics without even one clinician on such a committee. Law schools have not established personnel systems for clinic teachers which give the clinic teacher the hope of a career and some kind of security. Most clinic teachers are shut off from the classroom teacher's tenure system and have nothing of their own to substitute for it. The salaries of clinic teachers are lower, even though clinic teaching requires longer hours and also a longer work year than classroom teaching. In short, the number of clinic teachers is kept to a minimum and they are discouraged from staying very long in clinic teaching, while students who take clinic courses do so at considerable sacrifice.

Second, there is little or no recognition in the law schools of the need to provide adequate physical facilities for clinics. With approximately half of clinic programs still sending their students outside the law school for their clinic placements, there is no pressure in many law schools for a decent physical environment for clinic teaching. Even where a law school has a teaching office on its own premises there are too many instances where good physical facilities have a low priority.

Third, law schools have not organized their separate clinical courses into a clinical curriculum. Instead, clinical courses are allowed to remain, year after year, separate and unconnected entities in the elective part of the law school curriculum. With rare exception law schools have disregarded the obvious need for a clinical sequence: to expose first year students to research and writing tasks on clinic cases; to give second year students interviewing and investigating experience on clinic cases; and to have third year students assume full responsibility for clinic cases under proper supervision. Nor have the law schools organized clinic courses so that students will have a proper educational mix of clinical experience, such as required basic experience in civil or criminal legal aid followed by choices of more specialized clinics.

Finally, there continues to be an effort by law school faculties to "fake it" in the clinical area—to substitute simulation and play-acting in classrooms for real-life involvement and responsibility in the clinic.

So, after twelve years, clinical courses have made their way into the law school curriculum. But law schools have kept their commitments to a minimum. Clinics remain on the fringe as separate and unconnected offerings in the elective curriculum. Less than one-third of the law student body takes clinic courses. Too many clinic courses are farm-outs to places where the law school provides little or no supervision. Those who get involved in clinic courses—whether they are students or teachers—do so at considerable sacrifice. Few law school clinics have decent physical facilities. And to top it all off, simulations of lawyer-client experience are put forth as being as good or better than real-life clinics. Many law teachers cannot seem to live with the thought that education can take place outside the rigidly controlled environment of

the traditional classroom, where the only participants in the teaching and learning process are teacher and student as is the case in elementary school, high school and college.

Now is the time to push for clinic experience for every law student. We must have a revolution in educational philosophy in the law schools. Law school faculties will have to act on the belief that as a professional school the law school represents more than an intellectual exercise, and the law school has to give its students contact with, and professional responsibility for, people and their needs in order to make them people-oriented as well as issue-oriented. For these purposes, the clinic is essential as a teaching and learning environment which includes clients, attorneys and judges from the real world presently outside the law school, and not in the form of actors or as make-believe. Professional responsibility to other people cannot be simulated.

Revolutions do not come about easily. Yet, unless clinical experience is made mandatory for every law student, we cannot expect the law schools to move from where they are now to making the larger investment of time and money which is required in order to remove the inadequacies and handicaps which now plague clinical legal education. That is why those of us who have fought for law school clinics must now lift our sights and make the case for clinics for everyone. Instead of the fight for clinics being over we are moving from a skirmish to a battle.