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# BEAUTY AND THE BEAST—HYBRID PROSECUTION EXTERNSHIPS IN A NON-URBAN SETTING

Margaret A. (Peggy) Tonon\*

## INTRODUCTION

As a clinician<sup>1</sup> working with external prosecution clinics over the past fifteen years,<sup>2</sup> I have become an unabashed proponent of hybrid prosecution clinics. In a non-urban setting, they are the best mechanism for delivering quality clinical experiences to students. The value of such clinics to the students, to the law school and to the surrounding legal community outweighs the deficits. This model works primarily because of the unique characteristics of a non-urban setting; the two components, non-urban and hybrid, work together to create the best learning atmosphere.

This paper examines and demonstrates how those two components, hybrid and a non-urban setting, work together to create quality external prosecution clinics. Part I describes the non-urban setting of the University of Montana School of Law. In addition to describing some of the physical characteristics, the section also explores the emotional and political character-

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\* Clinical Supervisor and Director for Student Affairs at the University of Montana School of Law. I offer my sincere thanks to Professor Mary Helen McNeal who kindly read my first draft and gave me crucial suggestions; to Professor Larry Howell who, with a few quick comments, gave me tools with which to clarify my thoughts and my writing; to Professor Stacey Gordon whose editing hand was invaluable; to Geri Fox who helped me understand the quagmire of formatting and spacing and, finally, to Professor Hans Sinha who originally asked me to contribute an article and who, by asking, gave me the courage to give it a try.

<sup>1</sup> Throughout this article I use the terms "clinician" and "faculty supervisor" interchangeably.

<sup>2</sup> See *infra* note 25. In 1990, I was fortunate to become a part of the University of Montana School of Law Clinical Program through a three year Department of Education Grant.

istics of the non-urban setting. Part II explores the definition of a hybrid clinic as it is understood at the University of Montana School of Law and as it is described in the published scholarship. Part III examines the history of clinical education at the University of Montana School of Law and describes the evolution of the current prosecution externships. Part IV describes the strengths and weaknesses of the hybrid model and suggests ways to bolster the strengths and ameliorate the weaknesses.

#### PART I-THE NON-URBAN SETTING OF THE UNIVERSITY OF MONTANA SCHOOL OF LAW

There is little doubt Montana qualifies as a rural or non-urban state on any number of scales. While it is the fourth largest of the United States, it is also the forty-fourth smallest in population. It covers an area of 145,552 square miles and is nearly 1,200 miles from diagonal corner to corner.<sup>3</sup> It takes longer to drive from Missoula (home to the University of Montana School of Law), located in the Western part of the state, to Wolf Point, Montana, in the North Eastern corner of the state, than from Missoula to Seattle, Washington.<sup>4</sup> The United States Census estimates the 2004 population is 926,865.<sup>5</sup> There are 6.2 people per square mile.<sup>6</sup> Montana has a single representative in Congress.

The City and County of Missoula also qualify as non-urban in a variety of ways. In physical terms, the city has 57,053 residents while the county has 98,616.<sup>7</sup> The county has

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<sup>3</sup> See Montana QuickFacts, at <http://ceic.commerce.state.mt.us/MTQuickFacts.htm> for additional information on Montana's population.

<sup>4</sup> This travel fact is crucial in that it represents the nearest major league baseball stadium for Montana's clinician baseball fans. While Missoula has the benefit of the Rookie League Missoula Osprey, Safeco Field in Seattle is the closest venue for seeing the New York Yankees.

<sup>5</sup> See *supra* note 3.

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

<sup>7</sup> See Montana QuickFacts, at <http://quickfacts.census.gov/qfd/states/30/3050200.html> for additional demographic information on the City of Missoula. See Montana QuickFacts, at <http://quickfacts.census.gov/qfd/states/30/30063.html> for additional demographic information on the County of Missoula.

an area of 2,600 square miles which is approximately twice the size of the state of Rhode Island.<sup>8</sup> While the population per square mile is 1,003 in Rhode Island, it is a mere 36.9 in Missoula County.<sup>9</sup>

While virtually all Missoulians would agree Missoula is non-urban in the context of the nation as a whole, the perceptions within the state are somewhat different. Despite its fairly small population, Missoula is one of Montana's four largest cities and is considered quite urban in relationship to other Montana cities and towns. For the purposes of this paper, I looked at Missoula through the eyes of clinicians located at other more metropolitan law schools and recognized Missoula's rural qualities were determined not only by numerical population, but by differences in demographics and life style as well.

A candidate running for Montana Attorney General once said, "Montana is like one big high school that no one ever graduates from."<sup>10</sup> The sense of personal connection within the legal community bears out that statement. Each of the three prosecution offices is staffed by supervising attorneys with whom I've previously worked as an attorney, with whom I am personally acquainted or who were my students. All of the judges in the different courts are men and women before whom I have practiced or with whom I have other professional relationships such as serving on boards or commissions. Lawyers practicing in Missoula and throughout Montana generally foster and maintain that close familiarity with and knowledge of each other.

The physical connectedness of the legal community plays a part in its non-urban make up as well. The three prosecution offices in Missoula, the County Attorney, City Attorney

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<sup>8</sup> See Rhode Island QuickFacts, at <http://quickfacts.census.gov/qfd/states/44000.html> for additional demographic facts for the state of Rhode Island. It was selected as a comparison state strictly based on its square mileage and population.

<sup>9</sup> See *supra* note 8 for information on Rhode Island and *supra* note 3 for verification of information on population demographics for Montana.

<sup>10</sup> Joseph Mazurek, Campaign Debate for Montana Attorney General Election at the University of Montana School of Law (1992).

and United States Attorney, are within a five minute walk of each other. The three different courts—Missoula County Courthouse, Missoula City Hall and Russell E. Smith Federal Building—are also literally within a five minute walk of each other.

The University of Montana School of Law plays a key part in this connectedness by virtue of being the only law school in the state. The closest neighboring law school, Gonzaga University School of Law, located in Spokane, Washington, is about a three hour drive over two mountain passes away. The University of Montana's other neighbor, the University of Idaho, is located in Moscow, Idaho and is about a five hour drive away. Approximately 75% of the University of Montana's graduates remain in the state creating a symbiotic relationship between the law school, its graduates and the State Bar.<sup>11</sup>

How do some of the obvious physical and personal characteristics impact the way the non-urban legal and professional community relates to the clinical program? Missoula, being a city of less than 100,000 people,<sup>12</sup> has a limited number of clinical placement options. All three prosecution offices in Missoula are currently involved in the University of Montana Clinical Program. While there are other prosecution offices in neighboring counties approximately fifty miles away, they are not an option for placement given their distance and the structure of our clinical program. If any one of the Missoula prosecution offices decided to withdraw, it would have a dramatic impact on the program.

Another non-urban impact is the reality that the prosecutors within each of the three offices do not generally specialize. In contrast to prosecutors in some larger metropolitan areas, each prosecutor can prosecute anything from traffic offenses and goats-running-at-large to domestic abuse and homicides. Having a broader caseload from which to work can affect how the offices incorporate the students. It also broadens the learning opportunities for students in ways that might

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<sup>11</sup> See 2004 Employment Statistics, at <http://www.umt.edu/law/CarSStats04.htm>.

<sup>12</sup> See *supra* note 3.

not be available in larger, more specialized prosecution offices.

The close ties within the Montana legal community also impact the students' clinical experience. If a lawyer has had a great success, word travels fast. If a lawyer has been struggling or needs help, word travels faster. While that is probably not unlike lines of communication in any bar, the difference in Montana is that word also travels to students through their own connections in the legal community. Students quickly become part of the network and part of the office culture.

My own professional ties, especially within the criminal law community, also impact what I say and do. If I make a comment about a case or on the performance of an attorney, whether just in passing, as part of a case review or in the seminar, it is more than likely that the my words will travel back to the subject of the comment. That fact tempers my opinions and makes cooperative and collaborative work that much more important.

Being in a smaller, non-urban community also allows me, as the clinician, relatively easy access to each of the prosecution sites and the courts. They are either a twelve minute walk or a three minute bus ride from the law school. Such close proximity means that I can be at clinic sites and attend court hearings on a daily basis. Attending a non-jury trial in City Magistrate Court at 10:00 in the morning still allows me to be back to the law school for an 11:50 in the morning faculty meeting. That access benefits both me and the students who develop a level of comfort knowing that I will be there to provide consistent critique and moral support.

The access to the prosecution sites and the courts is a matter of physical time and distances, reputation and trust. The years I spent in practice in the area and the reputation I earned as a prosecutor operate to open those offices to me and therefore to my students.

## PART II-THE MONTANA DEFINITION OF A HYBRID CLINIC

Through the use of shared supervision, the Montana hybrid model strives to create a cooperative setting where students have the benefit of the wisdom of both practitioners and

clinicians. Public entities have the benefit of additional assistance and the law school has the benefit of offering clinical work to a greater number of students. This hybrid definition does not stand alone, however. It is inextricably intertwined with the non-urban setting which surrounds it.

While the idea of hybrid clinics is not new, there is relatively little scholarship solely devoted to a description or analysis of hybrid clinics.<sup>13</sup> Margaret Martin Barry, Jon C. Dubin and Peter A. Joy quote the 1917 article of William V. Rowe<sup>14</sup> and state, “[t]he type of clinical legal education that Rowe promoted most closely resembles a modern externship or perhaps hybrid clinic, in which students are placed with an off-site legal aid office, prosecutor, or public defender, combined with general classroom work, with ‘demonstrations’ of current clinical problems, as well as individual instruction and guidance in each case in hand.”<sup>15</sup> They further describe in part a “hybrid in-house/externship program” as one in which students are supervised by “both a full-time clinician and lawyers from the outside office.”<sup>16</sup> They cite as a benefit to this arrangement the “added advantage of immersing students in an actual law office while ensuring their access to a full-time educator who can help them reflect upon their day-to-day experiences and to extract the appropriate lessons.”<sup>17</sup>

For Montana, the first ingredient of the hybrid model is

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<sup>13</sup> Somewhat surprisingly, there are relatively few articles that specifically refer to clinic structures as hybrid and describe them in depth. See, e.g., Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 817 n.5 (2004) (describing the hybrid clinic as a “combination of the in-house and externship clinic models” and citing the early work of William V. Rowe). See Leah Wortham, *The Lawyering Process: My Thanks for the Book and the Movie*, 10 CLINICAL L. REV. 399, 445 (2003) (describing in-house and hybrid clinics as ones where the students act as “lead counsel with major client responsibility under supervision”).

<sup>14</sup> William V. Rowe, *Legal Clinics and Better Trained Lawyers-A Necessity*, 11 Ill. L. Rev. 591, 591 (1917).

<sup>15</sup> Margaret Martin Barry et al., *Clinical Education for this Millennium, The Third Wave*, 7 CLINICAL L. REV. 1, 7 (2000) (internal quotations omitted). This article is an excellent discussion of the past, present and future of clinical education at the turn of the millennium.

<sup>16</sup> *Id.* at 28.

<sup>17</sup> *Id.* at 28-29.

the immersion of students in a working prosecution office. Not only is it key, it is one of the goals of the prosecution externship course. It is my firm belief that having students in the middle of often chaotic prosecution offices develops skills that an in-house prosecution clinic could not similarly recreate. While not necessarily a blessing, having students face equipment shortages, unexpected time deadlines caused by misplaced files and other kinds of triage hones their abilities to learn and to adapt.

Another key ingredient of the hybrid model is the frequent and knowledgeable direct involvement of a faculty supervisor. There is a difference between an externship where the clinician's knowledge of a student's work comes primarily from journals and a weekly seminar and an externship where the clinician's knowledge of the student's work comes from being a routine visitor to the clinic sites and to the courtrooms. The latter model allows the clinician to provide more direction and to be more available to answer student concerns as they arise. It makes the model closer to an in-house model, but with benefit of exposure to a full-time prosecution office.

