Note for Ellman Clinical Theory Workshop Participants:

Our goals in writing "The Boundaries of Autonomy: Case and Client Selection in the Context of Law School Clinics" are to document clinic and clinical program norms and practices in a way that is useful to clinicians and to inform university leadership about these same norms and practices. We build on existing scholarship that anthologizes interference in law clinics and the risks law school clinics weigh to develop a tool that clinicians can refer to and show to their universities to describe how clinics operate.

The central tenets of the paper are autonomy and academic freedom. We aim to connect these principles to the practicalities of clinic work in ways that demonstrate both the professional responsibilities that clinicians have as practicing attorneys and the freedoms they have that manifest in pedagogical choices unique to clinicians.

By the time of the workshop we will have completed at least 10, hopefully more, surveys with schools that have historically been considered part of the T-14. The questions are shared in Appendix I of the paper. Our talk will provide a brief overview of the context in which this project developed and will focus on the themes emerging from the survey responses.

We welcome feedback on the paper as well as reactions to the premise and survey questions. We invite discussion on how norm setting functions at a time when norms are being upturned, how norms and best practices can be most effectively presented, and who would you like to present clinic norms and practices to at or outside of your institution? We hope for suggestions on framing the paper that are most useful to clinicians as we navigate the changing higher education landscape and that are open to broadening the discussion of autonomy and academic freedom to any aspect of interest to the group.

THE BOUNDARIES OF AUTONOMY: CASE AND CLIENT SELECTION IN THE CONTEXT OF LAW SCHOOL CLINICS

Laura Riley,[1] *Alicia Plerhoples,*[2] *Praveen Kosuri,*[3] *Beth Lyon,*[4] *Robin Walker Sterling,*[5] *and Ty Alper*[6]

Abstract

Law school clinical programs face unprecedented pressure to restrict their autonomy in selecting clients and cases. While political interference with clinics is not new, today's threats differ in scale, potentially cutting off hundreds of millions in federal funding, and increasingly come from within institutions themselves. Nervous administrators and faculty seek to preemptively constrain clinic autonomy to avoid controversy.

This article documents how such restrictions would violate established professional, ethical, and pedagogical norms. Clinical faculty operate at the intersection of academia and legal practice, bound by attorney-client confidentiality rules and professional responsibility requirements that protect client representation from institutional interference. Case selection, predicate to the attorney-client relationship, is integral to clinical pedagogy, teaching students to represent clients whose views they may not share, whose lives they may not understand, whose problems are novel to them. That exposure and experience is essential to becoming and being a lawyer.

Through original survey research of leading law schools, we demonstrate that clinical programs operate with substantial autonomy that represents the professional norm for good reason while potentially exposing institutions to criticism. This autonomy ensures compliance with ethical rules, academic freedom principles, and educational best practices developed over fifty years.

Law school clinics serve essential dual missions: training practice-ready lawyers and providing legal services to marginalized clients who would otherwise lack representation.

---

[1] Assistant Dean of Clinical Education, U.C. Berkeley School of Law.

[2] Paul and Patricia Saunders Professor in Business Law; Anne Fleming Research Professor; Associate Dean for Clinics and Experiential Learning, Georgetown University Law Center.

[3] Immediate Past Deputy Dean for Clinical Education (2018-2025), Practice Professor of Law, and Director of the Entrepreneurship Legal Clinic, Penn Carey Law.

[4] Clinical Professor of Law, Associate Dean for Experiential Education and Clinical Program Director, Cornell Law School.

[5] Mayer Brown/Robert A. Helman Clinical Professor of Law, Associate Dean for Clinical Education, Director of the Bluhm Legal Clinic, Northwestern Pritzker School of Law.

[6] Clinical Professor of Law; Co-Director, Clinical Program, U.C. Berkeley School of Law.

Protecting clinical autonomy is therefore crucial not only for legal education but for access to justice itself.

Introduction

Ever since law schools began housing and supporting clinics serving public interest clients, clinical faculty have had to grapple with the boundaries of their autonomy to select clients and to determine the manner in which they litigate cases on behalf of the clients they choose to represent. No lawyer ever has completely unfettered autonomy in these areas; constraints can come in the form of statutory or regulatory guidelines, financial pressures, limits of expertise, reputational anxieties, or a combination of any of these factors. Clinics operating within the walls of a law school have additional unique guardrails: the lawyers who lead them are usually part of a university faculty, reporting to a university administration – the political and policy interests of which may deviate significantly from those of the law school clinics.

As a general matter, from death row prisoners to religious minorities to unhoused people to radical protestors, law school clinics have a long and storied tradition of representing unpopular and/or marginalized clients. Our choice of clients does not always endear us to our faculty colleagues, our tenure review committees, our deans, our university presidents, or our schools' donors and political benefactors. This reality can put us in the crosshairs, and it can lead to both direct and perceived threats to our ability to choose our clients and how we represent them. Existing literature documents well cases over the past six decades in which law school clinics have faced, and, for the most part, withstood, political interference that threatened their dual service and educational missions. Calls for curtailment of clinical autonomy are therefore nothing new.

