

**Draft 9/15/2010** (do not cite without permission of the author)

*Herding Cats: The Role of Directors of Law School Clinical Programs*

Binny Miller

Professor of Law, American University, Washington College of Law

It is often said that a leadership role in many institutions is akin to herding cats. Perhaps nowhere is this axiom more true than in academia, where power is diffuse and shifting, and autonomy is one of the most highly regarded values. If this axiom is true in academia in general, how does it apply to legal education, and more specifically, to the role of directors of law school clinical programs? This essay is my effort to reflect on my two-year stint as the director of a law school clinic, and to offer some thoughts on the role of clinic directors. I am sure that my observations are very much affected by the particulars of my program, our “model” of the director position, and my own experiences but I hope that the essay speaks more broadly to the experience of other clinicians.

While hundreds of articles have been written by law school clinical teachers on the role of lawyers vis-à-vis their clients and clinical teachers vis-à-vis their students, in this potent mix of lawyering theory and clinical pedagogy, as far as I can tell nothing has been written about the role of directors in programs that provide legal services to clients and a legal education to law students. This essay reflects on my own experience in this role, but also seeks to provide some theoretical underpinnings for a larger discussion of the role. There are probably as many different types of directors as there are clinical programs,<sup>1</sup> but at the same time, these can be grouped into some general categories that will lead to a better understanding of the role.

---

<sup>1</sup> CSALE, how many?

I also want to provide some basic information on the process of selecting clinic directors. How are directors chosen at different law schools? Are the positions short-term ones, or term-limited in any way, or are directors directors for life? What difference does it make in how the role is performed? Are there generational differences that are of any interest in this role? What can we say about what the role of the clinic director will look like in the future? Here I do not mean to take on status issues – such as whether clinic directors should have the status of Associate Dean or similar title – although this practice has become increasingly common and can obviously have a major impact on the role of the director. If, for example, the clinic director has responsibilities for broader experiential learning within the law school or public interest initiatives, this role definition will expand the substantive reach of the director’s job. My focus, however, is not so much on the substance of the work, but the process and the relationships with other clinic faculty, as well as others in the larger law school. The job of a clinic director is also affected by substantive issues in legal education --- political interference with the lawyering work of clinicians<sup>2</sup> and security of position, to name a few. These issues, which have had a major impact on clinical programs, are not addressed here.

There are common conceptions – and misconceptions about the job. One audience for this essay are clinicians who have served or are serving as directors; the other is clinicians who are rising through the ranks of clinical program seniority and might want to serve as directors.

As a clinical teacher noted on the clinic listserv, perhaps sarcastically, “the opportunity for administrative service is one of the particular delights of academia.”<sup>3</sup> If

---

<sup>2</sup> See Louisiana, Maryland legislation.

<sup>3</sup> Everyday misogyny posting, clinic listserv

this is so, what is the job, and who might want to do it? What is it about administrative work that makes it interesting, challenging, frustrating at times, and often worth doing?

### *Scholarship*

Why is so little scholarship in the legal academy devoted to these types of issues?<sup>4</sup> As I discuss later in this essay, the job of clinic director presents multiple opportunities to think about the question of role. While in the nonclinical legal world, the question of role is less prominent, in clinical scholarship the question of role is prominent in its early roots.<sup>5</sup> There exists a vast and wonderful clinical literature on role – the role of lawyers and the role of clients, as well as the role of clinical teachers vis-à-vis their students, and to a lesser extent, the role of law students in clinical programs. While the first is broadly described as lawyering theory, the second forms the heart of clinic pedagogy. Indeed, it is the focus on role that some have argued most distinguishes clinical legal scholarship from other types of legal scholarship. But in this vast mountain of scholarship, literally nothing has been written about the leadership role of developing and running clinical programs. Much has been written about the substance of those programs, the advantages and disadvantages of different types of clinics, both for the clients served and the students who participate in those clinics.<sup>6</sup> There is an increasing emphasis on how to measure success in those programs in terms of outcome measures,<sup>7</sup> a move that is present in many other academic settings. Yet the ways of leading or managing those programs is largely absent from the discussion.

---

<sup>4</sup> Note the annual issues in the U. Tol law review devoted to “deaning.”

