

**CLINICAL ANTHOLOGY:
READINGS FOR LIVE-
CLIENT CLINICS**

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CLINICAL ANTHOLOGY: READINGS FOR LIVE- CLIENT CLINICS

Second Edition

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MATTHEW  BENDER

Dedications

To Mary Winifred Wrasman. — A.J.H.

To the memory of my mother. — F.S.B.

To my mother and to the memory of my father. — S.L.B.

To Preston M. Stein. — S.L.K.

Preface to the Second Edition

Clinical legal education has come a long way since the publication of the first edition of the *CLINICAL ANTHOLOGY* in 1997, and subsequent scholarship by clinical faculty has had a significant influence on curriculum and methodology in law schools throughout the United States. This second edition reflects that growth of clinical scholarship. It has the same goal as the first: to make available to law students in live-client clinical courses materials that introduce the goals and methods of clinical education and identify and address issues and dilemmas that arise consistently in the practice of law. The earlier edition has also been used by clinical teachers and scholars to develop their own research agendas and curricular approaches. We hope this new edition will continue to serve that purpose as well.

The new edition reflects the growing significance of the *CLINICAL LAW REVIEW* in the development of clinical methodology and lawyering theory. It has become the forum for clinical scholarship that its founders intended it to be. The new edition also benefits from two major efforts to review the state of legal education. The Clinical Legal Education Association sponsored a multi-year Best Practices Project that culminated in 2007 with the book by Roy Stuckey and Others, *BEST PRACTICES FOR THE LEGAL PROFESSION: A VISION AND A ROAD MAP*. In the same year the Carnegie Foundation for the Advancement of Teaching published the results of its study of legal education in a book by William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*. Both studies, parts of which are excerpted in Chapter 1, emphasize the critical role of clinical experience in preparing students for the legal profession.

The new edition has a slightly different structure. We organized this edition into five parts, each with two or three chapters. While many of the new parts look similar to the chapters in the first edition and many of the new chapters cover essentially the same topics as the parts of the chapters in the first edition, we combined the topics covered in Chapters 2 and 6 of the first edition into a new Part II titled “Professionalism: Ethics, Values and Access to Justice” in order to emphasize that a lawyer’s duty to clients, to the justice system, and to the public are inseparable components of professionalism. We also added a chapter on “Re-thinking Advocacy: Community Lawyering and Transactional Clinics” in the new Part III to respond to the increased diversity of types of clinics and their approaches.

The excerpts chosen for the various chapters represent a wide range of viewpoints, and inclusion of an excerpt in the anthology does not represent endorsement of the point of view expressed. We have omitted footnotes whenever possible, and we have used asterisks to indicate omissions from the text. We encourage readers with an interest in a particular subject area to refer to the complete works for a fuller explanation of the respective author’s, or authors’, position.

Preface to the First Edition

The CLINICAL ANTHOLOGY grew out of our four-year search for readings to use in the classroom component of the live-client clinic at Vanderbilt Law School. We each supervise students who represent clients in areas of our separate specialties, including civil, criminal and juvenile law matters. The classroom sessions include all of our students and are intended to help them reflect more generally on their clinical practice experience.

Our search for reading materials required us to identify issues that we wanted all of our students to recognize and to consider in the context of their clinical practice. We were also guided by our view that the classroom component of a live-client clinic is secondary to students' learning through representation of clients. Our goal was to identify a set of materials that raise certain issues that arise consistently in clinical practice, as well as others that constitute a core set of topics about the lawyering process. Given this orientation, we decided not to include materials that focus on particular practice skills. Rather, the readings in this anthology reflect the growing body of scholarship about the issues and dilemmas that lawyers confront in practice. This new body of clinical scholarship, when read and discussed in conjunction with actual casework in the clinic, can make a law student's first exposure to the world of law practice a richer learning experience.

The time available for classroom teaching and discussion in a live-client clinic limits the topics that can be taken up in the classroom. Although there is a coherence to the set of readings as a whole, instructors can select readings from the anthology that will meet the needs of their particular courses and that address the problems of their students' caseload. In our view, classroom sessions for a particular clinical course should focus to a significant degree on the types of cases handled in the clinic and even on current developments in individual cases. Accordingly, the anthology is designed to allow flexibility in assignments. Classroom discussion based on readings can incorporate illustrations and problems from ongoing cases.

The organization of the readings in the anthology reflects a suggested order that topics might be taken up in the classroom. The excerpts in the first chapter offer different views of what law students can and should learn in clinical courses and explain methods of clinical teaching and learning. The next four chapters explore issues of lawyer-client relations and relations with other parties and court systems that are likely to arise as a case progresses in a student's clinical practice. The final chapter examines the lawyer's obligation to pursue justice and to ensure access to the courts.

The four middle chapters focus specifically on issues that arise in practice and begin with Chapter II on professional ethics and values. The topic of professional ethics and values is taken up at the beginning for two reasons. First, law students must be aware that their conduct is governed by rules of ethics before they take on responsibility for clients. Second, law students should be aware of the breadth of professional responsibility issues. Every aspect of the practice of law, from how one communicates with clients to how one negotiates with an adversary, has ethical implications. As the readings throughout this anthology illustrate, learning to practice law includes not only skills training but also developing standards of ethical and moral conduct.

Chapter III emphasizes issues that arise when lawyers relate to clients, including how

Preface to the First Edition

lawyers communicate with clients and the nature of the lawyer-client relationship. Chapter IV explores how lawyers and clients work together to frame the story of a case, to make decisions, and to gather information about relevant facts.

Chapter V focuses on the lawyer's role as an advocate. It examines the respective roles of lawyers and clients when their goal is to persuade an adversary or to convince a court.

The final chapter raises broad issues about the justice mission of lawyers and the duty of lawyers to guarantee access to the courts. The excerpts reflect the unique role of live-client clinics, most of which provide free legal services to persons who could not otherwise afford legal representation.

The excerpts selected for the anthology reflect current discussions and debates in legal education generally and in the field of clinical legal education in particular. They represent a wide range of viewpoints; inclusion of an excerpt in the anthology does not constitute an endorsement of its point of view. Most of the excerpts selected for the anthology are only small portions of the articles from which they are taken. We encourage readers to refer to the complete article for a full explanation of the author's point of view. We have omitted footnotes whenever possible in order to focus attention on the points made in the text. Asterisks indicate omissions from the text. We have also corrected minor typographical errors.

We wish to thank those who helped us prepare this book. Linda Williams deserves special recognition for her contribution to the CLINICAL ANTHOLOGY. She prepared the entire manuscript and coordinated the task of requesting copyright permissions and the work of the proofreaders. The project would have stalled without her dedication and commitment. We are grateful to Professors Anthony V. Alfieri, Paul Bergman, Naomi Cahn, Clark D. Cunningham, Peter T. Hoffman, Carol Bensinger Liebman, Peter Margulies, Elliott S. Milstein, Dean Rivkin, Paul Tremblay, and Roy T. Stuckey for their comments and suggestions. Many Vanderbilt law students helped with research, screening and proofreading. We are particularly indebted to Paige Black, Shalini Gopalakrishnan, Mark Helm, Caroline Memnon, Neil Morholt, Michelle Morseman, Hugh Ray, Amber St. John, Miguel Soto, and Christine Wohar.

A.J.H.

F.S.B.

S.L.B.

S.L.K.

Nashville, Tennessee March, 1997

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