

## THE CLINICAL LAW REVIEW AT 25— WHAT HATH WE WROUGHT?

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### INTRODUCTION

1992 seems like a lifetime ago. I was in my tenth year as a clinical teacher at American, and in my second year as a tenured law professor. My children were seven and five years old, respectively. (They are now both married and parents of infants.) The sports teams I followed most closely (and still do), the Yankees in baseball and the Giants in football, were both having down years.<sup>1</sup> The Americans with Disabilities Act, a landmark statute of great importance in disability rights, my substantive field of interest, had been enacted only two years earlier. To be sure, the political campaign generated a fair bit of excitement, as the three-way race between George H.W. Bush, H. Ross Perot, and Bill Clinton was in full swing, though from today's overheated political perspective that campaign seems almost quaint by comparison.

My most important professional activity in 1992 was my service as chair of the Association of American Law Schools (AALS) Section on Clinical Legal Education. In September 1992, I wrote a Message from the Chair for the Section's newsletter on clinical legal scholarship and the fast-developing plans to establish a peer-edited law journal dedicated to its publication.<sup>2</sup> Mine was not the first Message from the Chair to address clinical legal scholarship—Gary Palm's Message in a 1986 Section Newsletter was entitled "Scholarship and Clinical Educa-

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With apologies to Samuel F.B. Morse and the Book of Numbers, 23:23, the phrase is in the title is a take-off from "What Hath God Wrought," the words from the Bible transmitted as the first Morse Code message on May 24, 1844.

<sup>1</sup> The Yankees record that year was 76-86. The Giants would finish 6-10. The Yankees' 1992 losing season was its fourth straight; starting the following year, 1993, the Yankees have not had any losing seasons. See [http://newyork.yankees.mlb.com/nyy/history/year\\_by\\_year\\_results.jsp](http://newyork.yankees.mlb.com/nyy/history/year_by_year_results.jsp). The Giants have been less successful in this time period, but have appeared in three Super Bowls, winning two of them. See <https://www.pro-football-reference.com/teams/nyg/index.htm>.

<sup>2</sup> Bob Dinerstein, *Message from the Chair*, SECT. ON CLIN. LEGAL EDUC. NEWSLETTER, ASS'N AM. L. SCHS. 3 (Vol. 92, No. 2, Sept. 1992) ("Dinerstein, *Message from the Chair*").

tion”<sup>3</sup>—but my purpose was to advance the discussion in several ways. I sought not only to make the case for the need for clinicians to produce legal scholarship (Gary’s treatment of the issue was much more ambivalent, and John Elson was more skeptical still) but also to set out some characteristics and goals for it. I suggested some areas that a new clinical legal education journal might explore, while, at the same time, suggesting some forms of writing that might not strictly speaking qualify as “clinical legal scholarship.”

In the Message, I argued that not all writing by clinicians was clinical scholarship but that “[w]hen a clinical scholar writes about clinical themes he or she is speaking (or writing) in the clinical voice. The value of a new clinical journal lies in its ability to provide an opportunity for clinical voices to be heard.”<sup>4</sup> I wrote that clinical scholarship could have the following goals. It could:

1. Inform one’s understanding of the lawyering skills one seeks to teach; develop a practice-oriented scholarship;
2. Allow us to see connections between our experiences and those of others;
3. Sharpen and require us to defend our ideas;
4. Permit the advancement of knowledge in the field;
5. Describe and analyze critically the phenomenon of role-based learning—the insights and distortions it can produce;
6. Analyze critically the pros and cons of different forms of clinical education—simulation, externship, in-house clinic—beyond mere description; and
7. Examine the relationship between theory and practice.<sup>5</sup>

I added that I thought, as distinct from most other legal scholarship, clinical legal scholarship:

1. Uses the lawyer’s or client’s actual experiences as a point of departure for analyzing legal or social problems; it is contextual and grounded in the real experiences of real people;
2. Is more likely to consider what happens in trial courts than in appellate courts;
3. Is likely to focus on issues of poverty, under-represented people, and public interest issues;
4. Can be concerned with the clinical law student’s learning process and pedagogy more generally; and

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<sup>3</sup> Gary Palm, *Message from the Chair, Scholarship and Clinical Education*, SECT. ON CLIN. LEGAL EDUC. NEWSLETTER ASS’N AM. L. SCHS. 1 (Sept. 1986). In addition, John Elson had published in 1989 his controversial article, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343 (1989).

<sup>4</sup> Dinerstein, *Message from the Chair*, *supra* note 2, at 4.

<sup>5</sup> *Id.* at 4-5.

5. Can evaluate different ways of teaching students to learn how to learn from experience and engage in self-evaluation.<sup>6</sup>

In a short essay,<sup>7</sup> I wrote around the same time as part of a *Cleveland State Law Review* symposium on The Justice Mission of American Law Schools, I added that clinical legal scholarship could be expected to:

1. Study the settings in which lawyers provide representation to clients;
2. Examine lawyer-client relationships—client-centeredness, lawyer domination of clients, etc.;
3. Address issues of professional responsibility and provide a critique of professionalism;
4. Incorporate interdisciplinary and multi-disciplinary perspectives;
5. Include empirical studies of lawyering;
6. Make use of clinicians' outsider status within the academy; and
7. Explore theories of justice.<sup>8</sup>

In the Message from the Chair, I noted the increased momentum for the establishment of a peer-edited journal dedicated to clinical legal scholarship, and, writing only for myself, mentioned that a clinical journal could include, in addition to articles dealing with the above themes, articles that could:

1. Discuss structural barriers clinicians face in producing clinical scholarship;
2. Present brief case reports and discussions of pedagogical techniques that could help clinicians in their daily work; and
3. Deal with the seemingly mundane aspects of clinical teaching—for example, examining inconsistent approaches to student empowerment—that could inform our daily clinical practice and approaches.<sup>9</sup>

Within two years, and after some sensitive negotiations, the *Clinical Law Review* (“CLR”), an entity sponsored by the Clinical Legal Education Association, New York University School of Law, and the Association of American Law Schools, became a reality. In the first issue, the three editors-in-chief—Stephen Ellmann, Isabelle Gunning, and Randy Hertz—set out their own visions for the journal and

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<sup>6</sup> *Id.*

<sup>7</sup> Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEVE. ST. L. REV. 469, 469-74 (1992) [in Symposium, *The Justice Mission of American Law Schools*, 40 CLEVE. ST. L. REV. Nos. 3 & 4 (1992)].

<sup>8</sup> *Id.* at 471-74.

<sup>9</sup> Dinerstein, *Message from the Chair*, *supra* note 2, at 5-6.

the kind of scholarship it would produce.<sup>10</sup> They noted that clinical pedagogy was such a new discipline that “[c]linicians still are debating fundamental questions concerning the nature and potential of the teaching enterprise.”<sup>11</sup> They expressed the hope that the CLR could reflect in print the “intellectual challenge and emotional responsiveness of the best of our clinical conferences.”<sup>12</sup> They stressed the importance of multi-cultural, multi-racial, and gender concerns, as well as issues of difference more generally.<sup>13</sup> They anticipated that there would be articles about the different locations of clinical legal education—in-house clinics, externships, and simulation courses—and articles about non-clinical courses.<sup>14</sup> They stated that they sought a diverse range of formats, welcomed letters to the editor, and noted that, “[W]e welcome shorter pieces that seek to advance inquiry in a more discrete fashion through the clarity of their observations, the questions they raise, and the areas they identify as deserving of exploration.”<sup>15</sup> I was heartened to observe that there was substantial overlap between the aspirations of the founding editors-in-chief and those I had expressed two years earlier.