Recently, though, the calls are coming from inside the house: clinics face anticipatory restrictions on their autonomy, either self-inflicted or from law schools or campus administrators and faculty who seek to reduce risk by constricting the freedom of clinics to choose cases and projects that might impact the reputation of the school or draw unwanted attention to it. When this happens, we believe it is important to take stock of first principles, and then to identify the norms that govern questions of clinical autonomy at the nation's leading law schools. Clinics – even long after their arrival onto the legal academy scene – remain a marriage of teaching and practice that is deeply unfamiliar to many non-clinical colleagues, deans, and university administrators. When our institutions make noises about restricting our ability to carry out our mission, it is helpful to remind them of what we and our clinical colleagues across the country do, and why.

We are a team of clinical leaders at public and private law schools geographically spanning the country. This Article builds on previous work to document and memorialize norms related to autonomy and academic freedom in law school clinical programs but goes a step further by documenting the practices related to clinic case and client selection at schools that are likely to be looked to as models for administrators and politicians seeking either to dismantle or protect existing programs.

Through a survey of law school clinical programs at leading law schools, we demonstrate here that the law school clinics at the top-ranked law schools operate with a freedom and autonomy that – admittedly, and without question – has the potential to expose the law school and university at large to criticism, scorn, and real financial pressures. It would be disingenuous to suggest otherwise. But this autonomy is the norm in the profession for good reason: it is consistent with professional ethical rules, widely accepted principles of academic freedom, and the best practices of a profession that has successfully served clients and trained law student for more than half a century.

This Article builds on the essential foundation laid by Bob Kuehn, Peter Joy, and others who have meticulously documented the recurring patterns of political interference with the operation of law school clinics and the ways in which clinicians and their allies have generally been able to maintain their autonomy in the face of skepticism and outright hostility.[7] It recounts the current iteration of this real and perceived interference, which has transformed even some of the most stalwart supporters of clinical autonomy, including university presidents, provosts, and law school deans, into reluctant gatekeepers, second-guessing clinic case selection and pedagogical choices that were once considered untouchable. Meanwhile, longstanding skeptics of clinical education (both inside and outside the academy) are exploiting this moment of vulnerability, moving aggressively in some instances to dismantle programs that have spent decades training law students to become ethical, skilled attorneys while providing essential legal services to the indigent and marginalized.

This convergence of external political pressure and institutional anxiety threatens to gut the very programs that bridge the justice gap and prepare practice-ready lawyers. That may sound alarmist, but we think it reflects the current climate. We face challenges from, for example, revised federal guidance for federally funded institutions, which has altered the understanding and enforcement of longstanding civil rights and anti-discrimination laws. And we face challenges from gun-shy administrators, nervous donors, and our own faculty colleagues who default to "playing it safe" when it comes to selecting the clients we serve alongside our students. At the same time, there are powerful reasons – ethical, moral, and pedagogic – to support the norms of clinical autonomy and academic freedom that we explicate in this Article. Our vulnerable clients need our services more than ever, and our students more than ever need to learn what it means to use available legal tools to represent unpopular clients. We are not defensive about the critical importance of clinical autonomy; rather, we think there is a need to

[7] Robert Kuehn & Peter Joy, "Kneecapping" Academic Freedom, AAUP.org, Dec. 2010, at 8; Robert Kuehn & Peter Joy, Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility, 59 J. Leg. Educ. 97 (2009); Robert Kuehn & Peter Joy, An Ethics Critique of Interference in Law School Clinics, 71 Fordham Law Rev. 1971 (2003), ssrn.com/abstract=407060; Robert Kuehn & Bridget McCormack, Lessons from Forty Years of Interference in Law School Clinics; Peter Joy, Government Interference with Law School Clinics and Access to Government Interference with Law School Clinics and Access to Justice: When Is There a Legal Remedy?, 61 Case West. Reserve Law Rev. 1087 (2011); Jonathan Entin, Law School Clinics and the First Amendment, 61 Case West. Reserve Law Rev. 1153 (2011), https://scholarlycommons.law.case.edu/faculty_publications/86.

explain why clinical autonomy and academic freedom is necessary – always, but particularly so when threats to that autonomy are most tangible – and also why it is the norm at leading institutions.

The Article proceeds in four parts:

Part I establishes the foundational importance of clinical education by illuminating both its pedagogical value and its critical role in addressing justice gaps. For readers unfamiliar with clinical methodology, this section explains why clinical education has become indispensable to modern legal training as an essential component that ensures students graduate "practice ready" while serving communities that would otherwise lack access to legal representation. Understanding what legal education, writ large, stands to lose makes the case for protecting clinical autonomy all the more compelling.

Part II provides a comprehensive overview of existing literature on clinical autonomy and academic freedom in U.S. law schools. The historical context reveals that today's threats echo patterns of interference that clinicians have faced for fifty years, but with the added dynamic of interference threats coming from within our own institutions. This longitudinal perspective empowers administrators and faculty to recognize that resistance is not only possible but has been successful.

Part III explores the unique professional positioning of clinical faculty, who operate at the intersection of academia and legal practice. Clinical faculty bear dual obligations—to their students as educators and to their clients as practicing attorneys bound by professional responsibility and student practice rules. This dual role grants them both heightened responsibilities and enhanced protections that administrators and non-practicing colleagues often overlook. Understanding these professional obligations is crucial because interference with clinic case selection does not just threaten academic freedom, it puts clinical faculty in a position in which they might have to violate professional responsibility rules governing attorney conduct, opening them, their law schools, and their universities up to liability. This section walks readers through both the mechanics of clinical education and the case selection processes that are integral to student learning, demonstrating how the attorney-client relationship itself becomes a pedagogical tool that prepares students for the complexities of representing clients whose viewpoints they may not personally endorse. We also synthesize in this Part key statements of principles on clinical autonomy.