<sup>5</sup> See introductory issue, *Clinical Law Reveiw*

<sup>6</sup> Upcoming Arrowhead conference

<sup>7</sup> See ABA standards

It may be that writing about something so “administrative” in nature seems insufficiently scholarly. With the exception of some literature about the role of law school deans, written by law school deans, legal scholarship does not seem to address the roles of faculty who serve in administrative positions.<sup>8</sup> The term “administration,” however, does not begin to capture the complexity of academic administration and the roles that administrators play. The seemingly mundane aspects of our daily work are not, especially when viewed in the context of the institutions in which we operate. Indeed, much lawyering, even when practiced by a clinical teacher in the relatively rarefied air of a clinic setting in a law school is administrative. Files need to be kept, and reviewed. Conflicts policies need to be implemented and reviewed. Court dates and meetings need to be logged. This is not the stuff, though, of writing about lawyering theory and clinical pedagogy. In the same way, scholarship about directing a clinic need not be about managing office supplies, or scheduling meetings. It should be about the role of clinic directors, in relationship to their colleagues, the law school administration, clinical students, clients, and the larger community. There was a time when scholarship about the daily work of lawyers was viewed as less rigorous and complex than scholarship about legal doctrine.<sup>9</sup> My hope is that the work that we clinical teachers do – not as teachers or lawyers or scholars --- can be the subject of equally vigorous study.

[section on the deaning literature]

Of course, a law school clinic director is not a dean. Although there may be no exact analogy to academic administrators outside of legal academia, the closest analogy

---

<sup>8</sup> Cite deaning literature, Toledo.

<sup>9</sup> Indeed it still is in some quarters

may be that of a department chair within a university.<sup>10</sup> Within law schools, there may be other programs whose leaders act as department chairs. Within the past decade, law school programs have grown by leaps and bounds. It is now typical for law school programs to include programs focused on business law, international law and human rights, environmental law, intellectual property law, and trial advocacy programs, among others. While some faculty teaching in these programs may share enough of a common purpose, and be sufficiently interconnected so that the faculty member leading the program plays a role similar to that of a department chair, directors of law school clinics are invariably cast in this role.

### *Historically*

What are the incentives for clinicians to serve as clinic directors? In the early days of directorships, the clinic director might have been the only (or the first) clinical teacher in the law school. Often the director was the only clinician with tenure or on a tenure track. Now, as the conversation on the clinic listserv about status of clinicians notes, the world of legal education has changed, and clinical teachers are pulled in more directions than ever before. Consequently, the responsibilities of directing can make it more difficult for clinicians to meet the increased set of responsibilities that accompanies clinical teaching.

There is a kind of quid pro quo here, or as law and economics aficionados might argue, directing a clinic was “incentivized.” If the only way to obtain a clinical teaching job with the possibility of tenure was to direct a clinic, then individuals interested in clinical teaching would start their clinical careers as directors. This is not the whole

---

<sup>10</sup> Indeed, in at least one law school, the clinical program, along with other programs, is a department within the law school. Moss compilation, St. Thomas, check website.

story, of course. Anyone interested in program building, especially in the early days of clinical education, would be attracted to a position directing a clinic. That is still the case in many institutions. But as the demands on clinical teachers have increased, any clinical teacher interested in directing a clinic needs to weigh these demands against the demands of directing a clinical program. *[Is it a high status job?]*

### *Structure & Selection*

My sense is that schools are moving away from the clinic directorship for life model, and looking for other leadership structures for clinic. What structures work best for a clinical directorship, in terms of how directors are selected, the length of a director's term, and other issues? Although the answer no doubt depends on the context of the school and clinical program, some advantages and disadvantages can be discussed in general terms.

A recent posting to the clinic listserv sets out the model of a rotating directorship, with a list of some of the responsibilities of the position.