Fast-forward 25 years to the present time. The CLR is now an established institution, regularly publishing two issues (on time) each year.<sup>16</sup> Under the able leadership of its three editors-in-chief,<sup>17</sup> and its

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<sup>10</sup> See, Stephen Ellmann, Isabelle R. Gunning, and Randy Hertz, Foreword, *Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L. REV.1 (Spring 1994) (Ellmann, et al., *Clinical Lawyer-Journal*). The editors-in-chief also solicited the views of a number of clinical scholars, whose articles in the issue constituted *Symposium: The Many Voices of Clinical Legal Education*, *id.*

<sup>11</sup> Ellmann, et al., *Clinical Lawyer-Journal*, *supra* note 10, at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 4. This solicitation of shorter pieces remains true today, as per the CLR website: “The Review welcomes unsolicited articles (as well as essays, comments, and other types of shorter pieces) on lawyering, clinical teaching, legal practice, or related subjects.” <https://www.law.nyu.edu/journals/clinicallylawreview>.

<sup>16</sup> In its first year of operation, the *Clinical Law Review* produced three issues. In each of the next 24 years, it has published two issues, timed to come out at the end of the fall and spring terms. The *Clinical Law Review* also published two special issues, volumes 2 and 3 of an annotated clinical bibliography compiled by Sandy Ogilvy and Karen Czapan-skiy : J. P. Ogilvy with Karen Czapan-skiy, *Clinical Legal Education: An Annotated Bibliography (second edition)*, Special Issue No. 1, CLIN. L. REV. (Spring 2001); J. P. Ogilvy & Karen Czapan-skiy, *Clinical Legal Education: An Annotated Bibliography (third edition)*, Special Issue No. 2, CLIN. L. REV. (Fall 2005). In the Introduction to the latter volume, Sandy Ogilvy observed: “I want to thank the editorial board of the *Clinical Law Review* for publishing the previous edition of the bibliography and this new one in their entirety. Everyone in clinical legal education is deeply indebted to the *Clinical Law Review* for its leadership in encouraging and publishing clinical scholarship. The publication of this bibliography is another example of the Review’s commitment to clinical scholarship.” J. P. Ogilvy, *Introduction* 3, in *id.*

<sup>17</sup> Randy Hertz is the permanent member of this troika, with two other clinicians serv-

board of editors,<sup>18</sup> this peer-reviewed journal has become the publishing site of choice for the placement of clinical legal scholarship. Some of the most iconic and influential articles in the clinical canon have appeared in its pages.<sup>19</sup> Nascent and experienced clinical scholars alike have published pieces in the CLR, with a number of respected scholars publishing multiple times in the journal. By any measure, the Clinical Law Review has been a great success.

But as I thought about the 25 years of the CLR's publishing history, I was intrigued by the question of whether, and to what extent, the CLR had implemented the visions of clinical scholarship the three editors-in-chief and I had identified so many years ago. Has the CLR published the kinds of clinical pieces we anticipated? If not, are there particular types of articles or other writings that the CLR has not published or subject-matter areas it has not explored? Has the CLR managed to publish in the "diverse range of formats" it sought, including the kinds of shorter pieces it identified? Perhaps most importantly, in what areas, subject matter, or formats of clinical legal scholarship has the CLR published that we did not anticipate?

An in-depth, exhaustive examination of these issues is well beyond the scope of this Essay. But by touching on some broad themes, I hope to highlight what I see as some of the CLR's most important characteristics, as measured by the articles it has published. At the end, I will make some recommendations for the kinds of clinical legal scholarship and CLR writings I would hope to see in the future.<sup>20</sup>

## I. THE FOCUS OF THE CLR—WHAT'S BEEN IN?

The categories of articles discussed below overlap considerably, and in many cases an article may be relevant for multiple categories. For my purposes, however, the specific characterization is less impor-

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ing with him for set terms that rotate. Steve Ellmann and Isabelle Gunning were the first co-editors-in-chief with Randy.

<sup>18</sup> I served on the original board of editors through Volume 5, No. 2 (Spring 1999).

<sup>19</sup> Mentioning any article in this category is sure to engender controversy but most would agree that at least one article for which this description is apt is Susan Bryant, *The Five Habits: Building Cross-Cultural Competence*, 8 CLIN. L. REV. 33 (2001).

<sup>20</sup> Two caveats are in order. First, I recognize that in an important sense the CLR, or any journal, is dependent on the submissions it receives, and cannot simply order up the types of scholarship it would like to publish (though from time to time the CLR has solicited submissions on particular topics, or by particular authors). Moreover, even if an article touches upon a subject the editors think would be important to examine in the journal, the article might not survive the peer review process, a key element of the CLR's structure (and, of course, different from the process virtually all student-run law reviews use). Second, my analysis did not entail any discussion with the current editors-in-chief or members of the Board of Editors about their publication goals and aspirations, their process, or any aspect of the current operation. Rather, I am judging the CLR literally by looking at what it actually has published during its 25-year history.

tant than the overall picture of some areas<sup>21</sup> in which the CLR specialized.

### A. Sources of Articles

Perhaps the most striking aspect of the sources for CLR articles is the extent to which the journal has published papers by clinicians at various conferences. By my count, the CLR has published papers from 16 conferences.<sup>22</sup> The CLR has published papers from the six national conferences on externships.<sup>23</sup> The CLR also published papers originally presented at the various “Lake Arrowhead” clinical scholarship conferences co-sponsored by UCLA School of Law and the Institute for Advanced Legal Studies, University of London.<sup>24</sup>

In addition, the CLR has convened its own virtual symposia. As noted above, Volume 1, Issue 1 was largely a symposium on the nature of clinical scholarship. In subsequent issues, the CLR has presented symposia on the MacCrate Report, Dealing with Difference, the 25th anniversary of the publication of the Bellow and Moulton Lawyering Process textbook, Analysis of the Rodney King trial, and, most recently, the 25th anniversary of the publication of Gerald Lopez’s influential book, *Rebellious Lawyering*.<sup>25</sup>

One significant innovation the CLR began in 2006 was NYU School of Law’s hosting of a CLR Writer’s Workshop. The workshops

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<sup>21</sup> I did not attempt to count up all of the articles that address the lawyer-client relationship, of which there are many, nor enumerate how many articles deal with in-house clinics, externships, simulation courses, non-clinical courses, or other subjects. My overall impression is that in-house clinics and externships are well represented in the CLR, with simulation courses much less so.

<sup>22</sup> See Memorandum from Sahar Takshi to Robert Dinerstein (undated but attached to July 14, 2019 email) 1-2 (on file with author).

<sup>23</sup> See, e.g., CLR volumes 5(2) (Spring 1999) (Externship 1) and 21(1) (Fall 2014) (Externship 7). The CLR has not published en masse articles from Externship 8 (March 3-6, 2016) or Externship 9 (March 9-11, 2018).

<sup>24</sup> See, e.g., CLR volumes 5(1) (Fall 1998) (Conference on “Conceptual Paradigms in Clinical Legal Education”) and 18(1) (Fall 2011) (Conference on “Complex Clinical Clients: Lawyering Beyond the Individual Client”). Originally, UCLA School of Law’s partner from the United Kingdom was the University of Warwick. However, by the time of the Fourth International Clinical Conference in 1997—the first one held after the inauguration of the CLINICAL LAW REVIEW in 1994—the U.K. partner was the Institute for Advanced Legal Studies at the University of London.