Part IV presents original empirical research that documents current practices and policies related to clinical autonomy at leading law schools. Building on previous surveys while providing fresh data for our current moment, this section reveals how proposed restrictions would deviate not only from established values and principles but from the actual practices at institutions likely to be viewed as models. By documenting what normal looks like, we provide concrete benchmarks against which to measure—and resist—proposed incursions on the autonomy of our clinical programs. Our research reveals that [XXX].

We believe an accurate accounting of the professional, ethical, and practical norms related to autonomy and academic freedom, as well as a credible survey of policies and practices at leading schools, will serve our clients and students well. We take our skeptics – and even our opponents – at their word; we know that representing unpopular clients can be, well, unpopular. But we aim to show that it is consistent with the highest aspirations of the worthy enterprise of clinical education.

Part I: Clinical Legal Education: Essential Foundation for Professional Practice

While law schools have long excelled at teaching students to "think like lawyers" through doctrinal analysis and case study, the legal profession increasingly demands graduates who can also "act like lawyers" from day one.[8] Clinical legal education represents far more than mere skills training or practical application of doctrine. Rather, it constitutes a distinctive pedagogical methodology that develops what research identifies as the transferable, generalizable competencies essential for effective lawyering in any context.[9] Through supervised representation of real clients in actual legal matters, clinical programs cultivate a sophisticated ensemble of analytical thinking, practical skills, and professional judgment that traditional classroom instruction alone cannot provide.[10] The parallel to medical education illuminates both the necessity and the potential of clinical legal education. It is unfathomable to imagine medical schools training doctors who had never seen patients before their graduation, yet this scenario mirrors the current state of legal education for many law students.[11] While medical students systematically progress through supervised clinical rotations that prepare them for independent practice, law students who participate in clinics gain valuable experience interviewing clients, learning their stories and lived experience, negotiating practical resolutions, or appearing before judges on behalf of real persons who rely on them for outcomes.[12]

Modern clinical legal education was born in the social ferment of the 1960s, emerging from the intersection of student demands for educational relevance and the burgeoning anti-poverty movement's need for legal advocates.[13] As university students made escalating demands for social engagement and relevance in their education,[14] law schools embraced the legal services model of law school clinics giving students academic credit for their participation, moving clinical education from an extracurricular to a curricular endeavor that provided representation to

---

[8] Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 *Clinical L. Rev.* 1, 17 (2000).

[9] Phyllis Goldfarb, Back to the Future of Clinical Legal Education, 32 *B.C. J.L. & Soc. Just.* 279, 298-99 (2012).

[10] *Id.* at 287; see also *Educating Lawyers: Preparation for the Profession of Law* 27 (William M. Sullivan et al. eds., 2007) [hereinafter Carnegie Report] ("The common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment on which each profession rests.").

[11] Erwin Chemerinsky, Why Not Clinical Education?, 16 *Clinical L. Rev.* 35, 36 (2009).

[12] *Id.* at 36-37. Consider reference to Jerome Frank - Why Not a Clinical Law School.

[13] Philip G. Schrag & Michael Meltsner, Reflections on Clinical Legal Education 3 (1998).

[14] Robert R. Kuehn & David A. Santacroce, An Empirical Analysis of Clinical Legal Education at Middle Age, 71 *J. Legal Educ.* 622, 623 (2022).

indigent clients with myriad legal problems.[15] The transformative potential of this educational model captured the attention of the Ford Foundation, which in 1968 committed $10 million over twelve years to promote clinical education in the legal academy, leading to the formation of the Council on Legal Education for Professional Responsibility (CLEPR) in 1969.[16] Through CLEPR's 209 grants to 107 law schools and subsequent federal funding totaling $87 million through the Department of Education's Title IX program, this vision of clinical education as simultaneously advancing educational excellence and social justice became embedded in American legal education.[17]

Today there are legal clinics spread across nearly 200 accredited law schools in the United States. They have moved beyond their origins to inhabit practices such as business law, intellectual property, tax, and securities and service clients who include veterans, women, children, and the elderly.[18] They embrace lawyering across many dimensions and for clients who are as heterogeneous as our society.

Clinical education's value extends far beyond teaching specific skills or exposing students to particular areas of law. At its core, clinical pedagogy develops what scholars identify as generalizable professional competencies, the foundational capabilities that enable lawyers to excel across diverse practice contexts and adapt to an evolving legal landscape.[19] Learning from experience provides enduring value regardless of a graduate's eventual practice specialization.[20] Clinical education systematically develops these transferable competencies through rigorous experiential learning where students are asked to make their thinking process visible, articulating, evaluating, and critiquing their choices in light of what has occurred.[21] The competencies developed encompass communication, collaboration, strategic planning, problem-solving, fact development, decision-making, and systemic evaluation—capabilities valued across all legal practice contexts.[22]

The benefits extend across the professional spectrum, serving both public interest and private practice needs. For students entering public interest and government positions, clinical education provides irreplaceable preparation for client-centered advocacy and resource-constrained problem-solving while cultivating the systemic perspective essential for effective policy advocacy.[23] Contrary to perceptions that clinical education primarily serves public interest

---

[15] Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 *Clinical L. Rev.* 1, 12 (2000).

