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SUPERVISED JUDICIAL CLERKSHIPS: A VALUABLE CLINICAL EXPERIENCE

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A major trend at contemporary law schools is to provide law students clinical experience. The author examines the Judicial Internship Program offered at William Mitchell College of Law and concludes that the clinic provides the student participant practical knowledge of a trial court's operation that would otherwise take several years of practicing law to obtain.

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I. INTRODUCTION

William Mitchell College of Law has offered a Judicial Intern Clinic for ten semesters. This course, part of a clinical program of great depth and variety,¹ has been well received by students and participating judges alike.² The course offers unpaid judicial clerkships with state and federal judges under faculty supervision. This Article explains the goals of the clinic and the organization of the class.

II. BACKGROUND

The Judicial Intern Clinic at William Mitchell is not a unique program. Clinical judicial clerkships have been a part of the

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1. Among the clinical courses offered at William Mitchell in the 1982-83 school year were: Administrative Law Clinic, Attorney General Clinic, Bankruptcy Clinic, Civil Litigation Clinic, Corporate Practice Clinic, Criminal Appeals Clinic, Estate Planning Clinic, Family Law Clinic, Legal Services to Minnesota Prisoners Clinic, Legislation Clinic, Mental Health Clinic, Misdemeanor Clinic, Public Interest Law Clinic, Tax Clinic, United States Attorney General Clinic, and Workers' Compensation Clinic.

2. In a 1974 survey of federal judges, student judicial intern programs were unanimously recommended as worthwhile. See Weinstein & Bonvillian, *A Part-time Clerkship Program in Federal Courts for Law Students*, 68 F.R.D. 265 (1976).

American law school curriculum since at least the early 1960's.³ Nonetheless, the use of judicial clerkships as a part of the clinical education of prospective attorneys has not been widespread.⁴

The program at William Mitchell involves both classroom and in-court experience, and is supervised both by the judges involved and the course instructors,⁵ as well as the director of the William Mitchell Clinical Program. Thus, the students involved in this course are provided with a number of persons who can provide assistance if requested.

III. EDUCATIONAL GOALS OF THE CLINIC

The educational premise which underlies this clinical class is the recognition that a judicial clerkship is beneficial to students. One court has observed:

A judicial clerkship provides the fledgling lawyer insight into the law, the judicial process, and the legal practice. The association with law clerks is also valuable to the judge; in addition to relieving him of many clerical and administrative chores law clerks may serve as sounding boards for ideas, often affording a different perspective, may perform research, and may aid in drafting memoranda, orders, and opinions.

This general knowledge and experience is an invaluable asset to the law clerk and his subsequent utilization of the knowledge is to be encouraged.⁶

The opportunity to obtain judicial clerking experience while in law school is a valuable one to the students involved. Many students take one, two, or even three years following graduation to gain the experience of a judicial clerkship. Although the experi-

3. See Casad, *The Kansas Trial Judge Clerkship Program*, 18 J. LEGAL ED. 75 (1965); Peden, *Obtaining Courtroom "Know How": The Judicial Assistanceship Program at the University of Louisville*, 12 J. LEGAL ED. 431 (1960).

4. A 1979 survey of clinical legal education is found in the United States Council on Legal Education for Professional Responsibility, Inc., *SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1978-1979*, 1-20 (1979).

5. This clinical course has been taught continuously by the author and Rebecca L. Rom, Adjunct Clinical Professor of Law, William Mitchell College of Law, and attorney, Faegre & Benson, Minneapolis, Minnesota. Both the author and Ms. Rom served as law clerks prior to teaching. Mr. Herr clerked for the Hennepin County District Court, in Minneapolis, during law school and Ms. Rom clerked for the Honorable Miles W. Lord, Chief Judge, United States District Court for the District of Minnesota, following graduation from law school. The author wishes to express his appreciation for the cooperation of Ms. Rom in the development of the clinical program and in the preparation of this Article.