The third, and in many ways, most important ingredient of the hybrid model is the shared supervision of students by both a faculty supervisor and a practitioner. While it may be the most important, it is also the most complex, requiring constant care and attention. Shared supervision draws on many of the aspects of the non-urban community. It requires frequent contact, personal knowledge of the attorneys involved and, most important, a significant level of trust.

### PART III-THE EVOLUTION OF CLINICAL EDUCATION AT THE UNIVERSITY OF MONTANA SCHOOL OF LAW

The creation of hybrid clinics at the University of Montana is a reflection of the school's long commitment to clinical legal education, its focus on integrating theory and practice and its willingness to experiment with a variety of clinical models. Our clinical path began in 1966 with the creation of



the Montana Defender Project.<sup>18</sup> The Defender Project was initially funded as part of the Ford Foundation's National Defender Project.<sup>19</sup> Professor William F. "Duke" Crowley was hired by the School of Law in January, 1966 to manage the program which, in part, provided students the opportunity to assist inmates at the state prison. As a part of the grant obligation, students would assist the inmates by reviewing convictions made suspect after the decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963). In addition to working on *Gideon*-related matters, students assisted tribal courts in developing criminal procedures to satisfy federal due process standards. They also represented inmates at sentence review hearings. While the work during the school year was done for clinical credit, the Ford grant also paid students over the summers to work with the federal court in Billings, Montana to assist appointed

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<sup>18</sup> For an interesting description of the Defender Project written near the time of its creation, see University of Montana Law School News Volume XIII, Number 2 (August, 1967) and Volume XIV, Number 3 (December, 1968).

<sup>19</sup> See information on the Ford Foundation grant at [http://www.fordfound.org/publications/recent\\_articles/docs/lawgrantees.pdf](http://www.fordfound.org/publications/recent_articles/docs/lawgrantees.pdf). The early history notes "[i]n 1959, the Foundation funded the National Legal Aid and Defender Association (NLADA) to establish a National Council on Law Clinics." *Id.* It goes on further to say,

[t]he Foundation increased its support to NLADA in 1962, providing its National Defender Project with \$2.6 million in seed money to create offices for the defense of indigent clients. This grant presaged by a few months *Gideon v. Wainwright*, a case in which the U.S. Supreme Court declared that criminal defendants are entitled to legal defense regardless of their ability to pay for counsel.

*Id.*

Once the Ford Foundation funding ended the law school sought alternative funding. From 1978 until 1996, the project was funded through annual contracts with the State of Montana Department of Institutions. In 1996, the decision in *Lewis v. Casey*, 518 U.S. 343 (1996) changed the scope of the legal representation required to be provided to prison inmates. Based on that decision, the Montana Department of Institutions issued a request for proposals that significantly reduced the amount and kinds of legal services for its inmate population. The Defender Project's annual proposal outlined the same level of service it had previously provided. Not unexpectedly, the grant was awarded to a single attorney who would provide assistance only in drafting an initial pleading and who was forbidden by the terms of the grant from representing inmates beyond that point. The Law School felt that the limited scope of representation was pedagogically insufficient and raised ethical concerns for the students.

defenders in felony cases.

Participation in the Defender Project was initially elective. Over the years it grew from two or three participating students to nearly a third of the fifty member class. By the mid-1970s, it provided nearly every Montana law student<sup>20</sup> a limited required clinical opportunity.<sup>21</sup> From that modest beginning the law school gradually expanded its clinical offerings. By 1970, the local Legal Services Office began taking student clinical interns and in 1976, the Missoula County Attorney's Office was added to the clinical roster. By 1987, Montana maintained a clinical program which had grown to two in-house clinics and seven external clinics.<sup>22</sup>

The genesis of Montana's foray into hybrid clinics began in 1990 after events which had a significant impact on the school's clinical education program. During November 1987, an outside evaluator visited the University of Montana. The evaluator raised some serious concerns with the operation of the external clinics.<sup>23</sup> With that impetus, the law school made some significant initial changes to its external clinic program that improved its supervision of those clinics.<sup>24</sup> In order to

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<sup>20</sup> In the mid-1990s an ad hoc Clinical Committee recommended that the exemption for law review students from required clinical hours be eliminated. It created significant student debate and concern. The decision was made based on the premise that participation on a law review was not an activity equivalent to participation in a clinical program. While both activities have benefits for students, the committee could see no valid rationale for excusing law review students from the clinical requirement.

<sup>21</sup> As a 1974 Montana graduate and one of two women in the class that year, I have a vivid recollection of sitting inches away from an inmate client within the gray stone walls of the former State Prison. For movie trivia buffs, the former Montana State Prison building was a site of the movie "Runaway Train" starring Jon Voigt and Eric Roberts. If any of the readers have seen the prison scenes from that movie they may more fully appreciate why my recollection is so vivid.

<sup>22</sup> In 1987, the Clinical Program included in house clinics, the Montana Defender Project and the Indian Law Clinic. It also included seven external clinics: ASUM Legal Services, Montana Legal Services, Natural Resources Clinic, Child Support Bureau, University of Montana Legal Counsel's Office, United States Department of Agriculture and the Missoula County Attorney's Office.

<sup>23</sup> Among the concerns raised were the lack of significant supervision either by field supervisors or by the faculty supervisor, the lack of educational goals and objectives and the lack of a classroom component.

<sup>24</sup> Much thanks should be given to Professor John McDonald who, as Clinical

continue that improvement, the law school applied for and was awarded a three year Department of Education (DOE) grant<sup>25</sup> the specific purpose of which was to provide more support for the three largest external clinics.<sup>26</sup> A significant component of the grant included the hiring of a clinical supervisor to provide that extra support.

In August of 1990, I applied for the position and was hired. Having been a deputy county attorney for the prior 16 years, I looked forward to working with the county prosecution clinic. Having read the outside evaluator's report and the DOE grant narrative, I began to look for ways to bridge the gaps identified by those documents. The grant's project schedule included establishing contracts (the precursor to the Memorandum of Understanding discussed later) with each of the three clinics, commencing a supervision and training project and developing a pilot classroom component among other activities.

Montana successfully applied for a second three year DOE grant to maintain and to revise and expand upon some of the changes made with the assistance of the first grant. The grant provided for a second supervising attorney to perform many of the same educational functions, but for three of the school's smaller external clinics.<sup>27</sup>

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Coordinator, was instrumental in implementing some of those initial supervision improvements. Professor McDonald increased site visits, organized formal meetings of supervising attorneys and improved evaluation techniques.

<sup>25</sup> Section 1124u, Pub. L. No. 89-329, 79 Stat. 1219; Pub. L. No. 99-498, 100 Stat. 1560; Pub. L. No. 102-325, 106 Stat. 776 established the law school clinical experience programs; authorized the Secretary to enter into grants or contracts with accredited law school to provide clinical experience in the practice of law to law students; set guidelines for the use of funds and limitations on the amount a law school may receive in any fiscal year; and defined the term "accredited law school".

<sup>26</sup> Page six of the narrative from the University of Montana's grant application set a lofty goal for the project: "[o]ur goal is to provide the students in the external clinics with the same level of supervision and educational experience as that provided to in-house clinical students." The three largest clinics at that time were the local Legal Services Office, ASUM (which was the legal office for the student of the University of Montana) and the local County Attorney's Office.

<sup>27</sup> The other external clinics in operation at that time were the University Legal Counsel's Office, the United States Department of Agriculture and the Na-

From the Defender Project beginnings to the current array of three in-house clinics and fifteen external placement sites, the program has grown in scope, personnel and opportunity. The driving factor for its growth has been the combination of a clinical requirement and the availability of a variety of public interest organizations. The mixture of student desire for particular experiences and organization requests for student involvement has allowed the program grow and to meet multiple needs.

The growth has not come without complications. One of the challenges of a non-urban external program is the likelihood that more organizations will want assistance than can be accommodated. In any given year the Clinical Director receives calls from outlying prosecution offices, other non-profit organizations and private attorney offices that want to become involved in the program. In a small legal community, it is common that the attorneys wanting clinical students are all known to the law school and may be strong proponents of the school. Finding an appropriate way to make choices and distinctions between offers is much more difficult in a smaller community.

Since 1990, additional clinics have been added in the environmental field, judicial arena and public service sector. Acknowledging a growing interest in prosecution by the students, two external prosecution sites were added in the 1990s. The Missoula City Attorney's Office was added in 1994 and the Missoula office of the United States Attorney was added in 1999.

The external prosecution clinics are a vital part of the clinical program. Prosecution clinics allow students the opportunity to obtain repeated trial experience, though the amount of experience depends on the particular office. Montana students take a required trial practice course, but for students who want the opportunity to broaden the litigation skills they have practiced in simulation, the hybrid prosecution clinics are a marvelous place to start. Trial work by itself can be

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tional Wildlife Federation.

incredibly exciting or overwhelming for students. When it is combined with the type of feedback available in a hybrid clinic, it becomes the most edifying.

#### PART IV-BEAUTY AND THE BEAST-THE HYBRID PROSECUTION EXTERNSHIP MODEL

Simply stated, discussing hybrid clinics using the “beauty and the beast” analogy is another way of discussing strengths and challenges. The more complex question, however, becomes for whom is the hybrid model beautiful and/or beastly. Is it the faculty supervisor? Is it the students, the supervising attorneys, the educational objectives? The fairy tale beast I learned about as a child evolved into a kinder, gentler creature. Are the beastly qualities of the hybrid model of that same nature? To answer those questions it will help to first have a snapshot of the structure of the current program.

The Mission Statement for the University of Montana School of Law Clinical Program states:

The mission of the University of Montana School of Law’s required clinical program is to provide faculty-supervised, experience-based learning for third-year students as they represent clients in clinics serving the public interest. The clinical program engages students in applying, enhancing, and integrating substantive and skills components of legal education, improves their ability to identify and resolve ethical and professionalism issues, and assesses student performance and the law school’s competency-based curriculum.<sup>28</sup>

Using the mission statement as a guide, the three prosecution clinics (in which nine students are placed)<sup>29</sup> are part of

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<sup>28</sup> See [www.umt.edu/law/clinics.htm](http://www.umt.edu/law/clinics.htm) for a further description of the Clinical Mission Statement and an overview of the Clinical Program.

<sup>29</sup> In the evolution of the clinical program, there were times when as many as eight students were placed at the County Attorney’s Office clinical site. That was the number in that clinic at the time of the 1987 ABA Site Team Accreditation visit. After implementation of the changes brought by the DOE grant (in effect the initial creation of a hybrid clinic), it became clear that neither the faculty supervisor nor the supervising practitioners could feasibly supervise that number of students in a single clinic. Each year the number of students placed at that

a clinical program that provides every student with a clinical opportunity. Because it is a required program, the perception of fairness in the placement process is critical. The assignment process includes an anonymous preference sheet where students indicate their top six choices and reasons for those choices. Prior to making their choices the students attend a "Clinic Fair" where each clinic is represented by supervising attorneys seated at tables that students can visit. The Clinic faculty make the placements with an effort to place as many students in their highest preferences as possible. While we have toyed with the idea of a random lottery, we found that a lottery would leave more students with lower ranked choices. Often, the three students assigned to each of the three prosecution clinics have made the selection their first or second choice clinic.<sup>30</sup>

At the beginning of each semester the students are given a variety of tools that will aid their work in the clinics. They receive a Syllabus and a Statement of Expectations. Among the expectations are hour per credit obligations, seminar attendance and participation and reflective writings.<sup>31</sup> The syllabus sets out the class sessions and readings for the semester which include individual case review meetings at the clinic sites, group case reviews, guest speakers on a variety of topics and class sessions on topics integral to prosecution.<sup>32</sup> They also receive a copy of the Memorandum of Understanding between the School of Law and their particular clinic site. Additionally, they receive a copy of the Student Evaluation of Clinic form and the evaluation form that will be used for their assessment.