[16] Kuehn & Santacroce, *supra* note 18, at 623.

[17] Barry et al., *supra* note 19, at 18-21.

[18]

[19] Goldfarb, *supra* note 2, at 298-99.

[20] *Id.* at 300; see also Anthony G. Amsterdam, Clinical Legal Education—A 21st-Century Perspective, 34 *J. Legal Educ.* 612, 616-17 (1984).

[21] *Id.* at 616-17.

[22] Goldfarb, *supra* note 2, at 287.

[23] Barry et al., *supra* note 1, at 12; see also Goldfarb, *supra* note 2, at 313-14.

career preparation, large law firms increasingly recognize the value of clinically-trained graduates.[24] The economic pressures facing legal practice have fundamentally altered the traditional model where clients underwrote the training of new lawyers, placing new demands on law schools to produce practice-ready graduates.[25] Clinical education develops the collaborative and interdisciplinary capabilities increasingly valued in sophisticated legal practice, where lawyers work cooperatively with professionals in other disciplines to address client problems in a more holistic, efficient, and cost-effective fashion.[26] The analytical and reflective capabilities fostered through clinical education—the ability to synthesize factual information, identify strategic options, anticipate consequences, and adapt to changing circumstances—serve clients well regardless of the legal context, providing foundations that no simulation or hypothetical exercise can replicate.[27] Clinical legal education represents not an alternative to traditional legal education but rather its essential complement, moving from the margins to the center of professional preparation to serve the broader interests of the legal profession and the clients it serves.[28]

Part II: Clinic Autonomy and a History of Political Interference

Law clinics date back to the first half of the twentieth century, with at least one clinical program dating as far back as 1904. Even then, law clinics operated with the twin goals of serving the poor and providing critical skills training to law students. But the activist zeitgeist of the 1960s facilitated an explosion of clinical programs, as law schools answered the call for more meaningful social engagement on behalf of the many populations clamoring to be heard during that time – the indigent and disadvantaged, anti-war protestors, racial and ethnic minorities, and other disenfranchised communities. Perhaps predictably, external pressures in the form of law school alumni, university officials, politicians, and corporate interests. This opposition most often took and continues to take the form of targeting client and case selection by clinic faculty.

Recent threats to law school clinic are the latest iteration of this abiding tension. Northwestern Community Justice and Civil Rights. CUNY CLEAR. Harvard International Human Rights Clinic.

- In this section, we may revisit the historical interference and digest 1) what the goal was and 2) what tactics they took. Tactics could include -- target the funding, input into client selection, target faculty, seek information on clients, personnel, clinic policies.

[24] Chemerinsky, *supra* note 4, at 41.

[25] *Id.* at 37; see also David A. Matasar, The Future of Legal Education: Three Visions and a Proposal, 51 *J. Legal Educ.* 1, 24-25 (2001).

[26] Barry et al., *supra* note 1, at 63-64.

[27] Chemerinsky, *supra* note 4, at 36; see also Goldfarb, *supra* note 2, at 299-300.

[28] Barry et al., *supra* note 1, at 74.

- Then we might consider unpacking what has happened at Northwestern (and maybe Harvard and CUNY) and showcasing how this is different or what new tactics and endgame they are seeking. Three different scenarios are at play here: 1) Northwestern where the University is being threatened with the loss of hundreds of millions of dollars and is actively negotiating with the administration 2) Harvard which faces the same threats as Northwestern but is fighting and 3) CUNY which doesn't take as much federal money but does receive State money and one of the principal federal investigators may become the Governor of NY.

As various federal entities have turned their sights on law school clinics, then, there is a sense of déjà vu. The recent threats of political interference are old wine in new bottles. They are different in scale, because being cut off from federal funding would be an existential-level event for many universities across the country, but not in kind. Over the last five decades, attempts to cabin clinic case selection have presented in all manner of protean guises. According to surveys of clinic faculty conducted in 2002, 2005, and 2008, these efforts have taken the form of "pointed inquiries directed at law school officials or clinic faculty intended to influence case-related decisions, [] threats to cut off clinic program funding or terminate a clinical teacher, [and] the actual denial of clinic funding or prohibition on handling certain types of unpopular or controversial cases or clients." Efforts to interfere in law clinic operations can be generally classified by the types of limitations attempted: case and client selection restrictions, funding restrictions and practice restrictions.

It is important to note that this kind of interference in case selection is widespread and common. All of these potential interests – the university, alumni, corporations, and politicians – are constantly in potential collision with law clinics. Add to that the reality that the vast majority of clinical professors do not have access to the same tenure protections as research faculty. Consider also that, while it has made important gains towards more acceptance, clinical legal education is still trying to carve out a place for itself within a system of legal academia prioritizes publishing. These elements create a perfect storm for interference in case selection. According to the Executive Director of the AALS, for each formal reported case of interference in a clinical program, "there are many dozens of criticisms voiced less formally." Law school deans swap stories about the latest call or email from a powerful stakeholder with a critique of their law school's clinic, often under the guise of concern for the school or its reputation. This is a problem that is capable of repetition yet evading review, since once the current crisis is resolved, involved parties are most likely to move on to the next.