*Currently we have a longstanding director who will be retiring in January. Those remaining are pondering implementing a two year (or three year) rotating internal position complete with a reduced teaching load (to accommodate the additional administrative responsibilities and oversight) and with overall responsibility for budgets, insurance, externships, additional semester clinical experiences, pr, fundraising, and promotion of the clinics in both the community and with the overall faculty. We would also request additional compensation for the duration of the director term and not make it a mandatory rotation, but instead open to any clinicians interested.*

*Does anyone have anything similar at their institution? If so, do the responsibilities differ and how? What title do you use? Is additional compensation and a reduced teaching load reasonable? Does your position incorporate those, and if so, how?<sup>11</sup>*

---

<sup>11</sup> Clinic listserv, 9/15/2010

This post suggests that the clinicians in this institution see the role of director as a shared responsibility of those working in the program, but a responsibility than any one of the group can “opt” out of. They do not seem to contemplate conducting an independent outside “search” for a clinic director, and seem to have rejected the idea of a long-serving director. We can only guess at the reasons why the clinicians at this institution are leaning towards a model of this sort; in general terms the “rotating internal term-limited model” has many advantages.

In our program at American University, we have a “rotating” director. I put the term in parentheses because we have not officially adopted a rotating model; it has functionally been our model since our founding director left the position. When our program first began in 1972, our director was the first (and only) clinician on the tenure-track, and the first to achieve tenure. When he left this position to become the law school’s dean in 1988, there were no other tenured clinicians. Several clinicians had just been promoted from supervising attorneys to tenure-track positions, and the next clinic director was a tenure-track clinician. Since then, all of our directors have been tenured clinicians.

All of our directors have been appointed by the Dean, in consultation with clinic faculty. The job is not designed to last for a set period of time – each director has served in the job for different amounts of time, and when he or she decided to step down, a new director was appointed. Our school has never conducted a search for a clinic director, and a director has never been appointed from outside of our program.

Our longest serving director was our first, who served in this capacity for 16 years. Our next served for 8 years, and after that, no director served for more than 4 years. For the past 13 years, a typical term length has been 3 years. The term that I served was the shortest one – 2 years. Two years ago one of our former clinic directors began a new term as clinic director.

The biggest advantage is diversity. Each director brings something different to the job. Each has different strengths and weaknesses. With change, there is a freshness and newness to the position that wouldn't exist with a longstanding director. Rotation ensures that the status quo will not remain the same for very long. Another advantage of multiple clinicians occupying the director chair is that there is a wider appreciation for the position among the clinicians. Anyone who has been a clinical director understands the challenges and is in a position to be more supportive of other clinic directors. At least in theory, this model is likely less hierarchical than one in which an individual serves as the director for a long period of time. There isn't the time to develop significant hierarchies, and the incentive to do so may be less in a situation where the hierarchy is constantly changing. And in a program where clinicians may prefer to teach and supervise students, a limited term directorship may make the job more appealing because the commitment is less. There is also a sense of fairness and equity: if the job is great, everyone gets a chance to do it. If the job not so great, no one needs to stay too long.

There are disadvantages to rotation. The biggest disadvantage is inexperience in the position. While rotation brings change, it also brings in a new person with a steep learning curve facing her in the new position. How steep, of course, depends on the

nature of the position, and the skills of the person taking over, but much time is spent learning the nature of the job.

The fact that there is a steep learning curve for the position, which would be true of many jobs, is compounded by the amorphous quality of how academic institutions function. While all large institutions share some similarities, academia is unique (or at least different) in many respects. In academia, faculty members, who comprise a large number of the actors, do not have bosses. Once tenured, they (we) function as relatively autonomous members of the larger community. This factor, taken together with flexible and somewhat shifting rules of operation, mean that the learning curve for understanding how things work, and who does what in the institution, is complex.

#### *What is the job?: Duties*

What are the different components of the position? These can include many functions including managing staff, developing and implementing clinic administrative policies, budget responsibilities, convening clinic faculty on curriculum development and other issues,, providing support for clinicians to write scholarship, serving as a sounding board for students enrolled in the clinic, being the “face” of the clinic at various law school and other functions, working as the liason between the clinic and the law school administration, etc.<sup>12</sup>

Anyone of these duties can consume a considerable amount of time. In writing this essay, I went back to the first agenda that I wrote for the first meeting of clinic faculty that I facilitated as the director:

1. Update on our project to improve access for LEP clients (SCHLEP)

---

<sup>12</sup> The lisserv posting in note \_\_, *supra*, lists the duties as including “overall responsibility for budgets, insurance, externships, additional semester clinical experiences, pr, fundraising, and promotion of the clinics in both the community and with the overall faculty.”