<sup>25</sup> See CLR Volumes 1(2) CLIN. L. REV. 347-491 (Fall 1994) (*Symposium on the MacCrate Report: Papers from the Midwest Clinical Teachers Conference*); 4(1) CLIN. L. REV. 1-162 (Fall 1997) (“Articles, Essay and Comments on “Dealing with Difference”); 10 (1) CLIN. L. REV. 1-468 (entire issue) (Fall 2003) (*Symposium: The 25th Anniversary of Gary Bellow’s & Bea Moulton’s The Lawyering Process*); 12(1) CLIN. L. REV. 1-202 (Fall 2005) (*Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*) and 23 (1) CLIN. L. REV. 1-337 (Fall 2016), 23(2) CLIN. L. REV. 471-815 (entire issue) (Spring 2017) and 24(2) CLIN. L. REV. 247-486 (Spring 2018) (articles by Gerald Lopez and Ann Shalleck) (*Symposium: Rebellious Lawyering at 25*).

were held biennially from 2006 to 2010 and annually since 2011.<sup>26</sup> The workshops have played an important role in fostering the development of clinical legal scholarship.<sup>27</sup> Not surprisingly, the CLR has not published all of the papers clinicians have presented at these workshops—some of the papers are at early stages and are never finalized into publishable form, some are submitted to other law reviews, and some are submitted to the CLR but do not survive the peer review process—but it has published a significant number of them: by my count, at least 13.<sup>28</sup>

The CLR also has published papers that clinicians originally presented at AALS annual meetings, the annual AALS Clinical Legal Education Conference (either from presentations or works-in-progress sessions), regional clinical scholarship workshops, such as the New York Law School Clinical Theory Workshop or the Mid-Atlantic Clinical Theory Workshop.<sup>29</sup>

Although these various conference and workshop settings are specifically focused on clinical scholarship and not clinical teaching (as the AALS annual clinical conferences are), the CLR's publication of papers originating in these fora is in an important sense a realization of the goal the editors-in-chief identified in Volume 1, Issue 1, that of seeking to build on the "intellectual challenge and emotional responsiveness of the best of our clinical conferences."<sup>30</sup>

Finally, one kind of CLR publication I did not anticipate in 1992 was the publication of articles that eventually became chapters in clinical textbooks.<sup>31</sup>

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<sup>26</sup> See e-mail from Randy Hertz to Robert Dinerstein, September 26, 2016, 9:22 AM.

<sup>27</sup> For a more complete discussion of the role of the CLR workshops, see the essay by Kate Kruse in this issue, Katherine R. Kruse, *Clinical Scholarship and Scholarship by Clinicians*, 26(1) CLIN. L. REV. 307 (Fall 2019).

<sup>28</sup> See, e.g., Mary Helen McNeal, *Slow Down, People Breathing: Lawyering, Culture and Place*, 18 (1) CLIN. L. REV. 183 (Fall 2011), and James A. Sonne, *Cross-Cultural Lawyering and Religion: A Clinical Perspective*, 25(1) CLIN. L. REV. 223 (Fall 2018). Clinicians increasingly present works-in-progress in a variety of settings, so the CLR Writer's Workshop may not be the sole source of the articles the CLR has published.

<sup>29</sup> See, e.g., Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22(2) CLIN. L. REV. 359 (Spring 2016) (Mid-Atlantic Clinical Workshop, and others); Ian Weinstein, *Learning and Lawyering Across Personality Types*, 21(2) CLIN. L. REV. 427 (Spring 2005) (New York Law School Clinical Theory Workshop); Hina Shah, *Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy*, 21(2) CLIN. L. REV. 393 (Spring 2005) (Southern California Scholarship Workshop at U.C. Irvine School of Law and AALS Clinical Conference).

<sup>30</sup> *Supra*, note 12.

<sup>31</sup> See, e.g., Robert Dinerstein et al., *Legal Interviewing and Counseling: An Introduction*, 10 CLIN. L. REV. 281 (Fall 2003), and Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLIN. L. REV. 755 (Spring 2004) (which became chapters in STEPHEN ELLMANN, ET AL., *LAWYERS AND CLIENTS: ISSUES IN INTERVIEWING AND COUNSELING* (2009)); Susan Bryant & Elliott S.

### B. Theory and Practice

The CLR has published an impressive number of articles on lawyering theory and the applicability of exogenous theories to clinical legal education. For example, the CLR has published numerous articles on narrative and storytelling, topics that authors in the first issue identified as important.<sup>32</sup> It has published articles on client-centeredness,<sup>33</sup> collaborative or political lawyering,<sup>34</sup> cognitive bias,<sup>35</sup> and

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Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLIN. L. REV. 195 (Fall 2007) (which became a chapter in SUSAN BRYANT, ELLIOTT S. MILSTEIN, AND ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL EDUCATION* (2014), Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18(2) CLIN. L. REV. 505 (Spring 2012), and Wallace J. Mlyniec, *Developing a Teacher Training Program for New Clinical Teachers*, 19(1) CLIN. L. REV. 327 (Fall 2012) (which were incorporated into DEBORAH EPSTEIN, JANE H. AIKEN, AND WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* (2014).

<sup>32</sup> Anthony G. Amsterdam, *Telling Stories and Stories About Them*, 1(1) CLIN. L. REV. 9 (Fall 1994); Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 (1) CLIN. L. REV. 41 (Fall 1994). See, e.g., John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer To Do When His Two Favorite Theories Collide?*, 6(1) CLIN. L. REV. 85 (Fall 1999); Philip N. Meyer, *Making the Narrative Move: Observation Based Upon Reading Gerry Spence's Closing Argument in the Estate of the Karen Silkwood v. Kerr-McGee, Inc.*, 9(1) CLIN. L. REV. 229 (Fall 2002); Robert Rubinson, *Client Counseling, Mediation, and Alternative Narratives of Dispute Resolution*, 10(2) CLIN. L. REV. 833 (Spring 2004); the articles analyzing the Rodney King assault trial, *supra* note 25; Carolyn Grose, *A Persistent Critique: Constructing Clients' Stories*, 12(2) CLIN. L. REV. 329 (Spring 2006); Laurie Shanks, *Whose Story Is It, Anyway? — Guiding Students to Client-Centered Interviewing Through Storytelling*, 14(2) CLIN. L. REV. 509 (Spring 2008); Paul Holland, *Sharing Stories: Narrative Lawyering in Bench Trials*, 16(1) CLIN. L. REV. 195 (Fall 2009); Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18(1) CLIN. L. REV. 283 (Fall 2011); Ann Shalleck, *Narrative Understanding: Revisiting the Stories of Lay Lawyering*, 24(2) CLIN. L. REV. 467 (Spring 2018).

<sup>33</sup> See, e.g., Beverly Balos, *The Bounds of Professionalism: Challenging our Students; Challenging Ourselves*, Comments, 4 CLIN. L. REV. 129 (Fall 1997) (professionalism and limits of client-centered counseling); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12(2) CLIN. L. REV. 369 (Spring 2006) (theories of client-centered representation); Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13(1) CLIN. L. REV. 379 (Fall 2006); Shanks, *supra* note 32; Robert A. Baruch Bush, *Mediation Skills and Client-Centered Lawyering: A New View of the Partnership*, 19(2) CLIN. L. REV. 429 (Spring 2013); Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22(1) CLIN. L. REV. 145 (Fall 2015).

<sup>34</sup> See, e.g., Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6(2) CLIN. L. REV. 427 (Spring 2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12(2) CLIN. L. REV. 541 (Spring 2006); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14(2) CLIN. L. REV. 355 (Spring 2008); Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19(1) CLIN. L. REV. 347 (Fall 2012); Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20(1) CLIN. L. REV. 39 (Fall 2013).

<sup>35</sup> See, e.g., Joseph R. Rand, *Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decision-Making*, 9(2) CLIN. L. REV. 731 (Spring 2003) (cognitive bias in legal decision-making); Ian Weinstein, *Don't Believe Eve-*

problem solving.<sup>36</sup> It also has published a series of articles by several authors on discourse analysis of client interview transcripts, a form of empirical work on lawyering that clinics may be uniquely able to produce.<sup>37</sup>

CLR authors have emphasized the importance of theory informing their work as clinical scholars.<sup>38</sup> The CLR has also published several “perspectives” articles that take a broad view of where clinical legal education has been and where it is going. Perhaps the best example of this kind of article is the article by Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy on the “third wave” of clinical education.<sup>39</sup>

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*rything You Think: Cognitive Bias in Legal Decision Making*, 9(2) CLIN. L. REV. 783 (Spring 2003) (cognitive bias).

<sup>36</sup> See, e.g., Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem Solving-Beyond Individual Client Representation*, 8(2) CLIN. L. REV. 405 (Spring 2002); V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9(1) CLIN. L. REV. 83 (Fall 2002); Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9(2) CLIN. L. REV. 835 (Spring 2003) and Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses As a Context for Nurturing Intrinsic Values*, 13(2) CLIN. L. REV. 839 (Spring 2007); Stefan H. Krieger, *Domain Knowledge and the Teaching or Creative Legal Problem Solving*, 11(1) CLIN. L. REV. 149 (Fall 2004); Alex J. Hurder, *The Lawyer's Dilemma: To Be or Not to Be A Problem-Solving Negotiator*, 14(1) CLIN. L. REV. 253 (Fall 2007).