Through this abiding threat, however, some important norms emerge. Most importantly, for the most part, law school administrators do not take part in the case selection decisions of their clinic attorneys. According to a 2002 survey by the Political Interference Group of the AALS Section on Clinical Legal Education, in 87% of schools, only clinic attorneys and students

participate in case selection decisions. The remaining 13% engage "advisory boards," but final decisions are made by the clinic's attorneys and students. Only two schools, in reaction to attacks on Tulane's environmental law clinic, reported giving the dean a role in pre-approving potentially controversial clinic cases.[29]

[Add: Section on clinical autonomy: Summary of literature/history on autonomy of clinical programs and the importance of keeping them immune from political interference, including the different kinds of political and other interference. Make special note of the kinds of resistance to political interference. Maybe make analogy to teaching hospitals – we would never restrict which patients they can serve?]

[Add: Small section on role of status. Status issues play into this as well. Because most clinicians are not tenured, the protection of academic freedom for clinicians should be stronger, not weaker. Even if clinicians don't have tenure, then their ideas about best practices in representing clients should.]

[Note: Analogy to current book ban debates: many people think that it goes too far is a parent can object to a book and have that book removed from the school's library so that no one can access it. What if the objection is from an alum, or a donor, objecting to the representation of an unpopular viewpoint?]

Part III: Educating Law Students to Practice Law Within Bounds of Rules of Professional Conduct

Clinics are part of the law school curriculum and show students a range of practice areas in preparation for their own legal careers while also meeting an access to justice need. Clinical law faculty are often compared to medical faculty: both teach their students by doing the work of their professions. Medical students in a teaching hospital can complete a rotation in pediatric care, general surgery, cardiology, dermatology, and other specialties. Similarly, law students can choose to further their career preparation by enrolling in a clinic in family law, criminal law, business law, appellate litigation, or civil litigation, to name a few.

Some medical departments (e.g., emergency rooms) and some legal clinics (e.g., criminal clinics who provide court-appointed representation to defendants charged with misdemeanors) take any patient or case that walks into their door. But for most clinics, clinical faculty carefully curate the type of clients that students in their clients represent in order to meet the learning objectives of the course. Client selection is largely done with a focus on (i) what clients will provide a rigorous learning experience for law students to learn the skills, responsibilities, and practice norms of the legal profession, (ii) what is within the expertise of the supervising clinical faculty member, and (iii) meeting access to justice needs. Additionally, some state law student

[29] More about this – what does this mean and who decides?

practice rules require that clinics not compete with the private bar in addition to requiring that they serve the public interest, or take on indigent clients, those who cannot afford a lawyer, or "or have particular difficulty obtaining lawyers because of the nature of their legal problems."[30]

Because they are practicing law, clinical faculty and students are bound by the rules of professional responsibility that govern lawyers in each state or jurisdiction, as well as state student practice rules. They must follow the client's decisions "concerning the objectives of representation,"[31] must keep client information confidential,[32] must represent their clients zealously,[33] and their clients can assert attorney-client privilege over their legal matters.

The legal profession has long adopted a neutral-partisan conception of lawyering where the lawyer's zealous advocacy on behalf of a client is distinct from their personal feelings toward a client or their position. This is codified in the rules of professional responsibility in Rule 1.2(b) which dictates that "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."[34] Clinical faculty model this rule for students as a critical element of being a lawyer.

This essential rule allows all clients to be represented by competent counsel, no matter their actions. An apt analogy to medicine is: a neurosurgeon does not ask who is under his scalpel when removing a brain tumor. The patient may be a mass murderer, a fraudster, a thief; the neurosurgeon operates on the patient anyway because of their professional responsibility to "respect human life" and "treat the sick and injured…without prejudice".[35] Likewise, criminal law clinics represent clients who are guilty of their crimes because justice requires that defendants have access to counsel and a fair assessment of their guilt or innocence.[6] This is not to say that lawyers and student attorneys in clinics are "hired guns" who represent any and all parties. Client selection is restrained by the norm of representing indigent or nonprofit clients and those who could not otherwise afford an attorney. Some clinical programs, like Georgetown Law's, also have an express social justice mission and largely operate clinics that seek to challenge and remedy injustice.

The American Bar Association (ABA) regulates law schools, including their legal clinics. ABA Standard 208 which addresses academic freedom and freedom of expression states that a school's academic freedom policies "shall.... apply to client representation in clinical

---

[30] Stephen Wizner & Jane Aiken, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, pg 997 (*Fordham Law Review*, 2004)

[31] [Add footnote to Model Rules and DC Rules of Prof'l Conduct Rule 1.2a]

[32] [Add footnote to Model Rules of Prof'l Conduct]

[33] [Add footnote to Model Rules of Prof'l Conduct]

[34] [Add footnote to Rule 1.2(b)]

[35] [American Medical Association, Declaration of Professional Responsibility https://www.ama-assn.org/delivering-care/prevention-wellness/ama-declaration-professional-responsibility]

programs,"[36] among other aspects of law school expression. The ABA defines law clinics as a "substantial lawyering experience that involves advising or representing one or more actual clients or serving as a third-party neutral."[37] The ABA dictates that law schools must provide "substantial opportunities to students" to participate in law clinics or field placements, and law students must complete at least six credits of experiential education, which may include a law clinic.[38] Law students in clinics must also be directly supervised by a faculty member.[39]

While the ABA regulates lawyers and law schools, the ABA does not have a model student practice rule. That is left to the states and particularly to state courts.