In Part II, I discussed the key elements of a hybrid clinic: immersion of students in a working prosecution office, frequent

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site was reduced until finally settling on three as a reasonable number for both the supervisors and the students involved.

<sup>30</sup> For the 2004-2005 academic year 67% of all the students were placed in their first choice clinics, 24% were placed in their second choice clinics and 7% were placed in their third choice clinics. For the nine students in the prosecution clinics, five (55%) were placed in their first choice, three (33%) in their second choice and one (11%) in her third choice.

<sup>31</sup> See Appendix 2 for a copy of the Fall 2004 Statement of Expectations.

<sup>32</sup> See Appendix 3 for a copy of the Fall 2004 Syllabus.

and knowledgeable direct involvement of a faculty supervisor and shared supervision of students by both a faculty supervisor and a practitioner. What are the strengths and weaknesses of the components of the program that effectuate the key elements?

### *Components of the Hybrid Model*

#### 1. The Ability to Participate in Case Selection

If there is one element that contributes most notably to the definition of a hybrid model of supervision it is the ability to participate in case selection. In two out of the three prosecution clinics case assignments are made solely by the supervising attorneys.<sup>33</sup> In one, the county attorney's office, I make the bulk of the assignments and maintain a master list of those assignments that is distributed to each supervising attorney. I maintain office hours at the county for a minimum of three hours per week.

In making the case assignments I am given access to ticket (mostly traffic) cases as they come to the county attorney from the two justice of the peace courts. I review them for educational content and variety. I also consult with the supervising attorneys when they have cases (non-traffic misdemeanors) they distribute to the students.

##### *a. Strengths and Challenges*

More than any other collaborative practice (evaluation, supervision, etc.) case selection allows a faculty supervisor to make both practical and educational decisions about the work that clinic students will perform. The practical aspects include consideration of caseload volume. Students who are devoting eight to ten hours per week (including classroom time) to clinic need a manageable number of cases.

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<sup>33</sup> While I am not involved in case selection in the City and United States Attorney clinics, I have a sufficiently close working relationship with the supervising attorneys to have input if I feel the cases are not providing good educational opportunities.

The educational aspects include dimensions of case variety, student ability and student interest. In clinics where the primary intern work is misdemeanor traffic, a student may get limited educational value from his or her fifth driving with no proof of insurance prosecution. He or she may, however, get significant value from prosecuting the same offense that has other variables such as different officers, opposing counsel or judges. Students arrive at clinic with varied backgrounds. Some students have already had the opportunity to be a summer intern in a prosecution office; others have had no live courtroom experience at all. Students may express a particular interest in an area of prosecution such as domestic violence.

With the ability to make case selections comes the responsibility for overseeing the whole of a student's caseload. That load may increase in a variety of ways. Supervising attorneys retain the ultimate authority over all cases and therefore retain the ability to also assign cases. In a clinic with paid interns<sup>34</sup> working side-by-side clinic students, the clinic students may offer to take paid intern cases in order to assist their classmates. In either instance, the faculty supervisor needs to establish a system for keeping track of the true workload of the students.

The most successful way to accomplish that goal is to use technology to keep the lines of communication open. Asking everyone involved, from supervising attorneys to clinic students and paid interns, to use email and to keep the faculty supervisor advised can work well if everyone agrees and follows through. Challenges arise when that communication falters. Any of the involved parties may forget to advise the faculty supervisor of a case assignment or a reset trial date. Clinic students may feel real or imagined pressure to take assignments despite having a caseload that requires all of their clinic time. Interns may volunteer for additional assignments despite the

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<sup>34</sup> In two of the three prosecution clinics, students are employed as paid interns. They have the same variety of cases (primarily traffic offences) as the clinic students, but have higher caseloads. Clinic students get excused absences from law school classes for court appearances. Paid student interns do not. That fact creates some of the tension in caseload management.



effect on their overall caseload because they want a particular experience. The challenges arise when the discussions fail to take place.

*b. Effect of Clinician Case Selection on the Clinician,  
Supervising Attorney and Interns*

What are the benefits and tradeoffs created by the ability of the clinician to make case selections? The straightforward answer is that everyone benefits and everyone has to accept some tradeoffs in the process. For the clinician, the benefit gained is a greater sense of educational control over the work students are performing. The tradeoff is the acknowledgment that there will always be a fine line to walk between balancing the educational needs of the students and the institutional needs of the prosecutors to maintain the flow of cases through their office.

For the prosecutors the advantage is in some benefit to their time management. By not being primarily responsible for case assignments they are more able to manage their own workload. The tradeoff is in giving away the primary control over caseload assignments and numbers. Being part of a busy office they have the pressure of case flow management. By relinquishing the role of assigning cases, they walk the same fine line as the clinician between educational and institutional demands.

What about the students? How do they benefit? What tradeoffs do they make? The students benefit by having a caseload that is managed with an eye primarily focused on educational value.<sup>35</sup> Given the shared responsibility established by the Memorandum of Understanding,<sup>36</sup> however, the trade off for students may be in having too many masters and feeling caught between them. Students may feel uncertain as to who

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<sup>35</sup> This is not to suggest that prosecution clinics where case selection is made by the supervising attorneys lacks that component. It reflects, however, the advantage a clinician has to focus primarily on educational value without the added pressure of office case flow management.

<sup>36</sup> See discussion of shared responsibility versus ultimate responsibility for cases as discussed *infra* note 43 and accompanying text

has ultimate authority over their case loads. For this trade off as well as the others, the solutions reside in a well crafted and executed Memorandum of Understanding.

## 2. The Memorandum of Understanding

To effectuate a hybrid clinic, the relationship between the clinical faculty supervisor and the onsite supervising attorneys, must be close. The closer the relationship, however, the more complex. As suggested by some of the tradeoffs discussed above, all the parties need a road map or guide which details the interplay between the faculty supervisor and the onsite supervising attorney. To address those details, each clinic signs a Memorandum of Understanding (MOU)<sup>37</sup> with the law school that sets out the educational objectives of the clinic and the responsibilities of both the clinic faculty supervisor and the supervising attorney. It is reviewed each year and signed by all involved attorneys.

At the University of Montana the idea of a MOU germinated in the first Department of Education grant. The schedule of the grant project included, "Establishment of contracts with each of the three clinics. These contracts will define the law school supervisor's role vis-a-vis each clinic, providing for a sharing of supervisory responsibilities by the law school supervisor and the on-site clinical supervisor."<sup>38</sup> One of the important rationales for establishing those contracts was based on observations made by the site evaluators during the 1987 ABA site visit. Based on the concerns raised, the 1990 D.O.E. grant included the following language.

Regardless of how extensive a training program a law school may develop for its external clinic supervisors, the fact remains that these supervisors are not employees of the law school and often work in offices that are understaffed. As a

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<sup>37</sup> See Appendix 4 for a copy of the Memorandum of Understanding (MOU) with the County Attorney's Office. The document is sometimes titled Memorandum of Agreement.

<sup>38</sup> Application for Federal Assistance dated January 12, 1990, page fifteen of the Project Narrative.

result, their work as clinical supervisors is not of primary import to them and they cannot and do not devote as much time to student supervision as might be wished to meet traditional educational standards.<sup>39</sup>

Fifteen years later, the observations made in the grant, although muted, are still true. Some of the prosecution offices are still understaffed and the workload of the supervising attorneys has increased with the passage of time. The attorneys are still not employees of the law school and their own work must come first. What has changed, however, as acknowledged in the MOU's, is the agreement that providing an educational experience for the clinical students is of primary importance. The beauty of the memorandum is the clarity that it gives both parties. The beast is in assuring that everyone is able to meet the duties and responsibilities as set out.

#### *a. Strengths and Challenges*

By carefully setting out the expectations of the parties in the MOU, a cooperative enterprise has a chance to build. For example, the first listed obligation of the supervising attorneys is to “[h]ave ultimate responsibility for all legal matters handled by law students working under his or her supervision.”<sup>40</sup> That language was the result of across the desk discussions between the clinician and the supervising attorneys. It was included for a variety of mutually beneficial reasons, not the least of which was to protect the integrity of office decisions. It was also included to protect the faculty supervising attorney from being placed in the untenable position of having case responsibility without authority to make ultimate decisions.

The first listed obligation of the faculty supervisor is to “[m]ake case assignments and maintain a calendar of motion, hearing and trial dates for clinical student cases.”<sup>41</sup> This obligation came about three years ago as part of the evolution of the hybrid model. At that time the county attorney clinic was

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<sup>39</sup> *Supra* at page eleven of the Project Narrative.

<sup>40</sup> *Infra* at Appendix 4.II.A.

<sup>41</sup> *Infra* Appendix 4.III.A(1).

on the verge of leaving the clinical program. The decision to remain came from a negotiated Memorandum of Understanding that incorporated the increased involvement of the clinician in matters such as case selection, pre-trial mootings, office hours and court supervision.

The beast still lurks, however, despite the best intentions for the division or sharing of duties as laid out in the MOU. As recognized in the MOU, neither the clinician nor the supervising attorneys may always be available to appear in court<sup>42</sup> with every student on every case.<sup>43</sup> When that occurs the responsibility, in a hybrid clinic, falls to all three parties (clinician, attorney and student) to keep each other apprised of the case status. A call or email from a student about a changed court date should trigger a follow up call between clinician and attorney to assure that the student will be supervised.

With that supervision comes the concomitant duty to provide the evaluation and assessment at the end of each semester. Where does the supervising attorney begin and the faculty supervisor end? While the MOU attempts to answer that question by setting out specific areas of responsibility, the reality of day-to-day scheduling often blurs those crisp delineations of responsibility.

Some of the duties overlap and when that happens, tensions may arise between attorneys and clinicians when their approaches to cases differ. For example, as a former full-time prosecutor, working in an office where there are different guidelines on how certain classes of cases should be handled has been problematic at times. The repair for such tensions

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<sup>42</sup> See Montana Supreme Court Rule No. 12982 (1991). The Montana Student Practice Rule allows students who have earned a minimum of fifty-five credits to appear in court unsupervised, but with permission of the client (in civil matters) and the supervising attorney. The rule does not allow unsupervised students to appear in criminal cases where the defendant has a right to court-appointed counsel.

<sup>43</sup> By acknowledging that reality the parties were able to work out a compromise where a student may appear in court without a supervising attorney or clinician if both the attorney and the clinician agree that the student and the particular matter are appropriate for an unsupervised court appearance. *Infra* Appendix 4.II.E(6).

must fall to the faculty supervisor. When a clinician offers an alternative solution to a case problem, but defers to the standard office practice, students see different resolutions to problems. Students are also exposed to the reality of office politics.

Having different attorneys offer alternative solutions can and should be a benefit to students. In actuality, it can become a problem when students become concerned about who they should be looking to for direction. Again, it is the faculty supervisor who should take the lead in stressing that the student must follow the direction of the supervising attorney. While students can benefit from differing advice, they should feel secure knowing to whom they should turn for the ultimate decision making.

*b. Effect of the Memorandum of Understanding on the Clinician, Supervising Attorney and Interns*

The effect of having a detailed Memorandum of Understanding can be positive for both the clinician and the supervising attorney for reasons of clarity and clear delineation of duties and expectations. It has another effect, however, that is difficult to articulate. By setting appropriately high standards and expectations, the MOU also creates a level of facade. The reality in the office and the courtroom cannot always measure up to the expectations set out in the agreement. At times, students do not receive the level of supervision that either the clinician or the supervising attorney would acknowledge is optimal.

Is that a reason for abandoning the standards or setting different standards? No, it is rather an opportunity to step back and acknowledge that the expectations may be, in part, aspirational. It is an opportunity for the clinician to work with the supervising attorneys in reassessing the value of the goals. For example, if a student is feeling frustrated by a lack of regular contact with either the clinician or the supervising attorney, can the MOU offer some advice? Is there a requirement or expectation that is not being met? Can it be met in another way?