2. Clinic volunteers – recruitment and relationship to #1.
3. Clinic happy hour at reunion weekend – Friday, October 6, 2006, 6:00-7:30 PM in the atrium
4. Clinic brochure
5. Case management – AMICUS/Time Matters
6. Clinic submission for the Dean’s report at faculty meetings
7. Schedule for weekly clinic lunches
  - \*Mondays?
  - \*topics
    - \*teaching collaboration – date?
    - \*the “what we do in our clinic” report: 2 sessions
    - \* how I teach “x” – discussion, video of successful/unsuccessful class/sample materials
    - \*class visits to other clinic seminars: 2 sessions
    - \*schedule for Nov. – appointments??? – 9 meetings thru Oct.
    - \*administrative

At first glance, these tasks look to be administrative, and indeed they are. But most also have a substantive component that affect the clinic’s delivery of service to the community, service to students, connection with other parts of the law school and the broader community. The SCHLEP project<sup>13</sup> (#1) exists to help improve the clinic’s ability to represent clients for whom English is not their first language, and volunteers from the student body (#2) are recruited to help provide language interpretation and translation services, as well as investigative assistance, to clinic clients. Our case management system affects our delivery of services to clients, but also affects our relationships with each other in the clinic. All of us agree that Amicus (the system we currently use) can and should be used for conflicts checking, but we have widely differing opinions on how necessary it is for case management more generally. And so

---

<sup>13</sup> Winner of a Bellow award

while this seems to be an administrative issue, it is also an issue of autonomy for our various clinics, pedagogy, and the best way to supervise students. So what seems to be a straightforward issue really is not. The submission for the Dean's report (#6) relates to the clinic's relationship with the larger law school community; it presents an opportunity to inform the community about clinic activities and achievements. The clinic brochure (#4) and reunion happy hour (#3) are also communications with a wider community – the brochure is designed to be mailed to faculty at other law schools and other organizations, while the reunion happy hour is an event for outreach to former students. At the same time, the reunion happy hour is an opportunity to collaborate with an administrative office in the law school (the Office of Development and Alumni Relations) that very much cares about programs in the law school connecting with alumni. And finally the topics for the clinic weekly lunches are the things that clinic faculty will talk about in our weekly collaborations. Many of the topics relate to clinic seminar pedagogy and case supervision, but others relate to administrative issues such as recruitment of students to participate in the clinic, staffing issues, and the like.

None of these projects was especially crisis-driven. They were all decisions that needed to be made or projects that needed to be completed, but they weren't especially hot button issues. But there were situations where many situations where a crisis perceived by a member of our program then became something that required immediate action by a director.

*Dogs in the Student Room and other intractable issues*

Seemingly small incidents can speak volumes about the work of a director. One of my most memorable and early experiences involved a controversy about a dog in clinic work space. In our program, all of the clinic students share workspace, and we are

one “law firm” for purposes of conflicts checks and confidentiality. The space is built around an interior light well in the building, and is basically one large open space with 3 different sections. Space is not assigned to individual students; instead, space at the tables and work stations is available on a first-come, first-served basis. The clinic has a number of rules about the use of the space; for obvious reasons, the space is limited to students, faculty and staff in the clinic program, and there are other rules as well.<sup>14</sup> One of the rules involves animals.

The law school has had a long standing policy that animals are not allowed in the building.<sup>15</sup> This policy extends to clinic space, and despite the policy, from time to time students have brought dogs into the building – and into clinic space.

Like many issues that I addressed as a clinic director, this issue began as a complaint from several clinic students to our program administrator. They told our administrator that a small white dog came to the student room later in the evening after clinic staff and most faculty teaching in the clinic had gone for the day. The students said that at first they didn’t mind that the dog was in the room. She was playful, but quiet, and didn’t much disturb the work that was going on. But that began to change when the dog barked a lot, started coming to the student room with its toys, and was seen urinating on the carpet. The students told our administrator that they had asked the student who owned the dog to leave the dog at home, and she refused. The students told our administrator that they didn’t want the dog owner to know that they had reported these incidents to the clinic administration.