<sup>37</sup> See, e.g., Gay Gellhorn et al., *Law and Language: An Interdisciplinary Study of Client Interviews*, 1(2) CLIN. L. REV. 245 (Fall 1994); Gay Gellhorn, *Law and Language: Empirically-Based Model for the Opening Moments of Client Interviews*, 4(2) CLIN. L. REV. 321 (Spring 1998); Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the “Traditional” Interview and the “Client-Centered” Interview*, 1(3) CLIN. L. REV. 541 (Spring 1995); Linda F. Smith, *Client-Lawyer Talk: Lessons from Other Disciplines*, 13(1) CLIN. L. REV. 505 (Fall 2006); Linda F. Smith, *Always Judged—Case Study of an Interview Using Conversation Analysis*, 16(2) CLIN. L. REV. 423 (Spring 2010); Clark D. Cunningham & Bonnie S. McElhinny, *Taking It to the Streets: Putting Discourse Analysis to the Service of Public Defender's Office*, 2(1) CLIN. L. REV. 285 (Fall 1995). Other articles have looked at large data-rich studies to examine the effects of clinic on development of professional skills and civility. See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect* 16(1) CLIN. L. REV. 57 (Fall 2009), or studied the work of particular players in the clinical supervision process, Jodi S. Balsam & Margaret Reuter, *Externship Assessment Project: An Empirical Study of Supervisor Evaluations of Extern Work Performance*, 25(1) CLIN. L. REV. 1 (Fall 2018) (studying supervisors' evaluations of externs' work product).

<sup>38</sup> See, e.g., Phyllis Goldfarb, *A Clinic Runs Through It*, 1(1) CLIN. L. REV. 65 (Spring 1994) (critical race, feminist, law and literature, and narrative theories); Minna J. Kotkin, *Creating True Believers: Putting Macro Theory Into Practice*, 5(1) CLIN. L. REV. 95 (Fall 1998) (theory and practice); Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13(1) CLIN. L. REV. 213 (Fall 2006) (therapeutic jurisprudence); Bruce J. Winick & David B. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Clinical Law Clinic*, 13(1) CLIN. L. REV. 605 (Fall 2006); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22(1) CLIN. L. REV. 1 (Fall 2015) (critical theory and business law clinics).

<sup>39</sup> Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 (1) CLIN. L. REV. 1 (Fall 2000).

### C. Social Justice/Collaborating with Clients

Given the focus of much of clinical legal education on issues of social justice, it is hardly surprising that the CLR has published numerous articles that address social justice themes. From the very first issues of the CLR<sup>40</sup> through special symposia on social justice,<sup>41</sup> to later articles,<sup>42</sup> the CLR has given a prominent place to articles that address these concerns. CLR authors also have discussed the connection between clinics and the community.<sup>43</sup>

### D. Ethics

As noted at the beginning of this Essay, one would have expected that, given their importance in the origin of clinical legal education, issues of professional responsibility and legal ethics would be important topics for the CLR to address. The issues of the CLR do not disappoint in this regard. The CLR has published numerous articles that deal with ethical concerns raised by collaborating with outside entities, protecting confidentiality, resolving conflicts of interest, and

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<sup>40</sup> See, e.g., Fran Quigley, *Seizing the Disorienting Moment: An Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2(1) CLIN. L. REV. 37 (1995).

<sup>41</sup> See, e.g., *Papers presented at the Rutgers-Newark Law School Conference on "The Social Justice Mission of Clinical Education,"* 7(2) CLIN. L. REV. 287 (Spring 2001); Symposium on Rebellious Lawyering, *supra* note 25.

<sup>42</sup> See, e.g., Kimberly E. O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11(2) CLIN. L. REV. 335 (Spring 2005); Frank S. Bloch & M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Education: Cross-National Currents from India and the United States*, 13(1) CLIN. L. REV. 165 (Fall 2006); Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13(1) CLIN. L. REV. 459 (Fall 2006); Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17(2) CLIN. L. REV. 615 (Spring 2011); Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systemically Including Community Legal Education in Law School Clinics*, 18(2) CLIN. L. REV. 401 (Spring 2012) (teaching social justice lawyering); Carpenter, *supra* note 34; Becky L. Jacobs, *Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating from Case to Social Justice*, 21(2) CLIN. L. REV. 371 (Spring 2015) (social justice and case extrapolation).

<sup>43</sup> See, e.g., Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4(2) CLIN. L. REV. 433 (Spring 1998); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6(1) CLIN. L. REV. 217 (Fall 1999) (community lawyering); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7(1) CLIN. L. REV. 147 (Fall 2000) (community lawyering and ethics); Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7(1) CLIN. L. REV. 227 (Fall 2000) (multi-disciplinary practices and collaboration with legal services); Paul R. Tremblay, *Counseling Community Groups*, 17(1) CLIN. L. REV. 389 (Fall 2010) (community lawyering, counseling community groups); Katherine Mattes, *The Tulane Criminal Law Clinic: An Evolution Into a Combined Individual Client and Advocacy Clinic*, 18(1) CLIN. L. REV. 77 (Fall 2011) (broader advocacy, community lawyering); Sinha, *supra* note 29 (role of lawyer in grass-roots advocacy).

working in a multi-disciplinary environment.<sup>44</sup> In addition, the CLR published an important article by Nina Tarr on the ethics of using client stories in clinical scholarship.<sup>45</sup>

### E. Skills Training

From the very first issue of the CLR, there has been a healthy debate about the extent to which clinical scholarship should focus on skills training, whether in general or with respect to specific lawyering skills, and, if so, whether the CLR should publish articles about skills training. Peter Hoffman made the case for doing so in Volume 1, No. 1,<sup>46</sup> and Gary Palm, a skeptic about clinical legal scholarship, made a related argument in the same issue.<sup>47</sup> Authors have addressed specific skills in their CLR articles.<sup>48</sup> In contrast, other authors have urged clinicians to go “beyond skills training” in their scholarship.<sup>49</sup> The debate remains an important one, and the CLR should continue to provide a forum where it can continue.

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<sup>44</sup> See, e.g., Kate E. Bloch, *Subjunctive Lawyering and Other Clinical Extern Paradigms*, 3(2) CLIN. L. REV. 259 (Spring 1997); J. Michael Norwood & Alan Patterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9(1) CLIN. L. REV. 337 (Fall 2002); Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, (1) CLIN. L. REV. 492 (Fall 2002); Clark D. Cunningham, *How to Explain Confidentiality?*, 9(2) CLIN. L. REV. 579 (Spring 2003); Alexis Anderson et al., *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting*, 13(2) CLIN. L. REV. 659 (Spring 2007); Nantya Ruan, *Student, Esquire?: The Practice of Law in the Collaborative Classroom*, 20(2) CLIN. L. REV. 429 (Spring 2014); Julie Marzouk, *Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases*, 22(2) CLIN. L. REV. 395 (Spring 2016).

<sup>45</sup> Nina W. Tarr, *Clients' and Students' Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity*, 5(1) CLIN. L. REV. 271 (Fall 1998).

<sup>46</sup> Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1(1) CLIN. L. REV. 93 (Fall 1994).

<sup>47</sup> Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1(1) CLIN. L. REV. 127 (Fall 1994).

<sup>48</sup> See, e.g., Rodney J. Uphoff, *The Criminal Defense Lawyer as an Effective Negotiator: A Systemic Approach*, 2(1) CLIN. L. REV. 73 (Fall 1995) (negotiation); Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4(2) CLIN. L. REV. 391 (Spring 1998) (delivering bad news to clients); Roy Stuckey, *Understanding Casablanca: A Value-Based Approach to Legal Negotiations*, 5(1) CLIN. L. REV. 211 (Fall 1998) (negotiation); David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10(1) CLIN. L. REV. 191 (Fall 2003); Paul R. Tremblay, “Pre-Negotiation” Counseling: An Alternative Model, 13(1) CLIN. L. REV. 541 (Fall 2006) (client counseling); David A. Binder, et al., *A Depositions Course: Tackling the Challenge of Teaching for Professional Skills Transfer* 13(2) CLIN. L. REV. 871 (Spring 2007) (depositions); Jayashri Srikantiah & Janet Martinez, *Applying Negotiations Pedagogy to Clinical Teaching: Tools for Institutional Client Representation in Law School Clinics*, 21(1) CLIN. L. REV. 283 (Fall 2014) (negotiation).