What about the effect on the student interns? I would be

naive if I assumed that each student dutifully read the MOU when reviewing his or her Clinic handbook. One of the better uses of the MOU, therefore, is to make it the centerpiece of one of the first seminar classes. Discussing the MOU gives students a clearer sense of the educational goals of the clinic—especially in a required clinic setting. The manner in which the MOU governs how the supervising attorneys and the clinician relate to each other has a ricochet effect on the students. It can be a tool for the students to use when they have questions or concerns about that relationship and about the operation of the clinic.

### 3. The Seminar Class

The classroom seminar has evolved over the years from a generic lawyering course attended by all third year students to separate seminars for each of the clinic groupings. The three prosecution sites attend a weekly seminar that addresses a variety of issues. The fall syllabus is drafted with input regarding class sessions provided by prior students in their written evaluations of their clinic.

The fall syllabus reflects the premise that providing a broad based introduction to the world of prosecution is the best use of classroom hours in a hybrid clinic.<sup>44</sup> In the first semester the emphasis is on exposure to the realities of the local law enforcement community. Tours of the regional detention center and the state forensics lab and lectures by retired detectives on interrogation and interviewing serve to give students a sense of how their casework impacts the rest of the law enforcement community. Students are encouraged to go on “ride-a-longs” with local highway patrol officers. While only one student in fifteen years has ever taken advantage of the opportunity, students in the county attorney clinic can observe an autopsy at

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<sup>44</sup> It does not primarily have a fundamental skills focus in part because of the heavily required skills curriculum at the University of Montana School of Law. All students are required to take the following skills-related courses: pretrial advocacy I and II, legal research, legal analysis, legal writing, business transactions, civil procedure, evidence and trial practice.

the state forensics lab.

An early semester class is offered on prosecutorial discretion and the ABA rules on prosecutorial conduct. In the future the class may be offered as a panel discussion utilizing the supervising attorneys as panelists. The benefit of that approach would be twofold. It would make the concept of prosecutorial discretion more tangible and it would allow the students to see their supervising attorneys as both lawyers and teachers.

Also included in the syllabus are monthly individual case review sessions at their clinic sites attended by the clinician and the individual students. It is time spent reviewing cases that they have pending or have recently completed. It is a time for both the student and the clinician to ask questions and get a sense of the work that is being done. Is the case selection sufficiently varied? Does it have an appropriate educational content? It is also a time to determine if the student is getting what he or she needs from the faculty supervisor, from their clinic supervising attorney(s) or the overall clinic experience.

One of the reasons for having the sessions at the clinic sites is to facilitate reviewing the actual case files. At the beginning of the semester such a hands-on approach is a valuable educational experience for students. For example, the supervising attorneys are steeped in the familiar process of prosecuting misdemeanor matters and have a vast array of knowledge. What they can sometimes forget, however, is the very basic level of knowledge that most students have when they first come into a clinic. The learning curve is incredibly steep. Taking the time, on site, to review files with students is time well spent. Taking the time, on site, to review the details of a traffic ticket and what those details mean to the prosecution of a case, may seem elementary to a busy practicing attorney. It is eye-opening to a student who has never seen an actual ticket.

#### *a. Strengths and Challenges*

A hybrid clinic approach allows students to bring into the classroom issues that arise in their casework. It also allows students to discuss those issues with a faculty supervisor who is actively familiar with their casework. Having that knowledge

gives the clinician the latitude to create classes that will best mesh with the real needs of the students as she observes areas where they are struggling or where they have questions. Meeting with students at the beginning of each semester to discuss their learning agenda sets the tone for the semester.<sup>45</sup> It is a time for me to become acquainted with the students and to determine what needs they have that might be addressed throughout the semester.

While individual meetings and classroom discussions are confidential, students often feel a dual allegiance to the supervising attorneys at their clinics and to their faculty supervisor. They often feel sufficiently comfortable discussing frustrations with happenings at their clinic sites with the faculty supervisor. When the faculty supervisor is in a hybrid clinic with similar responsibilities as the supervising attorney, where do students go if they have frustrations with the faculty supervisor? One of the challenges of the system is to create an atmosphere where students are unafraid to express concern or frustration, no matter what the source.

*b. Effect of the Seminar Class on Student Learning*

Given the demands of day-to-day clinic obligations, students may see the requirement of clinic as forced public service rather than an educational opportunity. Some students may see the weekly seminar as precious time away from the "real" work they are doing at their clinic sites.<sup>46</sup> The challenge for

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<sup>45</sup> See J.P. OGILVY ET AL., *LEARNING FROM PRACTICE* 24 (1998). Students sometimes struggle when faced with the learning agenda at the beginning of the semester. Their goals are often too broad to be effective. By meeting to discuss the agenda, the faculty supervisor assists students in refining their goals.

<sup>46</sup> A factor compounding the feeling that the seminar is taking away time from the "real" work of the clinic is the credit distribution. Students are required to complete a total of four credits of clinic and have the option of taking up to eight credits. Most of the students take two credits each semester. Those credit hours (four hours per credit per week) include all of their work, both at their sites and for the classroom seminar. It can easily be argued that two credits for all the work expected of the students is simply too little. When choosing between time spent on casework and time spent on classroom materials, most of the students would rather opt for the former, no matter how interesting the classroom piece. That fact is one of the major reasons that the seminar is grounded in the



the faculty supervisor is to create a classroom seminar that strikes a balance. A seminar that blends guest speakers and panels from current law enforcement with particularized skill sessions and issues of prosecutorial ethics is one method of enhancing the goal of creating skilled, ethical and thoughtful prosecutors.

#### 4. Reflective Writings

Reflective writings or journals<sup>47</sup> are communication tools often used by faculty supervising external clinics to give a window on the world of the clinic student. As suggested to students in *Learning from Practice*,

Journals provide an excellent mechanism for a two-way communication with the faculty supervisor responsible for overseeing your externship. A journal is not a substitute for personal communication, but it can supplement in-person communication in meaningful ways.

A journal entry gives you the opportunity to frame carefully a specific question to which you would like an answer from the faculty supervisor. A journal provides the faculty supervisor with information about your externship and can help the supervisor design helpful learning interventions to improve your experience.<sup>48</sup>

Over the years I have taken different approaches when discussing the reflective writing requirement with my students. In some years I have arbitrarily set a schedule for submission of the writings and have given them suggested topics. In other

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hands-on realities of prosecution work described above.

Those frustrations may also be caused, to some degree, by simple fatigue. In a recent informal survey, I found that anywhere from one-third to one-half of third year students are employed between ten and twenty hours per week. When they add at least ten hours per week of clinical responsibilities, they see little time for their other academic work, family or social needs. Whether or not accurate, they often see the required clinic as the primary source of their fatigue. The reason for that focus may be the simple fact that most students, by their third year, resent any required courses.

<sup>47</sup> For a critical discussion on the role of journals see J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55 (1996).

<sup>48</sup> OGILVY ET AL., *supra* note 45, at 102.

years I have given the group two or three options and let them vote on which they preferred. The variables might include the number of writings, the frequency of submission and the length. In the most recent years the students have been required to submit three, one to two page writings, which are submitted monthly during the semester.

*a. Strengths and Challenges*

Over the years the evaluations from students on the reflective writing aspect of the course have varied from damnable to sublime. In discussing the requirement with students I have told them that my interest is not so much in what they are doing as in how they think about what they are doing/seeing. They have focused on a variety of issues: concerns with treatment defendants receive from judges, perceived inadequacies of opposing counsel, their own lack of understanding about courtroom process and frustrations with the required element of clinic.

In posing questions to me as the confidential reader, they put faith in that promise of confidentiality. I respond in writing to each student, sometimes both answering and asking additional questions raised by the content. If a student raises a particularly interesting issue, I might ask permission to raise it at a class session. I find that students are eager to share experiences with their peers and seek others' opinions.

The question is whether this tool serves a sufficient pedagogical purpose when the clinic is hybrid in nature and the students are afforded contact with the clinician more similar to that of an in-house clinic. More than fifteen years ago the relevance of reflective writing in the in-house clinic context was discussed by clinicians Philip Schrag and Elliott Milstein in the following exchange.

**PHILIP SCHRAG:**

Not only reading, but reflective writing increasingly is resisted in clinics. In my clinic, we used to have students write a seven page semester paper in addition to their classroom exercises and what they were writing to further their cases. The assignment simply called on them to write in depth about

some small decisional moment or interpersonal event in one of their cases. They could write about a decision to file one kind of motion instead of another, or about a five minute, or even a five second, portion of a client interview. The point was to look at something closely and reflectively for seven pages. This year, after mutinies in two successive semesters over this diversion from case handling, we have had to abandon this writing assignment.

ELLIOTT MILSTEIN:

And because they were required to do it only because you said so. There was no demonstration of its usefulness in any way in their lives. I do not know that that is an irrational decision on their part or one that is fair to be angry about. With all the competing demands, telling a student something is in their interest is not enough. Students are not going to take your word for it. We need to create devices that interest them.<sup>49</sup>

Other guidance on whether the writing serves a useful purpose can be drawn from the evaluations of students elicited at the end of each semester. Below are selected student responses given over the course of the last two and a half academic years to the question, "Evaluate the reflective writing component of the course. What are its strengths and/or weaknesses for you?":

- I was surprised at the value of stepping back for a moment and really analyzing my thoughts from a creative point of view. Although the last one snuck up on me-they were more valuable than I anticipated.
- I thought it was fine. I don't know how much it really helped me, but it certainly didn't hurt me.
- Personally, I recommend it be optional. It becomes one more thing to do.
- Reflective writing is helpful insofar as it requires individuals to cognitively apply how to be a better attorney.

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<sup>49</sup> Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years, and Aspirations for the Future*, 36 CATH. U. L. REV 337, 357 (1987). The frustrations expressed so many years ago by Philip Schrag have been the current topic of discussions among the clinical faculty at Montana.

- The reflective writing component was difficult, but made me more observant.
- The reflective part of the course is great. I really liked having the reflective interviews<sup>50</sup> because I got immediate feedback. I definitely recommend making that option available to everyone. In the midst of a searching moment, it is vital to have a person to respond to the feelings and questions so we know we aren't the only one in the world who has pondered such a thing.
- You get out of it what you put into it.
- I do not like this component and feel it adds little to the experience. I would get rid of this.

Although student reaction to the writing requirement is varied at best, most of the reflections that I read tell me that the students, some under duress, are doing the clarifying and reflecting I am looking to find. In balance, perhaps the student reflections enhance the life of the clinician more than they clarify and improve the lives of the students. Is it appropriate to ask the question, "What benefit does the clinician receive from the reflections?" Or, is that hubris? Clinicians can learn many things from the writings: topics that need further discussion, problems in supervision, suggestions for better instruction. If the clinician gains nothing more than the delight from reading a well-crafted piece of writing, is that selfish? If the end product that students submit has shown thoughtfulness and reflection, is that a sufficient reason to mandate it? Perhaps selfishly, my answer is "yes."

Below are two examples drawn from the last three academic years (used with permission of the writers) that illustrate my belief that clinicians have as much or more to gain from the writings than do the students:

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<sup>50</sup> During the second semester I have offered students an opportunity to have "reflective interviews" with me rather than to submit a reflective writing. I admit that the pedagogy of this offer is questionable. If one of the important benefits of reflection is the clarification created by the writing process, how can I justify this oral alternative? On the other hand, students who have taken me up on this offer have uniformly preferred that type of verbal reflection and the sessions have been beneficial to both student and teacher.