- [Add: paragraph on student practice rules which often govern the types of matters students may handle.]

Largely, clinical faculty have adopted a particular pedagogy in which they make law students "first-chair" in representing clients. This means that law students are making the oral arguments in court to defend their clients, advising their clients on legal strategy, and drafting legal work product. In this way, law students are not only developing their legal skills but they are also developing their own professional identity by representing one or more clients as lead counsel.

- Add: discussion of Chavkin's types of pedagogy – watching, doing, etc; Clinical faculty engage in "guided discovery" by supervising their law students, providing feedback (and editing) on their written work product, mooting their live-client interviews, counseling sessions, and other interactions, and mooting their oral arguments.
- Add: discussion of Binder on Client-Centered Lawyering

But, following the Rules of Professional Conduct, clinic cases are client cases. The clinician and clinic students advise clients on legal strategy, but ultimately abide by the clients' decisions.

Additionally, within the law school, only clinicians and clinic students are bound by an attorney-client relationship with their clients. Non-clinical faculty and students not participating in the clinic are outside the attorney-client relationship and therefore, under the Rules of Professional Conduct, clinicians and clinic students cannot share client information with law school administrators and other non-clinical faculty or staff.

Yet, law school (and by extension – university) oversight of law school clinics does exist. Most law schools have clinic administrators such as a Clinic Director or Clinical, Associate,

[36] ABA Standard 208(a)(2)

[37] [ABA Standards and Rules of Procedure for Approval of Law Schools 2024-25, Standard 304c] [Add in New Proposed Standard]

[38] [ABA Standards and Rules of Procedure for Approval of Law Schools 2024-25, Standard 303a and 303b]

[39] [ABA Standards and Rules of Procedure for Approval of Law Schools 2024-25, Standard 304a6]

Deputy or Vice-Dean who is part of the law school administration (or dean's suite) and oversees the clinical programs, reporting directly or indirectly to the law school dean.

The faculty also have oversight of law school clinics in that they (i) are most often the body that hires the clinician who directs the clinic and (ii) vet the subject matter and pedagogy of the clinic when a new clinic is added to the curriculum. The faculty exerts their influence over the clinical curriculum via shared governance and the hiring process.

Because of attorney-client privilege and professional / ethical duties that a lawyer has to their client, the appropriate time for non-clinical faculty or law school administrators to have input into the clinic's clients of types of clients the clinic will take is at the hiring stage.

Case Selection

[When the clinicians we surveyed] choose cases for current or potential student involvement, they balance a number of non-negotiable considerations. Clinicians balance their caseloads to ensure they have sufficient existing (or obtainable) resources to pursue the casework. In assessing resources, they must factor in that the primary case handlers are students who rotate in and out of the clinic. Clinicians must only accept matters they are competent (or can develop competence) to handle and supervise. Additionally, he matters they take on must provide pedagogically appropriate casework or potentially provide work for students in the future. Finally, clinicians must ensure that the representation does not violate any professional responsibility norms, including positional conflicts of interest. For example, a clinic may not represent a student or employee of their university against their employer.

Clinicians spend a great deal of time developing their caseloads with all these nonnegotiable factors in mind. None of these factors, however, requires clinicians to reject controversial cases; on the contrary, the student practice rules require law school clinics to assist individuals who otherwise would not have representation. It is only the "institutional conflict" of universities or outside interests that lead to overt attempts to force clinicians to screen out controversial cases, or create environments in which clinicians decide they must self-screen. Therefore, when powerful interests are disturbed by the work of clinics, debates flare up about the extent to which academic freedom protects clinical case selection.[40] Arguments in favor of full faculty control over case selection fall into the several categories.

University neutrality and legal practice as a professional activity. Client selection is not a political tool, nor should a clinic representing a controversial client reflect on the host university. This is a fundamental aspect of case selection, and one that is widely respected. If an academic

[40] *See* Robert R. Kuehn & Bridget M. McCormack, *Lessons From Forty Years of Interference in Law School Clinics*, 24 Geo. Legal Ethics 59 at 41 (2011) ("The willingness of law clinics to represent unpopular clients, for whom clinics often are the only available legal assistance, has led to numerous attempts by public officials to impose case and client selection restrictions on clinics).

publishes an op-ed, a law review article, or a book, or offers testimony in their individual capacity, they are clearly indicating their views, and all of these activities are squarely protected by academic freedom. Meanwhile, client selection does not implicate the individual views of the lawyer, and academic freedom should all the more easily attach, as case selection is governed by other factors in the professional judgment of the faculty-practitioner. The Rules of Professional Conduct explain clearly that a lawyer's representation of a client's cause does not signal endorsement of the client's cause.[41] No rational observer argues that a lawyer representing a person accused of murder is endorsing murder, or that a lawyer representing a church against allegations of molestation is endorsing rape. Moreover, licensed faculty-practitioners have handled legal matters that do *not* involve student supervision, whether paid or on a *pro bono* basis, since long before clinical legal education evolved. Throughout this long history of legal practice by academics, the views of the client have not been ascribed to the faculty member, and faculty are permitted to engaged in such work within time limitations on their percentage of effort.