<sup>49</sup> See, e.g., Stephen Wizner, *Beyond Skills Training*, 7(2) CLIN. L. REV. 327 (Spring 2001); Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19(2) CLIN. L. REV. 489 (Spring 2013).

### F. Pedagogy and Assessment

Pedagogy is at the heart of what clinicians do, whether in the classroom, in their offices, or in the field. The articles that deal with clinical pedagogy are too numerous to list, but a number of them address cutting-edge issues in this domain. Other than the Journal of Legal Education, and various legal writing-oriented journals, the CLR is one of the only legal academic journals to make pedagogical issues an important focus of its published work.<sup>50</sup>

Issues of student supervision are critical to clinical pedagogy, whether in in-house clinics or externship programs. Although supervision issues are embedded in other articles,<sup>51</sup> there were a relatively few that focused specifically and in depth on this modality. In one of its earliest issues the CLR published four related “Essays on Clinical Supervision,” which included essays by two clinicians, a clinical student, and an edited version of a speech from a well-known non-law academic.<sup>52</sup> It published additional stand-alone articles on supervision in in-house clinics<sup>53</sup> and in externship programs.<sup>54</sup>

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<sup>50</sup> See, e.g., Mary Marsh Zulack, *Rediscovering Client Decisionmaking: The Impact of Role-Playing*, 1(3) CLIN. L. REV. 593 (Spring 1995) (use of role plays); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3(1) CLIN. L. REV. 55 (1996) (use of journals); Peter Jaszi et al., *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5(2) CLIN. L. REV. 403 (Spring 1999) (externships); Binny Miller, *Teaching Case Theory*, 9(1) CLIN. L. REV. 293 (Fall 2002) (teaching case theory); Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9(2) CLIN. L. REV. 623 (Spring 2003) (using reflective judgment to address student “stuckness”); Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11(1) CLIN. L. REV. 15 (Fall 2004) (multiple lawyering intelligences); William Berman, *When Will They Ever Learn? Learning and Teaching from Mistakes in the Clinical Context*, 13(1) CLIN. L. REV. 115 (Fall 2006) (learning from mistakes); Bryant & Milstein, *supra* note 31 (case rounds); Adrienne Jennings Lockie, *Encouraging Reflection on and Involving Students in the Decision to Begin Representation*, 16(2) CLIN. L. REV. 357 (Spring 2010) (role of students in case selection); Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19(2) CLIN. L. REV. 405 (Spring 2013) (social suffering pedagogy); Jennifer Rosen Valverde, *Hindsight Is 20/20: Finding Teaching Moments in the Extraordinary and Applying Them to the Ordinary*, 20(1) CLIN. L. REV. 267 (Fall 2013) (teachable moments); Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20(2) CLIN. L. REV. 317 (Spring 2014) (reflective practice).

<sup>51</sup> See, e.g., Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1(2) CLIN. L. REV. 299 (Fall 1994) and the response by his clinic supervisor Abbe Smith, Abbe Smith, *Carrying On in Criminal Court: When Criminal Defense Is Not So Sexy and Other Grievances*, 1 CLIN. L. REV. 723 (Spring 1995).

<sup>52</sup> See *Essays on Clinical Supervision*, 2(1) CLIN. L. REV. 137-250 (Fall 1995) (essays by Margaret Martin Barry, Jennifer Howard [law student], Jennifer P. Lyman, and Donald A. Schön [non-law academic]).

<sup>53</sup> See, e.g., David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1(2) CLIN. L. REV. 199 (Fall 1994) (working in teams); Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and*

A theme in many CLR articles is the importance of critical reflection, both as a skill to inculcate in students and in one's own work as a clinician. Critical reflection is a salient part of all forms of clinical education.<sup>55</sup>

Closely related to issues of pedagogy are articles about how clinicians should assess student performance in clinic. Early on, an author discussed testing in clinic,<sup>56</sup> and two co-authors discussed grading models in clinic,<sup>57</sup> while later articles discussed the virtues of evaluating students through simulations as opposed to examinations,<sup>58</sup> methods of evaluation in externships,<sup>59</sup> and the importance of students being assessed on their conceptual understanding and not on results.<sup>60</sup>

### G. Descriptions of Clinics

When I was on the inaugural CLR Board of Editors, I believed strongly that the CLR should be careful about publishing descriptive articles that were along the lines of "here's what we do in our clinic." Such articles can be important to clinicians who want to assess their

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*the Management of Empathy*, 9(1) CLIN. L. REV. 135 (Fall 2002) (empathy and student identification with clients); Jennifer A. Gundlach, "This Is a Courtroom, Not a Classroom": So What is the Role of the Clinical Supervisor?, 13(1) CLIN. L. REV. 279 (Fall 2006); Carolyn Grose, *Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisor at Initial Client Interviews*, 14(2) CLIN. L. REV. 415 (Spring 2008); Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19(2) CLIN. L. REV. 517 (Spring 2013) ("adaptive clinical teaching").

<sup>54</sup> See, e.g., Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17(1) CLIN. L. REV. 145 (Fall 2010).

<sup>55</sup> See, e.g., Harriet N. Katz, *Using Faculty Tutorials to Foster Externship Students' Critical Reflection*, 5(2) CLIN. L. REV. 437 (Spring 1999) (reflection in externships); Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13(1) CLIN. L. REV. 143 (Fall 2006) (self-awareness, self-evaluation); Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13(1) CLIN. L. REV. 573 (Fall 2006) (reflection in a small-case litigation clinic); Carolyn Grose, *Uncovering and Deconstructing the Binary: Teaching (and Learning) Critical Reflection in Clinic and Beyond*, 22(2) CLIN. L. REV. 301 (Spring 2016).

<sup>56</sup> See, e.g., Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?*, 2(2) CLIN. L. REV. 349 (Spring 1996) (testing).

<sup>57</sup> Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3(2) CLIN. L. REV. 299 (Spring 1997).

<sup>58</sup> Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8(1) CLIN. L. REV. 247 (Fall 2001) (assessing multiple intelligences in simulation course).

<sup>59</sup> Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10(2) CLIN. L. REV. 581 (Spring 2004) (evaluation and professional development in externship programs); Kelly S. Terry, *Embedding Assessment Principles in Externships*, 20(2) CLIN. L. REV. 467 (Spring 2004) (externships and assessment principles).

<sup>60</sup> Stefan H. Krieger & Serge A. Martinez, *Performance Isn't Everything: The Importance of Conceptual Competence in Outcome Assessment of Experiential Learning*, 19(1) CLIN. L. REV. 251 (Fall 2012).

own programs, or who are contemplating creating new clinics, but they may be insufficiently theoretical to qualify as “scholarship.” The need to establish clinical scholarship as analytical and theory-driven was especially critical in the early days when non-clinical law faculty were often skeptical about whether there was any “there” in clinical scholarship.