Essentially, I believe it comes down to a question of what justice truly is and what we are seeking to do as prosecutors. We have discussed the concept of justice in class, and yet I do not think we have come to an adequate definition-or more realistically, an adequate definition may be unattainable. Webster's dictionary defines justice in terms of impartiality, equity, vindictive retribution, merited punishment, rights, fairness, uprightness, and even a "virtue." But justice seems to have another element related to social consequences; i.e. what are the consequences to society by establishing guilt in a certain scenario. In the end, I do not think I can yet define justice except to say that the prosecutor seems to face a dual edged sword in many cases and can only strive to seek the truth together with the fact finder, while avoiding over-reaching.(R.A.)

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Days before, I had written to my mentor and good friend, a professor of philosophy at another institution, with my reaction to the readings you assigned. I remarked to him that the prosecutor is free of the duty to a specific "client," and that initially that freedom appeared to be welcome. Yet the duties that do exist for the prosecutor, to the interests of justice and the community, can be conflicting duties. Society, and the micro-society in which I live, Missoula, demands an infrastructure that operates in an orderly fashion. Drivers on the city streets are obligated to do their part to avoid confusion and promote safety, and rules are promulgated in accordance with those obligations. Clearly, those rules, like any other laws, must be enforced. Enforcement requires penalties for those who disobey, and the courts establish that a punishable offence occurred. I asked my friend, "When do the interests of justice outweigh the interests of society?" Could society value order to such a high degree that the demands upon its citizens become unreasonable? I wondered if a zealous prosecutor with an ear tuned to the interests of a community might miss the truth that no offense had occurred. I wondered if my first trial had taken place not because each individual in society deserves a just outcome, but because I had determined that an orderly society must be preserved.

A traffic ticket hardly seems to warrant such high-minded contemplation, yet perhaps municipal court is exactly where

this thinking must begin. The proper sense of prosecutorial discretion developed at this level in the judicial hierarchy will also be the sense required at a higher level, where a human life may depend on the choice of a prosecutor. No matter what path my legal career follows, the choices I must now make as a prosecutor are teaching me to balance the need for justice for individuals and justice for collective society. The right choice, it seems to me, need not preclude one at the other's expense.

I did not expect to feel the weight of these sorts of decisions in my clinical training. Perhaps I expected someone else to make the choices I am now facing. I find these choices disturbing because I know that without developing my own personal balancing test, I will never be able to make the choices without regret. I also know that these decisions may require courage to face a community that does not always agree with the discretion I exercise. Knowing now what my values require of me will prepare me for those times. I may experience more sleepless nights as I worry about making the right choices; possibly the worst thing that could happen is that these decision will NOT cause sleepless nights. (K.M.)

#### *b. Effect of Reflective Writings*

The above two reflections best illustrate the effect of a hybrid clinic's closer student-faculty association. In each of the two writings the students were reflecting in response to a case or incident about which I, as the faculty supervisor, was very aware and involved. In each instance I had talked with the student about aspects of the case or incident prior to their writing about it. Would the students have been as thoughtful had my involvement not been as direct? Perhaps. Would the students have felt as comfortable expressing frailties and concerns? Perhaps not. The more involved contact created an avenue for more thoughtful and vulnerable reflections.

The second writer's thoughts made me delve deeply to respond in as thoughtful a way. They also highlighted the importance of the non-urban community in which he or she was prosecuting. By describing "the micro-society in which I live, Missoula," the student acknowledged how seemingly minor

decisions can have a significant impact within the "micro-society." The same can be said of the decisions made by a clinician within that same micro-society.

### 5. Observation, Feedback and Evaluation

For a hybrid clinic, the ability to participate in the observation and evaluation of student performances is nearly as critical as case selection. I attend as many of the student trials in all three clinics as possible with an emphasis on the county attorney clinic because of my increased role within that clinic. My role when I attend is primarily as an observer/critiquer, but can be more involved depending on the student and my knowledge of the case. Immediately after the trial, time permitting, I sit down with the student and debrief the case and the student's performance. If both the supervising attorney and I have attended the trial or hearing, we both sit and debrief the student. Using the NITA<sup>51</sup> methodology, I take detailed notes and then use specific examples of performance to play back to the student and suggest alternatives with an explanation.

Prior to any court appearance the student gives the judge a Judicial Evaluation Form to complete and return to me.<sup>52</sup> The form was created in the early 1990s as part of a Department of Education grant previously discussed. The form works as well as the relationship between the faculty supervisor and particular judges. Having the advantage of a rural court setting with closer contacts and relationships, most of the judges use the form and have even come to chide students who neglect to present them with one. Depending on the judge and on time pressures, the form may give students minimal or quite detailed feedback from the judge's perspective. At a minimum it gives the student a starting point from which to talk with the judge if the student chooses to do so.

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<sup>51</sup> The National Institute for Trial Advocacy or NITA offers courses for attorneys, law students and law teachers in the art of advocacy and supervision. I was fortunate to participate in a NITA Advocacy Teacher Training course and have spent two one-week sessions teaching at Emory School of Law using the NITA teaching methodology.

<sup>52</sup> See Appendix 5 for a copy of the Judicial Evaluation Form.

In most external clinics, the responsibility for mid-semester evaluations<sup>53</sup> as well as written final evaluations<sup>54</sup> falls to the supervising attorneys who observe most or all of the case-work done by the students. In a hybrid clinic, there is a sharing of that responsibility. There may be times when the clinician has been the sole observer of a student's court appearance or has been the only attorney to discuss a case with the student. It may be that the clinician and the supervising attorney have different, although equally valid, perspectives on a student's performance.

### *a. Strengths and Challenges*

Generally speaking, it can be frustrating for any student who receives conflicting, separate feedback on courtroom performances and evaluation of overall clinic work. In a hybrid clinic setting, the opportunity for conflicting feedback is compounded. A successful partnership requires that both clinician and supervising attorney trust and value each others opinions even in disagreement. If the feedback is truly contrary, then it becomes the role of the clinician to help the student see the distinctions and benefit from differences.

For a clinician wanting to observe trials in multiple courts, not matter how physically close together they are, it can be a logistical challenge. The arrangement that I have with the City Attorney addresses that problem by sharing of observation duties. At the beginning of a semester we both attend all court appearances and give our feedback immediately after. As the semester progresses and we see a student gaining in confidence and experience, we often take turns attending court hearings or trials. The arrangement allows both of us to continue to assist

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<sup>53</sup> See Appendix 6 for a copy of the mid-semester evaluation form.

<sup>54</sup> See Appendix 7 for a copy of the Final Evaluation form. The evaluation process is periodically reviewed for its effectiveness for the students as well as for its workability for the supervising attorneys. Between 2002 and 2004 the clinical faculty proposed changes to the evaluation forms, met with the supervising attorneys to vet those changes and finalized a form where the evaluators would make observations supplemented by specific examples rather than use a numbering system.



and evaluate students and gives both of us time to manage our schedules.<sup>55</sup>

*b. Effects of Observation, Evaluation and Feedback*

In a hybrid clinic there is a benefit to the faculty supervisor, the supervising attorney and the student when everyone is actively interacting. Repeatedly, students positively report in their evaluations of their clinical experience that the time spent on feedback after a court appearance was the most beneficial aspect of the clinical experience. The same is true when they evaluate individual case review sessions.

Students are hungry for individual assessment and critique in what they perceive is a safe setting. Each year the same scenario plays out. The first time that I appear in the back of a courtroom with my notebook in hand, the student looks back nervously and clearly telegraphs that she wishes I were not there. Some are bold enough to say that to me directly. After the trial and the critique session that follows, the student visibly relaxes and then welcomes future incursions into "their" courtroom. The overall effect of direct observation, evaluation and feedback, when done in an affirming way, enhances a student's learning.

### CONCLUSION

I titled this article "Beauty and the Beast" in part as a personal observation. For the past fifteen years I have considered myself to be incredibly fortunate in my work. But, that is not to say that there have not been frustrations. The one constant, the ability to stay closely involved with the courts, law enforcement and the prosecuting attorneys, coupled with the introduction of students to the prosecution world, is both the beauty and the beast of my clinical career.

Have I answered any of the questions that have been raised? For example, are hybrid prosecution clinics a meaning-

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<sup>55</sup> There are times when I have students in two different courts at the same time and the arrangement with the City Attorney allows me to maximize my coverage of student trial appearances.

ful fit in a non-urban community? The answer is “yes” for several reasons. The closeness of the legal community lends itself to shared responsibility. Conversely, the closeness of the legal community discourages a system where the law school clinician and the onsite supervising attorneys lead completely separate lives. The small legal community fares better when the people interacting with the students are working together, even when they may disagree over process or supervision issues.

Familiarity is a significant factor in the non-urban setting of the prosecution clinics. The three prosecution offices are the only ones available to our students. We do not have the luxury of different courts (immigration, bankruptcy, worker’s compensation, appellate) sufficiently close to place our students if the three existing clinics choose to withdraw from the clinical program. That reality means that extra effort and negotiation must be employed to make the partnership between the prosecution offices and the law school work to the student’s advantage.

Are hybrid prosecution clinics a meaningful fit for the faculty clinician? Perhaps I can only speak as a majority of one, but having a place in the life of the clinic student that goes outside the classroom makes the work and the student interaction more meaningful. Having a regular presence in the office, making case assignments and monitoring caseloads, giving regular feedback and evaluation; all of those actions create an educational atmosphere within the workplace. The reflective writings assume more depth, even when students do not like writing them or feel they are not a valued exercise. The day-to-day contact with the students extends past the clinic. On numerous occasions the closer student relationship created through the clinics has carried over into career or other counseling situations. That contact in turn helps solidify the clinic relationship and the relationship between the law school clinical program and future supervising attorneys.

Are hybrid prosecution clinics a meaningful fit for the onsite supervising attorneys? Without doing a market survey, I can only look to the anecdotal evidence. When the county attorney clinic and the clinical program were having frustrations

with each others conflicting needs, a negotiated Memorandum of Understanding resolved most of the concerns. Everyone recognized that neither the county attorney clinic nor the Law School could give students a meaningful clinical experience without the help of the other. Both sides recognized a symbiotic need and benefit.

It may be occurring to some readers that what I am describing is the same kind of relationship that in-house clinicians have with their students. In part, I think that is what happens. The difference, however, is that the students become part of a working prosecution office with all of its strengths and frailties. What the students lose in case depth, they can gain in broader case variety and experience.<sup>56</sup> Having the opportunity to handle both a variety of misdemeanors and to assist on felony cases has a broad appeal for students. With that opportunity comes time pressure that is certainly one of the frailties of a busy working office. Finding that reasonable medium becomes one of the primary, and most difficult, jobs of the faculty clinician.

I admire the work that prosecutors do. A prosecutor who has not fallen prey to the overzealousness<sup>57</sup> that sometimes occurs, can do more good for society than twice as many dedicated defense attorneys. When a prosecutor exercises his or her power with restraint and compassion, everyone benefits. The ripple goes farther.

I hope that forms used in Montana's hybrid clinics that I have attached as appendices will be of use to some. I know that our program has benefitted over the years from the generosity of other clinicians. In the years that I have attended clinical gatherings I have often both asked and heard the question, "But, how do you do that exactly?" I hope that the forms will

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<sup>56</sup> A student in the County Attorney's Office recently assisted a supervising attorney in the prosecution of an Attempted Homicide case in the District Court. The student's experience cemented his desire to seek work as a prosecutor post graduation.

<sup>57</sup> Kenneth J. Melilli, *Prosecutorial Discretion in an Adversary System*, 1992 BYU L. REV. 669, 670 (describing "an overzealous and insatiable desire to rescue the world from criminals")

help answer that question. This article was never meant to probe the scholarly depths, but rather to offer a practical view of hybrid clinics from a clinician in a small town.

Creating a clinical opportunity for students allows them to work within the chaos of a busy prosecutor's office, and yet also have the safety net of a clinician who understands the frustrations both they and their supervising attorneys encounter, has advantages that outweigh the disadvantages. The process is ever undergoing change and revision.