6. *Fredonia Broadcasting Corp. v. RCA Broadcasting Corp.*, 569 F.2d 251, 255-56 (5th Cir.) (citation omitted), *cert. denied*, 439 U.S. 859 (1978).

ence gained in the shorter period of one semester is not quantitatively as great, the clinic offers many students an opportunity to view and participate in the judicial system in a manner which would otherwise be unavailable to them.

One of the goals of the Judicial Intern Clinic is to involve students directly in the observation of, and even participation in, a jury trial. The need for this type of experience has been underscored by numerous critics of traditional legal education.⁷ Each student is required to attend all proceedings in one jury trial, from jury selection to verdict. In addition to attending a jury trial, students are expected to observe a wide variety of judicial activity, including criminal appearances, arraignments, pleas and sentencing, presentation of civil pretrial motions, pretrial conferences and settlement conferences, and chamber discussions between the judge and the judge's full-time law clerks. Students participate in discussions of the judge's opinions and help prepare drafts of bench memoranda or opinions.

The clinic attempts to foster the educational development of the student in a number of areas. An understanding of the ethical obligations and limitations on judges and their courtroom staff is fundamental. Completion of the course in Professional Responsibility is a prerequisite of the Judicial Intern Clinic. The clinic is intended to hone the skills of the law student towards his or her ultimate role as an advocate for a client. It focuses the student's attention on the role of the lawyer in judicial decision making, and attempts to teach the student how a lawyer's efforts may be best directed toward advocacy of a client's cause.

The clinic's goal is a greater understanding of the judicial system and its role in dispute resolution in our society. The societal needs for dispute resolution and the courts' success in meeting those needs are discussed repeatedly throughout the semester. The role of judges in facilitating settlements of disputes without trial is also examined.

7. See JUDICIAL CONFERENCE OF THE UNITED STATES, *Final Report of Committee to Consider Standards for Admission to Practice in the Federal Courts* (Sept. 19-20, 1979) [Devitt Commission Report], reprinted in 83 F.R.D. 215 (1980). Senior Judge Edward J. Devitt, United States District Court, District of Minnesota has been a participant in the Judicial Intern Clinic, and has made numerous helpful suggestions in how the clinical experience of the law students can be improved, for which the author is grateful. Judge Devitt has vigorously supported the improvement of the teaching of advocacy skills in law schools. See, Devitt, *Why Don't Law Schools Teach Law Students How to Try Law Suits?*, 29 CLEV. ST. L. REV. 631 (1980).

IV. ORGANIZING THE CLINIC

The Judicial Intern Clinic meets four or five times during a semester. The first class is devoted exclusively to organizational and administrative matters, including a preliminary discussion of the role of the law clerks in the local courts. A general discussion of the ethical responsibilities of law clerks is held at that time, although the primary discussion of ethics and professional responsibility takes place at the following class.

The first assignment given to the students is a request for a five page paper on the subject of the ethical obligations of a law clerk.⁸ We specifically require the student to read the Canons of Judicial Conduct, as well as the Code of Professional Responsibility as adopted in Minnesota. One entire class period at the beginning of each semester is devoted to the discussion of the ethical aspects of the activity in which students are about to embark. Cases relating to law clerks are reviewed in this class.⁹ Ethics is a topic for discussion throughout the semester.¹⁰ In addition to the ethical requirements relating to confidentiality, the practical importance of confidentiality to the judges is emphasized to the students. In many cases, confidentiality appears to be the single factor judges deem most important in considering whether to participate in the program.

During the first class students are asked to fill out a sheet containing certain biographical and educational background information. A formal resume is required a week later, which is used in the assignment of students to the particular judges. The program is not elitist—all students who have completed the course in Professional Responsibility may participate. The only other requirement is that a student be in good standing scholastically. No grade, class standing, or similar requirements govern the assignment of a student to a judge. Similarly, judges are not permitted to “select” students from the pool of students.