---

<sup>14</sup> Kathleen H. – what are they?

<sup>15</sup> There’s an exception for service animals

After receiving this report, our administrator went to the student room and documented evidence of the report about the dog: spots on the floor, and a dog bone found in the middle of the carpet. She took pictures and sent them to me, outlining a plan to send an inflammatory email to the students assigned to the clinic space warning them that the law school and clinic policy was being violated. I suggested that she contact the students who had come to her with the information and ask them to provide the name of the student with the dog (with the promised that they wouldn't be identified as providing the information) and to contact the dog owner, ask her to come to the office, and let her know that complaints had been received about the dog and tell her that the dog should stay at home.

#### *Training and support*

Not much. Every two years, at the annual clinical teachers' conference, the AALS offers a day long workshop for clinic directors.<sup>16</sup> These workshops cover such topics as [add]. For the past 5?? years, the clinical directors in the DC area have met several times during the semester to discuss issues on common and to serve as a sounding board for the joys and frustration of the job. We typically meet over breakfast at a local restaurant for 1 and ½ to 2 hours in a rounds type format.<sup>17</sup> We have discussed issues such as the local student practice rules, summer coverage of cases, fellowship and practitioner programs, interactions with our colleagues, staffing problems, and the like. These director rounds are a place to share ideas, and at times, to commiserate.

Last year, these meetings served as the impetus for a concurrent session at the AALS Clinical Teachers Workshop, [MORE]

---

<sup>16</sup> Cite AALS dean's school

<sup>17</sup> Elliott and Sue's article

## *Typology*

My typology of clinical directors include the following: a cat herder, member of dean's administrative team or shop steward?, visionary, or making the trains run on time.

[clichés: -can't see the forest for the trees; -still water runs deep] [stock stories – or problems;viewpoints]

Here I am talking clinic directors work within the law school as its own entity, not in its role as part of the larger university. Because law schools that are part of a larger university have a wide variety of relationships with their parent institutions, I will largely limit this discussion to the role of clinic directors as actors within the law school.

In formulating this typology, I rely a great deal on my own experience, and the experiences of other colleagues who have played this role, both at my own institution and at other institutions. The experience that I know best is my own experience, and the program that I know best is at my own school, but my views have been very much shaped by conversations with clinical directors at other schools. In particular, the breakfast meetings of the DC/Baltimore area clinical directors taught me a great deal about the roles colleagues at these schools played in their own institutions.

[and maybe something here on the components of the role, regardless of the typology?]

There are of course practical considerations that will have a huge impact on how the role of a clinic director is constructed in a particular institution. But that doesn't mean that thinking about how this role should work, or the ideal types within this role, doesn't matter.

The subject of client counseling provides a wonderful example of why theory matters, even when practical considerations trump theory. For example, the question of

who decides approaches in a case, lawyer or client, is a key consideration in lawyering, and an important subject in the curriculum of many clinical programs. For a client with the resources to hire (and fire) a lawyer, this question as a matter of day to day practice may matter less because a client who wants to make more decisions than her lawyer wants her to can prevail on that lawyer to give the client greater latitude. And the client who wants the lawyer to play a greater decisionmaking role will simply prevail on the lawyer have a greater voice in decisions. Yet, the literature on client counseling is vast, and the theory richly developed,<sup>18</sup> because it does matter how lawyers think of these issues in the first instance.

At some future point, I hope to explore the extensive scholarship on leadership in other disciplines – education, sociology, social psychology, anthropology and organizational development – to see how these insights apply to clinical directors. Scholarship in other fields may assist in further developing this typology, but my task for now is to develop a theory of the role “from the ground up.” Much of what I write here is descriptive, but hopefully it can help others in thinking about the roles that they play – or might later play—in their own institutions.

Thus, some hot button issues such as political interference, which have had a major impact on many clinical programs, are not addressed.