Students will and do say that there are problems with the system. They may feel that they do not have enough time with the supervising attorneys. Even when they are told that the supervising attorney offices are open door and that they should feel free to walk in at any time, students believe what they see rather than what they hear. They see the attorneys carrying insurmountable caseloads and they often do not want to interrupt. Students do and will say that they are asked to do too much work for the credits allotted. Each group of students has different ideas about how to improve the clinic. The program changes as we all experience it.

But when the final analysis is in, the benefits of a cooperative effort that utilizes the advantages that a non-urban setting has to offer, outweigh any disadvantages. The final product is worth the effort and serves the common good.

## Appendix 1

Clinic Descriptions  
Academic Year 2004-2005*Criminal Defense Clinics*

*Criminal Defense Project*, Prof. Jeffrey Renz (Maximum of eight students)

The Criminal Defense Clinic is located in Room 192 of the Law School. Students in the Criminal Defense Clinic represent defendants in serious misdemeanor cases (cases that require appointment of counsel) and occasionally represent clients in uncomplicated felonies. At the start of the semester, students who enroll in the Criminal Defense Clinic will, as part of the clinic's requirement, complete a short course in trial techniques. Students will observe and conduct simulated jury selection and direct and cross examination. Opening and closing arguments will be demonstrated. Students will be videotaped and will review their videotapes with an experienced litigator. Following completion of this training, students will participate in all phases of a criminal defense from the initial meeting with their client through acquittal or sentencing and, if necessary, appeal. The Criminal Defense Clinic also represents prisoners in habeas proceedings in the United States District Court and in post-conviction proceedings in the state courts, and may engage in other litigation related to the rights of defendants and prisoners.

*Federal Defenders of Montana*, John Rhodes, David Avery (Maximum of two students)

The Federal Defenders of Montana, which is located at Millennium Building, 125 Bank Street, maintains a branch office in Missoula. The mission of the Federal Defenders of Montana is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (Title 18 U.S.C. § 3006A), and other congressional mandates are enforced on behalf of those who cannot afford to retain counsel or

obtain criminal defense services. In fulfilling its mission, the Federal Defender program helps to (1) maintain public confidence in the nation's commitment to equal justice under law and (2) ensure the successful operation of the constitutionally-based adversary system of justice by which both federal criminal laws and federally guaranteed rights are enforced.

Clinical students will assist the federal defenders in providing aggressive and effective legal representation to individuals accused of federal offenses, under investigation for federal criminal violations, or appealing a federal conviction or sentence, as well as furnishing representation to federal *habeas corpus* litigants (including those under a sentence of death). Clinical students will directly experience client contact, aid with defense investigations, participate in proceedings in the United States district court (to the extent permitted by the client, the court and the attorney supervisor), and research trial and appellate issues. Assignments may also include writing memoranda in support of pretrial motions and drafting briefs to the United States Court of Appeals for Ninth Circuit and writs and petitions to the United States Supreme Court.

*Prerequisite:* Students applying should attach a resume indicating prior experience working with people.

*Indian Law Clinic*, Tracy Labin, Acting Director (Maximum of eight students)

The Indian Law Clinic is an in-house clinic at the University of Montana School of Law. The students in this clinic can participate in a wide variety of activities, including: responding to requests for assistance with tribal code development; creating training programs for tribal entities; providing technical assistance to tribal courts and organizations; representing clients in tribal court; handling mediation/settlement conferences; assisting non-profit organizations on a variety of indigenous rights issues; and handling legal research requests from federal, state and tribal courts judges, as well as attorneys working in the field of Indian law. The primary objective of the Indian Law Clinic is to provide students with practical experience regarding the application of federal Indian and tribal law in

the various forums and how to effectively work with Indian clients.

*Prerequisite:* Students should take or have taken Federal Indian Law or Tribal Courts/Tribal Law. It is recommended this be done prior to taking clinical although it can be done concurrently with clinical.

*Judicial Clinic,* Federal District Court Judge Donald Molloy (one student) and United States Magistrate Leif Erickson (three students).

The United States District Court, Missoula Division, is located in downtown Missoula in the Russell E. Smith Courthouse, 201 East Broadway, and has a law library and work stations with computers. Interns work on active court cases and receive instruction and guidance from the Judge and court staff. Duties include legal research, oral presentation and discussion of work in progress, and drafting of advisory memoranda and court documents. Interns also observe a variety of pretrial conferences, settlement conferences, hearings, criminal proceedings and trials.

*Prerequisite:* Students applying should attach [to their clinic preference sheet] their resume and an anonymous writing sample of no more than five pages.

*Land Use Clinic,* Professor John Horwich

The Land Use Clinic is an in-house clinic located in the Law School (Room 185). The clinic is staffed by law students, graduate students in Environmental Studies, and students in Land Use Planning in the Geography Department. The Land Use Clinic provides services to local Western Montana cities, towns and counties. Services include assistance in long-range planning efforts and the development of growth management plans as required by Montana law, ordinance drafting and support to local communities addressing specific land use issues.

Students work with city, town and county attorneys and with local planning staffs and citizen boards. Students provide advice to local communities regarding their legal obligations

under Montana law. Students assist in the preparation of local growth management plans and zoning ordinances. Students also provide research and advice concerning specific land use issues.

Students will periodically travel to the communities for which they are working to meet with local officials and to attend relevant public hearings.

*Special Land Use Clinic Requirements:*

*Credit Hours:* Students in the Land Use Clinic *must* enroll for a minimum of *five credit hours* for the year.

*Grading:* The credit/no credit option for grading is *not* available for the Land Use Clinic.

*Course Prerequisites:* All Land Use Clinic students must have completed the Land Use Planning Law course.

*Legal Service Clinics*

*ASUM Legal Services, Annie Hamilton, Tom Trigg, Terry Burnham (Maximum of ten students)*

This office is located on campus in the UC, and provides a variety of legal services to students at the University. The cases encountered are 70% civil and 30% criminal. The civil cases are of a broad variety, including dissolutions (divorces), negligence, consumer, contract drafting, landlord/tenant, simple wills, and domestic cases (adoption, name-change, etc.). The criminal matters are generally limited to misdemeanors such as drug possession, DUI & other traffic citations, shoplifting, and disturbance & assault charges. Interns will meet one-on-one with clients and will be primarily responsible for their cases. Interns can expect to perform the full range of attorney activities, from negotiating, drafting, and plea-bargaining, to court appearances which may include hearings, non-jury trials and occasional jury trials.

*Child Support Enforcement Division, Patrick Quinn (Maximum of one student)*

The Child Support Enforcement Division is located at 1610 South 3rd West, #201. A clinical student assigned to the Child



Support Enforcement Division of the Department of Public Health and Human Services will be exposed to the various roles performed by an attorney for a state agency. This may include attending administrative hearings, attending and participating in contested district court matters, drafting proposed legislation, determining compliance with Federal and State statutes and regulations, preparing modifications of child support for approval by the District Court, interpretation of case law, and drafting of responses to petitions. This clinic is valuable experience to any student who wishes to work for an agency of the State of Montana.

*Montana Legal Services Association*, Klaus Sitte, Ed Higgins  
(Maximum of four students)

Montana Legal Services Association (MLSA) provides access to justice for low income clients in civil cases. Student interns will have an opportunity to represent domestic violence survivors in family law cases, social security clients (including administrative hearings), and work to resolve landlord tenant issues. MLSA has a holistic approach to its clients, and will attempt to meet all of their legal needs, which may include additional areas of practice such as public benefits, housing law, consumer law, and others. Interns will also have an opportunity to participate in a videoconferencing pilot project, representing and advising low income people in Miles City through use of this technology. Representation may include court appearances using this ground-breaking technology as a way to provide legal services to rural communities.

Interns are fully integrated members of the law firm. Cases will be assigned to the intern and each intern will be expected to handle a variety of cases as if she/he were an associate in a firm. Interns work under the supervision of a supervising attorney but are given significant responsibility for their cases. Interns can expect to appear before district court judges, standing masters, and administrative law judges. In addition to an opportunity to use litigation skills in a contested hearing, interns will gain practical general practice skills such as client interviewing techniques, negotiation skills, document drafting

and legal research.

MLSA clients have nowhere else to turn for legal assistance, and are highly appreciative of the work done on their behalf by student interns. Students will leave their clinical experience knowing that they have made a real difference in someone's life.

Montana Legal Services office is located in downtown Missoula, at 304 North Higgins Avenue.

*Mediation Clinic*, Art Lusse, Torian Donohoe (Maximum of three students)

This clinic has two components. First, clinical students have the opportunity to mediate legal and non-legal cases. *Mediations include cases referred from the justice court (including small claims and general civil cases with attorneys), sheriff's office, police department, and the city and county.* Mediation is also available at the Salish-Kootenai College twice a month. Students are expected to engage in extensive preparation for each case along with their co-mediator, review files, review the law (where applicable), and discuss the case with their clinical supervisor. Following each mediation, students are expected to keep journals and meet with the supervisor to discuss the mediation.

The second component of the Mediation Clinic involves consulting and training with the University of Montana student Peer Mediation Program and training opportunities in the middle and high schools in School District 1. Students consult with new student mediators, are involved in the teaching of conflict resolution and mediation skills and theory, and coach role-plays.

*Prerequisite:* ADR 614.

### *Prosecution Clinics*

*Missoula City Attorney's Office*, Judy Wang, Jim Nugent (Maximum of three students)

The Missoula City Attorney's office is located on the second floor of Missoula City Hall, 435 Ryman. Students who are as-

signed to this clinical will spend a lot of time in court. The general areas of legal assistance that will be available to a law school clinical student include legal research of civil, administrative or criminal matters; counseling citizens regarding municipal government operations; interviewing complainants and witnesses in misdemeanor criminal cases; and preparation and prosecution of misdemeanor cases in Missoula Municipal court. Clinic Students work on real cases with real people.

*Missoula County Attorney's Office, Kirsten LaCroix, Dale Mrkich, Suzy Boylan-Moore (Maximum of three students)*

The Missoula County Attorney's office is located at the county courthouse. Clinical students assigned to the Missoula County Attorney's Office deal with a variety of criminal and civil matters. The students represent the State of Montana as the prosecutors in traffic and other misdemeanor cases in the justice courts or on appeal of these cases in district court. In these cases, the students make use of the lawyering skills of interviewing and preparing witnesses, building a case file, negotiating case resolutions with other lawyers, law students or pro se defendants, legal writing when responding to motions, and the litigation skills needed in jury and non-jury trials. Students also have the opportunity to assist members of the County Attorney's staff in felony cases in the district court by preparing written briefs on motions, handling pre-trial hearings, or sitting second chair at trial. Students also often represent the State in driver's license suspension cases in district court. In addition to the litigation experience, students handle the bulk of the questions from the public which are addressed to the County Attorney's Office in the areas of landlord-tenant and consumer relations.

Although the focus of the clinic is primarily in the area of criminal law, students may have the opportunity to work under the supervision of several attorneys in the office in the areas of public health, mental commitments, juvenile justice, child welfare, or land-use planning. Students must spend time in the County Attorney's Office above-and beyond their litigation time handling questions from the public. Students will be expected

to work the entire school year, with a minimum of two credits per semester. Students will also be expected to attend two full days of training prior to the start of the fall semester before beginning work at the clinic.

*United States Department Of Justice, Kris McLean, Josh VandeWetering and Robert Anderson (Maximum of four students)*

Students placed with United States Department of Justice may work with both the United States Attorney's Office and the Wildlife and Marine Resources Section, Environment and Natural Resources Division.