8. This paper is used as a writing sample available to participating judges upon request.

9. *See, e.g.*, *Fredonia Broadcasting Corp. v. RCA Broadcasting Corp.*, 569 F.2d 251 (5th Cir.), *cert. denied*, 439 U.S. 859 (1978); *Kennedy v. Great Atlantic & Pac. Tea Co.*, 551 F.2d 593 (5th Cir. 1977).

10. Chief Justice Warren Burger has called upon the law schools to increase their role in the inculcation of ethical standards in aspiring lawyers. *See*, Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377 (1980).

After evaluating the student demand for the class¹¹ judges are contacted to determine their interest in participating. Upon assignment of a student to a judge, a meeting is held between the student, the judge, any of the judge's regular staff, and at least one of the instructors for the class. The purpose of this meeting is to ensure that the judge, student, and instructors understand their respective obligations and expectations and are aware of what each is required to do.

The judges participating in the program are asked to permit the student to participate in chamber discussions, to discuss matters pending before the court with the students, and to provide the students with some insight into the actions taken by the judge. The judges are not asked to participate directly in the grading of students, although each judge agrees to return an evaluation which forms one of the bases for grading. The judges are not asked to keep track of a student's hours. The student is expected to keep his or her hours essentially on an "honor system" basis.¹² Each judge is asked, however, if there is any reason to doubt the student's report on the number of hours devoted to court-related activities.

Each judge is also advised that the student will be expected to submit the written work done for the judge to the course instructors at the end of the semester. Each judge agrees to give the student at least one major writing project during a semester. In practice, most students write on many more projects of varying length and complexity.

In addition to the written work for the judge, the students are asked to prepare two documents for this class: monthly reports and a daily diary. The monthly reports are to be addressed to the judge to whom the student is assigned and to both of the instructors. This monthly report is to set forth, in summary fashion, the activities of the student during the previous month, including the approximate number of hours involved, types of projects, and other significant facts. Each student is required to deliver these reports to the judge during the first week of the month. The daily diary kept by the students is devoted to more subjective comments and observations.

11. This has become a perfunctory exercise because the clinic has had a good response from the student body. The class has been filled to its capacity of fourteen students every semester since the first semester and there is a full waiting list.

12. The student may take the course for either two or four credits requiring, respectively, 96 to 192 hours devoted by the student to the course.

Once the students have been assigned to judges, three or four class periods, spaced approximately every three weeks, are held to discuss the experiences of the students in court. In addition, the instructors meet with each student individually at mid-semester to review the written work of the student and to verify that the student is experiencing an appropriate variety of judicial activities.

The primary purpose of the class discussions is to expose the students to the differences between the state and federal judicial system and the varying approaches to judicial decision making used by different judges. The willingness of judges to discuss their decisions with the interns, the extent to which the judges review the attorneys' briefs and materials prior to hearings, the willingness to decide issues summarily, the approach toward settlement and involvement in settlement discussion, the judge's methods of helping a jury to understand the court proceedings, and the judge's interaction with the attorneys are all topics which provoke discussion. Additionally, the quality of attorney presentations and the widely divergent approaches to advocacy used by litigation attorneys appearing in court is a subject which repeatedly is brought up by students.

V. CONCLUSION

The clinical experience of supervised judicial clerkships is valuable for student participants. Specifically, the clinic enhances the students' legal education in the following areas:

1. Understanding the ethical responsibilities of judges and attorneys;
2. First-hand experience in the judicial process;
3. An opportunity to examine, and discuss, the role of juries, trial judges, and trial courts in resolving societal disputes;
4. An opportunity to observe, discuss with the trial judge, and discuss in class the trial techniques and tactics of trial attorneys; and
5. An opportunity to write bench memoranda or draft opinions.

The judges participating in the program have been eager to continue their participation, and the students have uniformly indicated that this clinic was one of the more valuable courses taken during their legal education. Because of the ease of administration of the program and the significant benefits derived from it by the

participating students, greater use of this clinical education tool is warranted.