In our clinical directors’ group, the question of the director’s role vis-à-vis our faculty colleagues in the clinic was one of our most frequent topics of conversation. I think that most of us were using the group to figure out our roles – given the dearth of

---

<sup>18</sup> Kate K’s fortress in the sand article summarizes this well. See also one of the more theory oriented texts, the steve, bob, ann, isabelle and kate book.

any writing on the question, most of us were familiar with the role as it was performed in our own institutions, but not with the job of director in other institutions.

*challenges*

\*“challenges of facilitating good working relationships among colleagues” --- everyday misogyny

-clinicians are good administrators

*Things that I liked about being director*

It helps to be an optimist and to like people. Even if you can't always be an optimist and like everyone, then it's critical to possess a deep curiosity about people, why they do what they do, how they feel about their colleagues and the institution. More than any other “skill,” I found this to be one of the most useful for the job. I have always been interested in questions of role, particularly the relationship between lawyers and clients. I like to think about decisionmaking, who gets to decide what, the factors that go in to complex decisionmaking, the players, both explicit and implicit, that play a role in how decisions are made, power dynamics, information (both how it is revealed and how it is withheld), and the like. This same interest, when applied to an institution, helped me find aspects of the job interesting which could otherwise have been frustrating.

Collaboration is one of the key aspects of the job of a clinic director, especially in a model that is non-hierarchical and horizontal. We talk a lot about collaboration in clinic – with students and with clients- what do I mean by collaboration here? Scholars have used the term “collaborative lawyering” to refer to a type of lawyering that involves clients and lawyers working together to achieve the aims of the client.<sup>19</sup> Others have written about the importance of collaboration as a clinical teaching goal, arguing that

---

<sup>19</sup> Lucie White

teaching students to be good collaborators with their peers is key.<sup>20</sup> True collaboration, I think, requires equality, or near equality, in relationships. If the relationships are not on a par in terms of power dynamics, then the working relationship cannot be truly collaborative. It may be one in which individuals work together to achieve an institutional goal, but if one person has managerial authority, or some other type of authority over the work of other individuals on the project, then collaboration is affected. So collaboration means something more than working together –

Collaboration was something that I really tried to foster when working as the clinic director. It was not an easy thing to figure out, particularly when one view of a clinic director might be that the person in this position should just “take care of things.” Putting aside questions of policy, such as clinical teaching loads, appointments and the nature of non-tenure track teaching positions (such as long term contracts, fellows or practitioners-in-residence and the like), clinic directors are often expected to just make the day-to-day things happen.

One of the insights that I gained in my term as director is that many aspects of our program are formed in our day-to-day working relationships. It was some of the small things that made us a group of people who could like and respect each other. So I implemented some practices, and continued others that had been a part of the repertoire of former directors, that were designed for us to collaborate and get to know each other better.

One of the things that I had observed in my 20 years in the program is that we talked a lot and exchanged a many ideas, but that as a faculty as a whole we didn't know each other very well. The experience of faculty in our program ranges from 38 years of

---

<sup>20</sup> Chavkin & Brustin

clinical teaching to a few months of clinical teaching. We are a large program with 22 clinic faculty members, with a mix of tenured, tenure track, long-term contract, practitioners-in-residence (similar to fellows in other programs) and parttime adjuncts. Many of us have close relationships going back to the time when we first joined the faculty, but every year faculty are coming and going from our program. It is not unusual for us to have four or five faculty members leave our program, and have an equal number join us.

Our program is known as a program with a lot of intellectual energy, and it is a well-deserved reputation. At times it felt to me as if our dialogue took over our relationships with each other, and we needed a way to step back and really look at each other.

So for two of our recent clinic-wide retreats, we took time to talk about ourselves, and not just our ideas. In one retreat, we used an icebreaking exercise where each person answered 3 questions on a card: they included “in high school, where were you most likely to be found.” Then the cards were read out loud and folks in the group had to guess which person had provided the answer. I learned a lot about my colleagues that way. It’s interesting to me that we often use icebreaking exercises in our classrooms, but don’t always remember the value of clinic pedagogy amongst ourselves. In the retreat the year after, we had “art projects” in which we instructed everyone to create a piece of art describing where they had been as a clinical teacher and where they were headed. We brought tape, paper, glitter, markers, scissors, confetti and other art supplies, and asked folks to work in groups but to create their own project, and then talk about it with the group. The results were amazing.