The United States Attorney for the District of Montana has established an office in Missoula. The Assistant United States Attorneys in the Missoula office, Kris McLean and Josh Van de Wetering, have primary responsibility for all criminal and civil cases which involve the United States in the Missoula Division of the United States District Court for the District of Montana. Although law students selected for this clinic will not have access to grand jury or other sensitive information, they will be involved in all aspects of the office's caseload. Assignments for the criminal work in the office may include appearances (initial appearances and detention hearings) and trials involving misdemeanor offenses before United States Magistrate Judge Leif B. Erickson, research and pretrial briefing for criminal cases, and research and brief writing for appeals before the Ninth Circuit.

The Wildlife and Marine Resources Section, Environment and Natural Resources Division, United States Department of Justice has office space within the United States Attorney's Office. The primary responsibility of the office is to prosecute federal criminal cases involving violations of wildlife laws like the Endangered Species Act, Lacey Act, Migratory Bird Treaty Act, Marine Mammal Protection Act and others. Many cases arise from long-term undercover investigations of criminal syndicates engaged in organized illegal international trafficking in protected wildlife species. Students working with Robert Anderson will primarily assist him with research and writing.

*Note: Students will be required to obtain a federal security clearance through the submission of an application which must be completed prior to the end of the spring semester.*

*Natural Resource Law Clinics*, Tom France, Matt Clifford (Maximum of three students)

Students placed with the Natural Resource Law Clinics may work with either the National Wildlife Federation (NWF) Northern Rockies Natural Resource Center or the Clark Fork Coalition.

The National Wildlife Federation's Northern Rockies Natural Resource Center is involved in cutting edge litigation and policy formation at the state, regional and national levels. Students will be supervised by Tom France of the National Wildlife Federation in Missoula, but will also have the opportunity to work with other lawyers active in natural resource litigation. Students will be involved with issues including forest planning, grazing, coal bed methane development, hard rock mining, oil and gas leasing, and endangered species management. NWF has a particular focus on wildlife conservation and restoration including wolves, prairie dogs, and grizzly bears. NWF's wolf work currently includes initiatives in the southern Rockies and the northeast. In working on these projects, students will have an opportunity to work with NWF biologists, other NGO's, and government officials. Work assignments include brief writing, administrative appeals, NEPA comments, and legal and factual (scientific and otherwise) research.

The Clark Fork Coalition offers a mix of experience in litigation and environmental policy/advocacy. Students will be supervised by Matt Clifford. The Coalition's mission is to protect and enhance water quality and environmental health in the Clark Fork River basin. Typical clinical assignments include research and writing related to ongoing litigation under laws such as the state water quality act, the metal mine permitting laws, and local land use law. Students also can expect to help prepare substantive comments on environmental impact statements and other government proposals, and to assist with representing the Coalition before state and federal administra-

tive agencies.

*Office of General Counsel, United States Dept. of Agriculture, Mark Lodine, Alan Campbell, Jody Miller (Maximum of three students)*

The Office of General Counsel is located in the Federal Building, 340 North Pattee. Clinical students assigned to the USDA perform in a variety of civil and in a limited number of criminal matters. The Office of General Counsel represents Region 1 of the United States Forest Service encompassing Northern Idaho, Montana, North Dakota and parts of South Dakota, with responsibilities encompassing federal contract appeals, forest planning, mining claim review and contests, claims and objections under Montana and Idaho water law, Federal tort claims, land acquisition and special uses, and law enforcement. This office also represents the Montana Offices of Rural Development, Farm Service Agency, Commodity Credit Corp., Natural Resource Conservation Service, Agricultural Research Service, Food & Nutrition Service (Food Stamps), and other USDA agencies with responsibilities including loan servicing, foreclosure actions, bankruptcy proceedings, tort claims, water right claims and objections, criminal prosecutions of food stamp violations, and general advisory opinions.

*Rocky Mountain Elk Foundation (RMEF), Grant Parker & Sally Johnson (Maximum of four students)*

The Elk Foundation Law Clinic provides students with the opportunity to apply the skills they develop in the class to the real-life situations met daily by this Missoula-based international conservation organization. There are opportunities to participate in many aspects of non-profit corporate law, which includes areas such as: employment law, real estate law, conservation easement issues, charitable contributions, planned giving and tax issues, individual state gaming compliance and tax issues, trademark law, copyright law, water law, and various types of contracts (sales, personal service, consultants, Internet, etc.). Interns are asked to provide the organization with accurate assistance in the following areas: document prep-

aration, legal and factual research, correspondence and pleadings, legal analysis and problem resolution, work product deadline control methods, and timely completion of assignments. The RMEF Law Clinic will enable students to apply these skills while working with in-house counsel, in a supportive, non-confrontational setting.

The Rocky Mountain Elk Foundation is a non-profit, conservation organization whose mission is to conserve and protect habitat for elk and other wildlife. RMEF has a membership of over 124,000 through more than 450 chapters in the United States and Canada. The Elk Foundation has generated \$70 million for habitat conservation, and have conserved and enhanced nearly three million acres, including over 730,000 acres of land acquisitions and nearly 60,000 acres of conservation easements, and completed more than 2,800 conservation projects in forty-seven states and eight provinces.

*University of Montana Legal Counsel's Office*, David Aronofsky  
(Maximum of four students)

The University of Montana Legal Counsel is located in Main Hall at the University of Montana. Students assigned to the University Legal Counsel's Office potentially handle a wide variety of legal matters. Activities will include assistance with the following: intellectual property issues; legal representation of the University in litigation and administrative agency proceedings; legislative drafting; development of University policies; and extensive client counseling with University administrators and committees. These matters also include extensive employee relations and personnel activities. This office serves as in-house General Counsel for the five University of Montana campuses with responsibility for coordinating and providing legal services throughout the University. Clinical students work under the supervision of University Legal Counsel David Aronofsky.

## Appendix 2

Statement of Expectations for Prosecution Clinics  
Fall Semester, 2004

The following is a statement of expectations for students in the Missoula County, Missoula City and United States Attorney Offices for the fall semester. The purpose of the statement is to clarify what each student must do to satisfactorily complete the course in the fall semester.

1. Complete all obligations to your clients as defined by your supervising attorney(s).

2. Complete the Learning Agenda and Self-Assessment discussed during Orientation. Schedule a time to discuss those documents with your supervising attorney. Return them to Professor Tonon by the first individual case review session.

3. Prepare for and attend\* all scheduled clinical seminars, training sessions and case reviews (see Syllabus for dates) unless they conflict with court dates or have been previously excused.

• The following opportunities for clinical credit are strongly encouraged, but not required.

*November 8, 2004* - The Judge James R. Browning Distinguished Lecture in Law - Professor Charles Ogletree of the Harvard Law School Clinical Program (time and location to be announced)

4. Complete the reflective writing requirement as discussed during the first seminar session. It is expected that you will give some thought to what you write and seriously engage in reflective practice.

5. Advise me of *all* pending court dates as soon as you are aware of them *and* of any postponed or settled trials. My goal is to attend as many trials as possible for every student so that I can provide feedback and assistance in preparation as needed.

6. Complete a minimum of four hours of clinical training per credit per week by no later than the last day of classes. *Report your time for the week by 5:00 p.m. Tuesday of the fol-*



*lowing week in order to be credited.* Turn in the yellow copy of your time sheets to Geri Fox in Room 194, give the white copy to your supervising attorney and retain the pink for your records. *Absent prior permission given for good reason, time turned in late will not be credited.* Clinical training includes, but is not limited to, case work, seminars and training sessions, case reviews, reflective writing preparation and meetings with supervisors.

7. Elect your grading option no later than September 17, 2004. If you do nothing, you will elect the grading option. If you wish to elect the pass/fail option, obtain a drop/add form from Geri Fox and file it at Griz Central no later than September 17, 2004.

8. Complete a final evaluation of your placement, your supervising attorney, your faculty supervisor and the clinical course no later than the last day of classes.

9. Attend an end-of-semester evaluation meeting with your supervising attorney and me at an agreed upon time.

*\* Any changes in times, dates or locations of scheduled meetings will be posted on the clinical bulletin board located opposite the copy machines. It will also be posted to your e-mail address. Make it a practice to check the board and your university e-mail daily.*

## Appendix 3

**Prosecution Clinics  
Clinical Seminar****Fall Semester 2004 Syllabus - Updated 9/15/04  
(All classes in Castles 19 unless otherwise noted)****Wednesday, 8/25/04****2:20 - 3:20 p.m. Orientation Meeting-Room 106****3:30 - 5:00 p.m. First Clinic Meeting**County Attorney - 200 West Broadway  
City Attorney—105 East Pine—2nd Fl.**Thursday, 8/26/04****3:10 -4:10 p.m. First Clinic Meeting**United States Attorney  
105 East Pine - 2nd Floor**Week of 8/30/04****No Class on Wednesday, 9/1/04  
Individual Meetings with Prof.****Tonon**Be prepared to discuss your Learning  
Agenda and Self Assessment - Times to  
be scheduled**Wednesday, 9/8/04****2:20 p.m.****Prosecutorial Discretion/Confidentiality****Readings: Disciplinary Rules and "The  
Prudent Prosecutor" by Leslie C. Griffin  
(will be placed in mail folders)****Assignment: Understand and be prepared  
to discuss your placement's position on  
prosecutorial discretion.****Wednesday, 9/15/04****Tour of the Regional Detention**

**Center**

2340 Mullan Road - meet at the jail by 2:25 p.m. Use the west entrance marked "Visitors". Security is high - no purses, guns, grenades, knives, metal etc. You will need a government-issued photo ID and will be asked to leave coats in your cars if possible.

**Wednesday, 9/22/04****2:20-3:20 p.m.****Supervision Skills**

Readings: Learning from Practice, Ogilvy, Wortham and Lerner (1998) Chapter Three - Learning from Supervision pages 29- 48 - to be placed in your mail folder

**3:30-5:15 p.m.****Browning Symposium\***

University Center  
Sex Crimes, Children and the Federal Sentencing Guidelines

**Friday, 9/24/04****8:45-10:30 a.m.****Browning Symposium\***

University Center  
Juvenile Incarceration

**\*Browning Symposium lectures listed above are optional and may be used for clinical hour credit.**

**FIRST REFLECTIVE WRITING  
DUE BY 5:00 P.M. ON 9/28/04**

**Week of September 27, 2004****NO CLASS ON 9/27/04**

**Individual Case Review with Prof.  
Tonon at your Clinic Site  
Sign up for a time on the door of Room**

166. Be prepared to discuss case work and your Learning Agenda.

**Wednesday, 10/6/04**

**2:30 p.m.**

**Tour of the State Crime Lab**

2679 Palmer (behind Rocky Mountain Elk Foundation Building on West Broadway) Meet at the Crime Lab by 2:25 p.m.

**Wednesday, 10/13/04**

**2:20 p.m.**

**DUI Field Sobriety Manuevers**

Officer Scott Hoffman and Captain Mike Froelich of the MHP will do a training on the Standard Field Sobriety Techniques (SFSTs) used in the course of a DUI investigation and stop.

**Wednesday 10/20/04**

**2:20 p.m.**

**Lie Catching Techniques**

Rich Ochsner, a retired detective from the Missoula Police Department, will lead a discussion of common interrogation techniques.

**SECOND REFLECTIVE WRITING IS DUE BY 5:00 P.M. ON 10/27/04**

**Week of 10/25/04**

**No Class on Wednesday, 10/27.  
Individual Case Review Meetings at  
Clinic Site-See Sign-Up Sheet on  
door of Room 166**

**Wednesday, 11/3/04**

**2:20 pm**

**Voir Dire Discussion and Exercise**

Lecture/Demonstrations by prosecutors from different jurisdictions. A student

volunteer from each of the three clinic sites will perform part of a voir dire using the class as potential jurors.