Although the CLR has published some pieces regarding specific clinics, for the most part the articles have described clinics in areas new to clinical education, or innovative approaches to existing clinical offerings. Back in 1992, a number of the kinds of clinics we now take for granted—in the areas of human rights, intellectual property, community and economic development, transactional, business, innocence project, prisoner re-entry, and disability,<sup>61</sup> to name but some—either did not exist or were outliers. Thoughtful articles about the importance of teaching students in these areas, and in the issues involved in constructing clinics to achieve desirable outcomes have been an important addition to clinical scholarship. Many of these clinics operate

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<sup>61</sup> See, e.g., James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLIN. L. REV. 457 (Spring 1996) (mediation); Philip G. Schrag, *Constructing a Clinic*, 3(1) CLIN. L. REV. 175 (Fall 1996) (immigration); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4(1) CLIN. L. REV. 195 (Fall 1997) (transactional small business clinic); Linda F. Smith, *Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap*, 5(2) CLIN. L. REV. 527 (Spring 1999) (externship clinic design); Jacqueline St. Joan & Nancy Ehrenreich, *Putting Theory Into Practice: A Battered Women’s Clemency Clinic*, 8(1) CLIN. L. REV. 171 (Fall 2001) (clemency for women who killed their abusers); Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9(1) CLIN. L. REV. 45 (Fall 2002) (community and economic development); Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinician Model for Serving Youth with Special Education Needs*, 11(2) CLIN. L. REV. 271 (Spring 2005) (special education clinics); Keith A. Findley, *The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education*, 13(1) CLIN. L. REV. 231 (Fall 2006) (innocence project); W. Warren H. Binford, *Reconstructing a Clinic*, 15(2) CLIN. L. REV. 283 (Spring 2009) (re-tooling an existing clinic); Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship*, 17(1) CLIN. L. REV. 99 (Fall 2010) (corporate counsel externship); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21(1) CLIN. L. REV. 255 (Fall 2014) (transnational human rights advocacy); Stephen Ellmann, *The Clinical Year Begins*, 21(2) CLIN. L. REV. 337 (Spring 2015) (immersive full year in one of three law offices); James A. Sonne, *Religious Liberty, Clinical Education, and the Art of Building Bridges*, 22(1) CLIN. L. REV. 251 (Fall 2015) (religious liberty); Bill Ong Hing, *Contemplating A Rebellious Approach to Representing Unaccompanied Immigrant Children in a Deportation Defense Clinic*, 23(1) CLIN. L. REV. 167 (Fall 2016) (unaccompanied immigrant minors); Patience A. Crowder, *What’s Art Got to Do with It?: A Rebellious Lawyer Mindset in Transactional Practice*, 23(1) CLIN. L. REV. 53 (Fall 2016) (transactional); Alina Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24(1) CLIN. L. REV. 27 (Fall 2017) (embedding tax transactions in a business transactions clinic); Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: Survey of Intellectual Property and Technology Legal Clinics*, 25(1) CLIN. L. REV. 95 (Fall 2018) (survey of intellectual property and technology clinics).

in the lower courts (or not in courts at all), a focus that I anticipated, as discussed earlier.

One area of clinical legal education that what was barely on the map in 1992 but has grown considerably since then is international clinical legal education, and the CLR reflects that development. The first international article appeared in Volume 6, Issue 1, in the form of a clinical essay by Rodney Uphoff on the limits of in-house clinics in international settings.<sup>62</sup> Uphoff's article provoked a responsive commentary by Kandis Scott,<sup>63</sup> and later articles about international clinical education have emphasized heavily the clinician author's experience in teaching in or consulting to an international clinical program, with some of the challenges and attractions of that work.<sup>64</sup>

#### H. Dealing with Students

Students, of course, are of major importance in clinical education. Many of the articles in the CLR have drawn upon student lawyering experiences<sup>65</sup> or upon different aspects of dealing with students in the clinic, including clinicians interacting with the current generation of students.<sup>66</sup>

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<sup>62</sup> Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6(1) CLIN. L. REV. 315 (Fall 1999).

<sup>63</sup> Kandis Scott, *Additional Thoughts on Romanian Clinical Legal Education: A Comment on Uphoff's "Confessions of a Clinician Educator,"* 6(2) CLIN. L. REV. 513 (Spring 1999).

<sup>64</sup> See Leah Wortham, *Strengthening the International Clinical Scholarly Community: Opportunities for the Clinical Law Review and Beyond*, 26(1) CLIN. L. REV. 393 (Fall 2019). CLR articles have discussed clinical programs in China, Chile, Israel, Japan, South Korea, Russia, Poland, and other countries.

<sup>65</sup> See, e.g., Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*, 1(1) CLIN. L. REV. 157 (Spring 1994) (collaborative lawyering by students); Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6(1) CLIN. L. REV. 127 (Fall 1999) (clinic students and local legal culture); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8(2) CLIN. L. REV. 445 (Spring 2002) (working with community groups); Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6(2) CLIN. L. REV. 347 (Spring 1999) (students working with interpreters); Irene Scharf, *Nourishing Justice and the Continuum: Implementing a Blended Model in an Immigration Law Clinic*, 12(1) CLIN. L. REV. 243 (Fall 2005) (linking students and community lawyers); Gail E. Silverstein, *All's Well That Ends Well: The Importance of Full and Effective Closure in Lawyer-Client Relationships*, 19(2) CLIN. L. REV. 555 (Spring 2013) (importance of students achieving closure with clients).

<sup>66</sup> See, e.g., Rader and Smith articles, *supra* note 51 (colloquy about student's clinic experience) and Robert D. Dinerstein, *Clinical Education in a Different Voice: A Reply to Robert Rader*, 1(3) CLIN. L. REV. 711 (Spring 1995); Steven Hartwell, *Moral Growth or Moral Angst? A Clinician Approach*, 11 (1) CLIN. L. REV. 115 (Fall 2004) (students' moral thinking); Alexis Anderson & Norah Wylie, *Beyond the ADA: How Clinics Can Assist Law Students with "Non-Visible" Disabilities to Bridge the Accommodations Gap Between Classroom and Practice*, 15(1) CLIN. L. REV. 1 (Fall 2008) (serving students with non-visible

### I. Issues Specific to Clinical Legal Education

Not surprisingly, some of the articles in the CLR have focused on issues that are important, and sometimes uniquely so, to clinical education or to clinicians. In this category, I would put its articles on student practice<sup>67</sup> and political interference, and law school accreditation issues.<sup>68</sup>

### J. Clinician Identity Issues and Development as Clinical Teachers

At its heart, clinical legal education is about people—students, clients, and clinical teachers. The CLR has published a number of articles that address clinician identity and related issues, often in short essays.<sup>69</sup>

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disabilities in clinic); Harriet N. Katz, *Counseling Externship Students*, 15(2) CLIN. L. REV. 239 (Spring 2009) (counseling externship students); Susan K. McClellan, *Externships for Millennial Generation Law Students: Building the Generation Gap*, 15(2) CLIN. L. REV. 255 (Spring 2009) (externships and millennial students); Emily A. Benfer & Colleen F. Shanahan, *Educating the Invisibles: Strategies for Teaching the Millennial Generation in Law School*, 20(1) CLIN. L. REV. 1 (Fall 2013) (teaching millennials in clinic); Alistair E. Newbern & Emily F. Suski, *Translating the Values of Clinical Pedagogy Across Generations*, 20(1) CLIN. L. REV. 181 (Fall 2013) (different generations of experienced teachers, junior teachers, and students); Ian Weinstein, *Learning and Lawyering Across Personality Types*, 21(2) CLIN. L. REV. 427 (Spring 2015) (lawyering and student personality types); Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24(1) CLIN. L. REV. 1 (Fall 2017) (student selection decisions in clinics); Alexi Freeman & Katie Steefel, *Uniting the Head, Hands, and Heart: How Specialty Externships Can Combat Public Interest Drift*, 25(2) CLIN. L. REV. 325 (Spring 2019) (specialty externships and students' public interest orientation).

<sup>67</sup> See, e.g., the article by Peter Joy and Chuck Weisselberg on political interference in clinical programs Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege*, 4(2) CLIN. L. REV. 531 (Spring 1998); the AALS and CLEA submissions to the Louisiana Supreme Court on efforts to amend the state's student practice rule, 4(2) CLIN. L. REV. 539-582 (Spring 1998); the Essays on the Political Dimensions of Clinics, 11(2) CLIN. L. REV. 447-483 (Spring 2005) (essays by Babich; Wizner & Solomon; and Babich); Adam Babich, *Controversy, Conflicts, and Law School Clinics*, 17(2) CLIN. L. REV. 469 (Spring 2011).