Access to Justice. In addition to the student practice rules summarized above, the Model Rule Preamble emphasizes a lawyer's public responsibility to promote justice and to "devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel."[42] Association with an unpopular group or cause is the very essence of a social barrier.

Cases as Topics and Textbooks, Clinics as Laboratories. In the academy, individual faculty are given control over their course materials to maximize student learning, and a clinical faculty member selecting cases should enjoy the same deference. [43] As Kuehn and Joy noted in 2010, "Deference to the curricular decisions of the faculty…nourishes an environment of discovery and intellectual experimentation. Respect for academic freedom in teaching helps keep politics and the caprice of public opinion from interfering with educational excellence."[44] In its 2025 "Statement on Instructional Use of Potentially Offensive, Disturbing or Controversial Materials," the UCLA Academic Senate Committee on Academic Freedom cited the American Association of University Professors Statement of the Freedom to Teach and noted its support for faculty control over topic selections: "Universities aim to expose students to a range of ideas and

[41] MODEL RULES OF PRO. CONDUCT r. 1.2(b) (A.B.A. 2025) (stating, "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."); MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. 5 (A.B.A 2025) (stating "Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities,").
[42] MODEL RULES OF PRO. CONDUCT Preamble (A.B.A. 2025).
[43] Robert R. Kuehn & Bridget M. McCormack, *Lessons From Forty Years of Interference in Law School Clinics*, 24 Geo. Legal Ethics 59 at 41 (2011).
[44] Kuehn & Joy, *supra* note X, 11-12.

perspectives. Toward this end, the principles of academic freedom protect an instructor's choice to discuss topics that are relevant to the course even when some parties find them offensive. The instructor should not introduce such topics capriciously; the decision should be based on the instructor's academic judgment of its value and relevance. Academic freedom in teaching includes the 'right of the faculty to select the materials [and] determine the approach to the subject.'"[45] Elizabeth Schneider made the point that academic freedom is even more important in the context of clinical legal education because of the "second-class status" ascribed to clinical education.[46] Professor Schneider was writing in 1984, but to this day, clinicians remain significantly less likely than their podium faculty counterparts to have access to tenure-stream appointments, [particularly in the law schools we surveyed].

Constitutional Academic Freedom. Courts have relied on equal protection to strike down restrictions on faculty participation in unpopular lawsuits,[47] and in the classroom rather than the service-learning context, federal and state courts have repeatedly protected "speech related to scholarship or teaching" academic freedom.[48]

Norm of courtesy notification at time of filing, not selection. At most for-profit law firms, case selection is a measured process where partners weigh in on the potential impact a case could have on the firm's reputation and more importantly how taking that case will benefit the finances of the firm. Whereas law firms may have vertical control over case selection, a law school Dean and university Provost are not law firm partners. [Our survey revealed] a strong tendency toward a collaborative approach to case selection. Purely at the discretion of clinic faculty directors and clinical deans, at [most of the surveyed schools], a courtesy heads up may be provided to deans, university general counsel, and communications departments regarding the implications of a particular case. The courtesy notification may come at the moment of case selection, but to protect client confidentiality, more frequently the notifications are offered shortly before filing of a complaint that is likely to create controversy.

---

[45] UCLA Academic Senate Committee on Academic Freedom, "Statement on Instructional Use of Potentially Offensive, Disturbing or Controversial Materials," (June 16, 2025) (citing American Association of University Professors, Statement of the Freedom to Teach).

[46] Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, Journal of College and University Law, vol. 11, no. 2, Fall 1984, pp. 179-214 ("Because clinical education has a second-class status within legal education, it needs the 'protection' afforded by academic freedom,");

[47] *See, e.g., Demers v. Austin,* (9th Ci. Wash. Jan. 29, 2014) ("We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition." (*citing Grutter v. Bollinger,* 539 U.S. 306, 329 (2003)); *See also* Kuehn & Joy, *supra* note X, at 12-14 (citing *Trister v. Univ. of Miss.*, 420 F.2d 499, 504 (5th Cir. 1969) (a university cannot discriminate against professors for representing unpopular client); Atkinson v. Bd. of Trs. of Univ. of Ark., 559 S.W.2d 473, 474 (Ark. 1977) (a law that prohibited professors from assisting in any state or federal lawsuit violated the Equal Protection clause)).

[48] *See* Kuehn & Joy, *supra* note X, at 12-13.

C. Statements of Values

Clinical faculty work at the intersection of academia and legal practice. Clinical faculty are bound by the professional responsibilities of both practicing attorneys and educators. They also have access to the rights and freedoms associated with these professions.

As practicing attorneys, clinical faculty are bound by the rules of professional responsibility issued by the State Bar Association they are members of. These rules vary slightly by state but their basis is the American Bar Association's Model Rules of Professional Conduct and are often approved by the State's Supreme Court.