**Wednesday, 11/10/04**

**2:30 pm**

**TBA**

**Wednesday, 11/17/04**

**Evidence Lecture and Exercise**

**Wednesday 11/24/04**

**No class - Thanksgiving Break**

**FINAL REFLECTIVE WRITING DUE  
BY 5:00 P.M. ON 12/1/04**

**Weeks of 11/22/04 and 11/29/04**

**Final Evaluations**

Complete self-evaluation and attend meeting with faculty supervisor and supervising attorney at your clinic site according to sign-up sheet.

## Appendix 4

### **Memorandum of Agreement Between University of Montana School of Law and The Missoula County Attorney's Office**

#### **I. EDUCATIONAL OBJECTIVES**

The Missoula County Attorney's Office is an external placement of the University of Montana School of Law Clinical Program. The Missoula County Attorney's Office functions to prosecute criminal offenses on behalf of the County of Missoula. The educational goals and objectives of this clinic are to enable up to three law students to:

1. Acquire and apply interviewing and counseling skills in the course of representing the State of Montana and victims of crimes;
2. Engage in case planning and implementation of case plans;
3. Acquire and apply negotiation skills;
4. Strengthen legal research skills;
5. Develop and apply legal writing skills in drafting of pleadings, motions, jury instructions, briefs and memoranda;
6. Develop and apply skills in the preparation and presentation of criminal cases before a judicial body;
7. Acquire knowledge in the substantive law areas of criminal law, criminal procedure and local government law;
8. Identify and resolve ethical problems arising in cases;
9. Develop good working relationships with other professionals, including legal and law enforcement personnel; and
10. Develop and apply sound law office management procedures involving caseload management, scheduling, and time and record keeping.

## II. THE ROLE OF THE SUPERVISING ATTORNEY

In order to accomplish the above objectives, the supervising attorney(s) shall:

- A. Have ultimate responsibility for all legal matters handled by law students working under his or her supervision;
- B. Provide, with the faculty supervisor, orientation to all clinic students;
- C. Model standard law office practices;
- D. Maintain frequent contact with the faculty supervisor;
- E. Provide student supervision. This shall include the following:
  1. Conducting regular case reviews with students;
  2. Generally assist students in preparing for court appearances and other major events;
  3. Conducting informal mid-semester evaluation meetings;
  4. Conducting formal, written, end-of-semester evaluation meetings;
  5. Emphasizing with students case development skills and trial preparation;
  6. As pre-arranged by the student with the supervising attorney, being present or arranging for another supervising attorney to be present with students in court except when the supervising attorney and faculty supervisor jointly decide that close supervision is not necessary for a student in a particular matter;
  7. Conducting "post-mortems" with students following every significant clinical event;
  8. In the role of mentor, informally sharing reflections on your practice with students; and
  9. When appropriate, allowing students to act as the primary attorney on the case.
- F. Provide the faculty supervisor access to records of pending and completed case work for review and evaluation to enable the faculty supervisor to assist more effectively in the supervision of students and in the

- design and implementation of a classroom component for the clinic;
- G. Assure that all clinical students, when acting within the scope of their duties, are covered by whatever protection is available to attorneys in the County Attorney's Office for tort liability;
  - H. Identify as soon as is feasible any problems that arise with respect to a student's performance or ability to perform, and alert the student and the faculty supervisor.
  - I. Fully comply with all federal and state anti-discrimination laws. This shall include consulting the faculty supervisor regarding appropriate accommodations if advised by a student or faculty supervisor that the student has a disability and is requesting reasonable accommodations.

### **III. THE ROLE OF THE FACULTY SUPERVISOR**

In order to further accomplish the above objectives, the faculty supervisor shall:

- A. Engage in the following activities with students:
  - 1. Make case assignments and maintain a calendar of motion, hearing and trial dates for clinical student cases;
  - 2. Moot each student's first two trials or significant court appearances;
  - 3. Hold regular office hours in the County Attorney's Office in a space to be provided by the County for a total of three hours per week;
  - 4. Assist students in identifying certain areas for emphasis and skill development;
  - 5. Meet with students on a regular basis to discuss their work and to assure that the students are advising their supervising attorney of the status of their cases;
  - 6. Critique observed student performances;
  - 7. Evaluate all students, which shall include drafting grading criteria and evaluation forms;



8. Prepare "Evaluation of the Clinic" forms;
  9. Encourage reflection by students on the practice of law;
  10. Provide students with information about Clinical Expectations;
  11. Assist students in specific cases when supervising attorney and faculty supervisor mutually agree such an arrangement is beneficial to both the student and the case, and the faculty supervisor has sufficient time to assist;
  12. Troubleshoot, addressing specific problems that arise with individual students;
  13. Design and implement the clinic seminar; and
  14. Sign clinical absence forms when the supervising attorney is unavailable.
- B. Engage in the following activities with supervising attorneys:
1. Provide specific information in the form of a supervising attorneys' handbook;
  2. Meet with supervising attorneys as a group on a regular basis; and
  3. Serve as a liaison between law faculty and supervising attorneys.
- C. Engage in the following activities at the Law School:
1. Engage other faculty members in assessment and integration of the clinical program in the overall curriculum;
  2. Work with faculty to assure that the curriculum prepares students for their clinical experiences;
  3. Preserve the confidentiality of all client information;
  4. Evaluate potential conflicts of interest within the clinical program;
  5. Develop policies to assure the smooth operation of the clinical program; and
  6. Provide the supervising attorneys with information about any student who has disclosed a disability that will require an accommodation.

The term of this agreement begins on August 24, 2004 and continues through September 30, 2005. It is contemplated that this agreement will be evaluated, modified, and renewed on an annual basis, as needed.

Appendix 5

JUDICIAL EVALUATION FORM  
JUDGE \_\_\_\_\_

Case Name \_\_\_\_\_ Date \_\_\_\_\_

Student Name \_\_\_\_\_ Clinic \_\_\_\_\_

1. The party opposing the student:  
    Appeared: Pro Se \_\_\_\_\_ By/With Counsel \_\_\_\_\_  
    Defaulted \_\_\_\_\_

2. Was the student prepared? Yes \_\_\_\_\_ No \_\_\_\_\_  
Did the student prepare the client/witness in courtroom  
procedure?  
    Yes \_\_\_\_\_ No \_\_\_\_\_ Not Applicable \_\_\_\_\_  
    Comments: \_\_\_\_\_  
                  \_\_\_\_\_

3. Did the student demonstrate a basic understanding of the  
substantive and procedural law involved in the case before  
the court?  
    Yes \_\_\_\_\_ No \_\_\_\_\_ Not Applicable \_\_\_\_\_  
    Comments: \_\_\_\_\_  
                  \_\_\_\_\_

4. Did the student demonstrate an understanding of the ap-  
plicable Rules of Evidence?  
    Yes \_\_\_\_\_ No \_\_\_\_\_ Not Applicable \_\_\_\_\_  
    Comments: \_\_\_\_\_  
                  \_\_\_\_\_

5. Was the student's courtroom demeanor appropriate?  
    Yes \_\_\_\_\_ No \_\_\_\_\_ Not Applicable \_\_\_\_\_  
    Comments: \_\_\_\_\_

- 
6. Did the student demonstrate effective advocacy in oral and written presentations before the court?

Yes \_\_\_\_\_ No \_\_\_\_\_ Not Applicable \_\_\_\_\_

Comments: \_\_\_\_\_

7. How could the student's performance have been improved?

Comments: \_\_\_\_\_

\_\_\_\_\_

**Thank you for your assistance. Please give this form to your Clerk/Secretary to save for the Law School Clinical Supervisor. The forms will be collected on a weekly basis. Your input is greatly appreciated by the Law School and by the students!**

## Appendix 6

**MID-SEMESTER EVALUATION FORM FOR  
SUPERVISING ATTORNEY**

Student: \_\_\_\_\_

1. Discuss the student's progress and strengths thus far during the semester, giving specific examples.
2. Discuss the student's weaknesses and areas in which you would recommend particular focus during the remainder of the semester.

\_\_\_\_\_  
Supervising Attorney\_\_\_\_\_  
Date**MID-SEMESTER EVALUATION FORM FOR STUDENT**

1. Discuss the areas in which you think you have performed well during the semester, giving specific examples.
2. Discuss the areas in which you would like to improve during the remainder of the semester.

\_\_\_\_\_  
Student Name\_\_\_\_\_  
Date

## Appendix 7

**PROSECUTION CLINIC  
EVALUATION**

TERM \_\_\_\_\_

CLINIC \_\_\_\_\_

Name of Student \_\_\_\_\_

Your evaluation is based upon both your legal work and your other clinic course work. In assessing your performance, the supervising attorney and Faculty Supervisor consider your effort and attitude, abilities, work product, practical skills, professionalism and the degree of improvement throughout the semester and year.

**I. Conscientiousness, Professionalism and Effort**

(Including consideration of the extent to which the student has: attended and participated in class sessions and clinic meetings [for in-house clinic use]; been punctual; shown initiative; assumed responsibility for files/projects; maintained witness/client contact; focused on quality of work; followed-through with projects; established a professional relationship with co-workers, clients, witnesses and other professionals; sought advice and guidance when appropriate; worked independently; timely completed assignments; self-assessed strengths and weaknesses; shown willingness to expend time and effort beyond the minimum required.)

**Strengths/Areas to Improve and Examples:****II. Interpersonal Skills**

(Including consideration of the extent to which the student has: developed rapport with witnesses and other professionals involved in the case/project; elicited essential information from clients and witnesses; listened carefully and respectfully; assisted clients in evaluating alternatives and making decisions)

**Strengths/Areas to Improve and Examples:**

**III. File/Project Development Skills**

(Including consideration of the extent to which the student has: effectively engaged in case/project planning, fact investigation, identification and evaluation of legal issues and legal theories; applied law to facts; developed alternative arguments and innovative legal theories; identified evidentiary issues.)

**Strengths/Areas to Improve and Examples:**

**IV. Legal Research**

(Including consideration of the extent to which the student has: evidenced basic command of non-computer legal research tools and computer legal research tools; developed effective and efficient research strategies; conducted thorough, careful, and accurate research; managed and organized the results of research.)

**Strengths/Areas to Improve and Examples:**

**V. Oral Communication**

(Including consideration of the extent to which the student has: exhibited the ability to express thoughts clearly and concisely, to organize thoughts, to listen and understand others, to speak persuasively, to explain legal/technical concepts in non-legal/technical terms and to conduct a meeting)

**Strengths/Areas to Improve and Examples:**

## **VI. Written Communication Skills**

(Including consideration of the extent to which the student has: shown proficiency regarding the technical basics such as grammar, spelling, punctuation, organization and proofreading; produced written work that is persuasive and clear; shown sensitivity to tone and other elements that vary with the audience.)

### **Strengths/Areas to Improve and Examples:**

## **VII. Attention to Ethical Issues**

(Including consideration of the extent to which the student has: Identified ethical issues; effectively resolved ethical issues; analyzed and evaluated ethical implications of decisions and acts.

### **Strengths/Areas to Improve and Examples:**

## **VIII. Law Practice Management**

(Including consideration of the extent to which the student has: effectively organized his/her legal work, including creating and maintaining files; effectively set priorities among tasks to be accomplished; maintained file documentation; effectively managed time and time keeping; kept supervisors apprised of the status of cases/projects; provided for an orderly transfer of the project/case and the end of the student's time in clinic)

### **Strengths/Areas to Improve and Examples:**



## IX. Litigation Skills

(Including consideration of the following: ability to perform/use opening statement, direct examination, cross examination, oral argument, introduction of evidence, objections and negotiation techniques.)

### Strengths/Areas to Improve and Examples:

\_\_\_\_\_  
Supervising Attorney

\_\_\_\_\_  
Date

I have reviewed this evaluation.

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

Student Comments on Evaluation:

Supervising Attorney:

While I will be responsible for assigning a final grade for this student, please indicate, if you would like, what letter grade you would assign to this student if given the opportunity. This information will be kept confidential.

I would assign \_\_\_\_\_ a grade of \_\_\_\_\_.