<sup>68</sup> See, e.g., Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2(2) CLIN. L. REV. 413 (Spring 1996). (ABA should require experiential education in the law school curriculum); William Wesley Patton, *Externship Site Inspections: Fitting Well-Rounded Programs into the Four Corners of the ABA Guidelines*, 3(2) CLIN. L. REV. 471 (Spring 1997) (externships); Peter A. Joy, *Evolution of ABA Standards Relating to Externship: Steps in the Right Direction?*, 10(2) CLIN. L. REV. 681 (Spring 2004) (ABA externship standards); Anahid Gharakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14(1) CLIN. L. REV. 61 (Fall 2007) (externships).

<sup>69</sup> See, e.g., Goldfarb, *supra* note 38 (describing case she handled); Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation and the First-Year Core Curriculum*, 1(1) CLIN. L. REV. 135 (Spring 1994) ("rookie" faculty member; diversity); Michelle S. Jacobs, *Legitimacy and the Power Game*, 1(1) CLIN. L. REV. 187 (Spring 1994) (Clinical Essay) (challenges faced as a clinician of color); Dinerstein, *supra* note 66 and Smith, *supra* note 51 (role of clinical supervisor) [Commentary]; Stacy Caplow, *A Year In Practice: The Journal of a Reflective Clinician*, 3(1) CLIN. L. REV. 1 (Fall 1996) (taking

The clinical community has always been remarkable for its generosity and willingness to mentor new entrants into the profession. Two CLR articles by Wally Mlyniec describe Georgetown University Law Center's extensive program for training new clinical teachers.<sup>70</sup>

That generosity of spirit is also reflected in the three collections of memorial essays for deceased clinicians the CLR has published.<sup>71</sup> The tradition is reflected in this issue with the essays honoring the late Steve Ellmann.

## II. WHAT'S OUT—OR DE-EMPHASIZED?

With this impressive array of articles covering a diverse range of topics, it may seem somewhat churlish of me to criticize the CLR for not publishing other kinds of pieces, or publishing enough of them. Notwithstanding the CLR's success, there have been some areas the journal has not addressed, or where it has perhaps not met either my expectations or its own. These include the relative paucity of "short pieces," such as book reviews, letters to the editor, and short case reports; the essential disappearance of the clinical essays; the lack of a significant student voice from student authors; the infrequency of articles by non-clinicians and non-US faculty; and the relative absence of

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year off from clinic to work as an assistant United States Attorney); Margaret E. Montoya, *Voicing Differences*, Comment, 4(1) CLIN. L. REV. 147 (Fall 1997) (life as a Latina clinician); Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming A Critical Lawyer and Teacher*, Clinical Essay, 4(1) CLIN. L. REV. 235 (Fall 1997) (theory and practice and reflection on her career arc) [Clinical Essay]; Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7(1) CLIN. L. REV. 273 (Fall 2000) (how he spent his sabbatical) [Clinical Essay]; Lawrence M. Grosberg, *Clinical Education in Russia: "Da and Nyet."* 7(2) CLIN. L. REV. 469 (Spring 2001) (international experience) [Clinical Essay]; Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9(2) CLIN. L. REV. 879 (Spring 2003) (clinical sabbatical) [Clinical Essay]; *Essays on Professionalism and Personal Satisfaction*—articles by Calvin G. C. Pang, Ann Juergens, and Lawrence S. Krieger, 11(2) CLIN. L. REV. 405-445 (Spring 2005); *Papers from An AALS Conference Workshop on "Clinical Legal Education at a Generational Crossroads"*—articles by Minna J. Kotkin & Dean Hill Rivkin, Praveen Kosuri, Karla McKanders, and Stephen F. Reed, 17(1) CLIN. L. REV. 197-254 (Fall 2010); Mary Helen McNeal, *Slow Down, People Breathing: Lawyering, Culture and Place*, 18(1) CLIN. L. REV. 183 (Fall 2011) (cultural dislocation of moving from University of Montana to Syracuse University).

<sup>70</sup> See Mlyniec, *supra* note 31. Another article by Justine Dunlap and Peter Joy discusses designing new clinician teacher training programs. Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11(1) CLIN. L. REV. 49 (Fall 2004).

<sup>71</sup> See Charles J. Ogletree, Jr., *In Memoriam: A Tribute to W. Haywood Burns and M. Shanara Gilbert: Revolutionaries in the Struggle for Justice*, 2(2) CLIN. L. REV. v (Spring 1996) (honoring Haywood Burns and Shanara Gilbert); *In Memoriam: Tributes to Kathleen A. Sullivan*, 8(1) CLIN. L. REV. 3-32 (Fall 2001); *In Memoriam: Stanley S. Herr*, 8(2) CLIN. L. REV. 287-314 (Spring 2002).

articles about structural impediments to the production of clinical scholarship.

### A. *Short Pieces*

As noted at the start of this Essay, from the very beginning the CLR editors-in-chief sought to publish short pieces, such as letters to the editor and book reviews. The results have been disappointing. The CLR has published six letters to the editor, but none since Volume 5, Issue 1, in Fall 1998. The letters provided a forum for clinical scholars to engage with each other on important issues, such as defining “difference” or the role of lawyers in mediation. If the best kind of scholarship involves dialogue among scholars, a re-commitment to seeking the submission of letters to the editor would be one way to foster such engagement.

The CLR also has had limited success in publishing book reviews. The journal has published three book reviews in its twenty-five years, and none since Volume 13, Issue 1, in Fall 2006. As compared to 2006—and certainly as compared to 1994—the number of books addressing different aspects of clinical education and lawyering has grown substantially. Book reviews of these and other books that might be of interest to the clinical community could provide a scholarly vehicle, especially for emerging scholars.

As discussed in the prior section, the CLR has had more success with publishing short pieces denominated “Clinical Essays.” These essays have allowed their writers to explore in a more informal context some of their observations about their work as clinicians, their explorations of new areas of inquiry, their clinic experiments, and so on. The CLR has published fourteen Clinical Essays, but this genre has essentially disappeared from the CLR’s pages: the last one was published in Volume 12, Issue 2, Spring 2006.

I do not have any inside knowledge as to why these short-form writings have disappeared from the CLR. It is possible, indeed probable, that the journal has not received submissions of these sorts, or at least not ones of publishable quality. It is also possible that the increasing availability of other forms of communication—e.g. blogs and other more informal means of expression—has made these short-form categories less attractive to potential contributors. Furthermore, the CLR may be a victim of its own success; its editors might well believe that since they appear to have enough scholarly articles to fill their issues, there is simply no room for these shorter pieces, which would carry less weight in scholarly assessments than others, including law faculty and university provosts, conduct. Be that as it may, I miss the Clinical Essays, and think there could be a role for the occasional

book review and letters section.<sup>72</sup>

My idea for short case reports, along the lines of what medical, psychology, or bioethics journals publish, never caught on. A number of the CLR's articles report on developments in cases, of course, but these treatments are more extensive, and richer, than the kind that I was suggesting. Because of confidentiality concerns, it can be challenging for lawyers to write about real cases, though doctors seem to have found a way to write about their patients. Moreover, the availability of the clinic listserv and other forms of electronic communication—again, a modality not available in 1994—may provide a more felicitous vehicle for brief case reports. The AALS and CLEA newsletters are still another source for this kind of material. Thus, I do not see the same need for this kind of piece as I do for the ones identified in the previous paragraph.