Central to practitioner work is the duty of competence (Rule 1.1[49]) and the duty of confidentiality (Rule 1.6[50]). Clinical faculty are individually licensed and barred attorneys who, as experts in their field, must provide high-quality representation to their clients. Part of that representation includes the responsibility to keep information relating to the representation confidential, including who the client is. In addition, attorneys and clients avail themselves of the attorney-client privilege, which is evidentiary and protects communications between an attorney and client in order to encourage full communication and facilitate effective representation.

As academics, clinical faculty are bound to invoke academic freedom as a professional standard and are protected by academic freedom as a legal right.[51] The Association of American Law Schools has long recognized and defended law school clinical faculty's and clinics' academic freedom.[52] In the law school clinic context, this freedom includes but is not limited to choosing cases and representing clients without interference.[53] This extends to managing cases and representational decision making.

The Association of American Law School's Clinical Legal Education Section's bylaws, reference the work that clinicians do in their dual roles of attorney and academic: "The Section's work includes supporting scholarship and mentoring and building on deep-rooted pedagogical and community values that include a focus on social injustice and on the promotion of the status

[49] American Bar Association Model Rules of Professional Conduct, Rule 1.1: Competence, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/

[50] American Bar Association Model Rules of Professional Conduct, Rule 1.6: Confidentiality of Information, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/.

[51] For extensive discussion of academic freedom as a professional standard and a legal right, *see*: American Association of University Professors, Academic Freedom and the Law, https://www.aaup.org/sites/default/files/Academic%20Freedom%20Outline%20for%20Website.pdf.

[52] Joyce Saltalamachia, Protecting the Academic Freedom of Law School Clinics, New York Law School (2003) https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1437&context=fac_other_pubs#:~:text=The%20Association%20of%20American%20Law,from%20outside%20interference%20or%20influence.

[53] *Id.*

of clinics and externships within the broader legal academy."[54] As practitioner teachers, clinical faculty provide students with a core academic component of their legal education. Through clinics, faculty introduce students to their professional responsibility of providing pro bono service[55] and teach students lawyering skills to help them bridge the access to justice gap.

Part IV: Clinic Norms – Survey

This section will convey the results of a survey of T-14 law schools regarding their policies and practices around these issues. We will establish that there are appropriate restrictions on case selection imposed by external bar rules, the governing ethical rules, and reasonable/appropriate law school or university policies - but that a practice of needing to vet clinic projects or cases with non-clinical faculty or law school administration would be far outside the norm, and would undermine the values of clinical education that contribute to its importance as a vehicle for delivering quality, practice-ready education to our students.

Aggregate as T-14 and list schools surveyed with no other identifiable information. When introducing project to schools describe goal as establishing trends and memorializing clinic norms and best practices.

Conclusion

[54] Association of American Law School, Bylaws of the Section on Clinical Legal Education, Art. I, Sec. 2, https://www.aals.org/app/uploads/2023/10/BYLAWS-Fall-2022-Clinical-Legal-Education.pdf.

[55] American Bar Association Model Rules of Professional Conduct, Rule 6.1: Voluntary Pro Bono Publico Service, https://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1/

Appendix I: Survey Questions

1. Describe the general structure of your clinical program and its leadership. For example, is it a collection of in-house clinics that share common administrative assistance, with individual clinic directors and an overall associate dean for clinics? Or some other model? Is the clinic a separate entity from the University?

2. What status do your clinical faculty have? Are they tenured or have long-term contracts? How would you describe their voting rights?

3. Describe how much autonomy your clinics have in client/case selection? If a clinic decided to take on a high-profile, unpopular, and/or high financial cost client, would the clinic have to vet this choice with or notify anyone? If so, who? Is there anyone who can tell a clinical professor that that professor cannot take a particular case? If so, can this also happen once the case has already been taken?

4. Is there any written or unwritten procedure around the selection of "sensitive" cases or clients? If so, describe the procedure and how "sensitive" cases or clients are defined. Does client and/or case selection process vary by clinic or type of case?

5. How would you articulate the constraints on case/client selection in your program? Some examples: student practice rules, other bar rules, financial considerations, your institution's identity/politics, internal policies.

6. Describe how much autonomy your clinics have with respect to curriculum/syllabus? Does anyone review these materials? When, for what purpose, and by whom? Are they ever reviewed for viewpoint diversity? Are other law school courses reviewed for this purpose?

7. Describe the role of the clinical program dean/director with respect to knowledge of, and/or control over, individual clinic case selection/dockets. Is the person in this role aware of the dockets of each clinic? If so, for what purpose? Can the person in this role run a report to find out the dockets of each clinic? If so, under what circumstances would this be done?

8. Is there a clinical program-wide conflict check that is done at some point? Is there any ideological or political aspect to that conflict check or is purely to ensure adherence to ethical rules?

9. If you have accepted cases you know are controversial or more costly, what were your reasons for taking them? If you had not taken them, were there other options for those clients to secure representation?

10. Do you have in-house or other ethics counsel? If so, describe the arrangement with respect to payment, status of counsel, how confidential their advice is, etc. Do you also work with your university general counsel? If so, how?

11. When a brand-new clinic is launched at your school, what is the procedure by which the subject matter of that clinic is chosen?

12. If a clinician decides to change clinics or practice areas, how if at all is that approved or communicated institutionally?

13. Has there ever been an issue involving political interference with a clinic at your institution? Please describe including process for resolution and ultimate resolution. Were academic freedom arguments made and how were they received?