### B. Student Authors

As discussed in Section I. H. above, students are at the heart of clinical education, and concerns about supervision, pedagogy, and relationships with clients are an important component of clinical scholarship. So it is perhaps somewhat surprising that there have been so few articles in the CLR that students have written. By my count, there have been only four articles in the CLR with student authors, and only one since 2000.<sup>73</sup> Other law reviews, of course, publish a significant number of student pieces, typically notes or comments. As a peer-edited journal, the CLR has a different mission, and I would not necessarily expect there would be a great many law students with the interest or background to write substantial articles for the CLR. But short pieces about the student experience in supervision, seminar, case

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<sup>72</sup> In its early days, the CLR published two works-in-progress: Paul R. Tremblay, *The Role of Casuistry in Legal Ethics: A Tentative Inquiry*, Work-in-Progress, 1(2) CLIN. L. REV. 493 (Fall 1994) and Clark D. Cunningham & Bonnie S. McElhinny, *Taking It To The Streets: Putting Discourse Analysis To The Service Of A Public Defender's Office*, 2(1) CLIN. L. REV. 285 (Fall 1995). The editors-in-chief introduced the Tremblay essay by noting, "The following essay is a work-in-progress. Professor Tremblay offers his unfinished ideas in this essay in an effort to invite reactions, criticisms, or research suggestions, all of which would aid him in refining his analysis of the subject. By presenting such works-in-progress the *Clinical Law Review* seeks to provide a forum for sharing ideas and sparking debate." 1(2) CLIN. L. REV. 493. Despite the invitation, the CLR did not publish any other works-in-progress. Given the many other forums in which clinicians can present works-in-progress, including the CLR's own, and highly successful, Writer's Workshops, forgoing publishing of works-in-progress in the CLR makes perfect sense.

<sup>73</sup> See Rader, *supra* note 51; Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167 (Fall 1995); Agata Szyptszak, *Where In The World is Dr. Detchakandi? A Story of Fact Investigation*, 6(2) CLIN. L. REV. 517 (Spring 1999); Jeffrey Ward, *One Student's Thoughts on Law School Clinics*, 16(2) CLIN. L. REV. 489 (Spring 2010).

rounds, or the field might round out the picture of clinical students that the CLR presents.

### C. *Other Ways to Diversify the CLR's Authors*

I have discussed previously the burgeoning number of articles in the CLR that address international clinical issues. Similar to the phenomenon of the lack of student authors, there are not that many foreign clinicians who have published articles in the CLR. Practitioner authors are also scarce, as are non-clinical US law faculty.<sup>74</sup>

Although the authors the CLR has published represent the cream of the clinical crop, as well as the next generation of clinical scholars, an occasional article by an author outside of the clinical family might serve to facilitate our critical reflection about our work. CLR articles have not avoided criticism of some aspects of clinical legal education,<sup>75</sup> but an outsider's perspective can provide a different level of feedback and insight from that which one receives from one's compadres.

### D. *Articles about Structural Impediments to Producing Clinical Scholarship*

Writing at a time (1992) when status issues were very much in the forefront of conversations among clinicians,<sup>76</sup> and when requirements for clinicians to produce scholarship were still relatively new, I argued that a clinical journal might serve as a vehicle for clinicians to discuss these issues in print. The Clinical Essays have sometimes addressed these issues, but not frequently. As I have thought more about this question, however, I have come to believe that such articles do not belong in the CLR. For one thing, the very success of the journal be-

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<sup>74</sup> Some deans have published in the CLR, but they have usually been clinicians before becoming deans—see Elliott Milstein (American University Washington College of Law), Shauna Marshall (University of California-Hastings College of the Law), and Joe Harbaugh (University of Richmond and Nova Southeastern University, Shepard Broad College of Law). An exception is Rick Matasar's article in the MacCrate symposium, *supra* note 25, Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1(2) CLIN. L. REV. 457 (Fall 1994). Foreign clinicians—as well as some U.S. clinicians—have published in THE INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, which began publishing in 2000. The journal, published by Northumberland University School of Law in the United Kingdom, is transitioning to an on-line format. See <https://www.northumbria-journals.co.uk/index.php/ijcle/about/history>.

<sup>75</sup> See, e.g., Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3(2) CLIN. L. REV. 337 (Spring 1997).

<sup>76</sup> Of course, status issues for clinicians are still extant. The move in many universities and some law schools to cut back on tenure-line positions in favor of contract or visiting faculty threatens the ongoing fight to provide clinicians with status equal to that of non-clinical law faculty.

lies the impossibility of clinicians producing high-quality scholarship. Our conferences and workshops provide a better forum in which to share ideas and experiences about how to produce scholarship under conditions of scarcity (time, status, money). Indeed, the CLR Writer's Workshops themselves provide important opportunities for clinicians to figure out how to research and write articles. The last session of every workshop is a discussion led by two successful scholars on how they have managed to produce scholarship while simultaneously engaging in the time-intensive teaching that characterizes clinical education.

#### CONCLUSION/RECOMMENDATIONS

When I wrote my Message from the Chair in 1992, I observed that a clinical journal could provide a forum in which clinical voices could be heard. The CLR has achieved this goal, and indeed exceeded it. Where once clinicians complained that it was very difficult to get law reviews interested in articles we wanted to write, we now have a journal in which good clinical pieces can and will be published, and where one can be certain that each issue will contain a number of articles that will spark one's interest, if not one's joy.<sup>77</sup>

My decidedly modest criticisms of where the CLR has failed to achieve some of its goals (or goals I had for it) can be addressed rather easily. The CLR editors can reach out to solicit writers of book reviews<sup>78</sup> and make it known more explicitly that letters to the editor are encouraged. Indeed, for selected articles, the CLR could solicit letters from clinicians who it might have reason to believe would disagree with the articles in one or more respects. The CLR could also encourage more dialogues along the lines of one of my favorite pieces in the CLR, the co-authored article by Mark Aaronson and Stefan Krieger in which they explain their disagreements regarding what are the most important things for clinical students to master.<sup>79</sup> The CLR could also solicit potential authors for a revived Clinical Essay section, which increasingly busy clinicians might find attractive as a less de-

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<sup>77</sup> Cf. MARIE KONDO, *THE LIFE-CHANGING MAGIC OF TIDYING UP: THE JAPANESE ART OF DECLUTTERING AND ORGANIZING* (2015) (arguing for eliminating anything in one's life that does not "spark joy"). My citation to this book is in no way to suggest that my own personal or professional behavior is consistent with the author's recommendations.

<sup>78</sup> I am currently one of the faculty editors for the *Journal of Legal Education*. The Journal has a faculty member specifically designated as book review editor. One of her tasks is to solicit reviewers for books that come to the editorial board's attention, or that the editors believe would be important to review. The CLR might consider adopting a similar approach.

<sup>79</sup> See Mark Neal Aaronson & Stefan H. Krieger, *Teaching Problem-solving Lawyering: An Exchange of Ideas*, 11(2) CLIN. L. REV. 485 (Spring 2005).

manding way to get their ideas into print.

I am not aware whether at present the CLR is overwhelmed with article submissions or sometimes finds itself in need of additional quality submissions. As I observed above, the CLR has published many papers originally presented at clinical scholarship conferences. The Externship conferences appear to be going strong, and the CLR Writer's Workshop continues to be a significant source of potential articles. But by design, the Writer's Workshop is geared toward relatively nascent and potential clinical scholars. More experienced clinicians need other outlets for their work, and one source of a number of CLR articles over the years, the Lake Arrowhead conferences, have ceased operation. The CLR should reach out (or, if it is doing so already, continue to reach out) to organizers of such gatherings as the New York Clinical Theory and Mid-Atlantic Clinical Theory Workshops to make sure they can receive a steady stream of high-quality submissions.

Finally, the CLR can make a concerted effort to reach out to non-clinical fellow travelers in the academy, and to foreign clinicians through the Global Alliance for Justice Education (GAJE) to diversify its authors and provide an opportunity for constructive criticism of clinical concepts and practices that permits those ideas to flourish in the marketplace of ideas.

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I close this Essay on a sad note. Given our long-time friendship and mutual interest in both producing clinical scholarship and nurturing clinical scholars, I would have loved to collaborate on this Essay with the late Steve Ellmann. Steve exemplified in a profound way the qualities that all true scholars should have—intellectual curiosity, fierce intelligence, a willingness to ask hard questions, and a generative and loving spirit. I would have loved to fight with him (in a friendly manner, of course) over the ideas in this Essay, and to consider the points he undoubtedly would have raised that I had not addressed. An advantage of published scholarship is that it lives on after one has passed away, available to future generations of readers and scholars. Steve's scholarship, including that which appeared in the CLR, has created a legacy that will always be part of the story of how clinical scholarship came to be more than a misnomer or oxymoron. We will miss him dearly.