SETON HALL LAW REVIEW

Volume Twenty-Two 1992 Number Fo

LEGAL EDUCATION IN THE 21ST CENTURY SYMPOSI

SYMPOSIUM - LEGAL ED
pp 1121 - 1400

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THE CLINICAL EXPERIENCE: A CASE ANALYSIS

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In trying to combine the best possible educational experience for the student with the highest quality legal services to the client, the clinician has one foot in each of two very different worlds. At one extreme, practitioners view academics as ivory tower thinkers with no sense of the real world. At the other extreme, academics view practitioners as trades-people, moving cases to conclusion without any examination of either the public policy behind the law or its theoretical underpinning. The chasm can be large.

This is the story of how Yale Law School's Homelessness Clinic dealt with that problem and the educational theory behind the clinic's legal work.

BACKGROUND

In 1980, Stephen Wizner and Dennis Curtis described the clinical program they developed at Yale Law School.[1] Wizner and Curtis began by noting that academic colleagues, practicing lawyers and non-lawyers were unfamiliar with the workings of the clinical program.[2] This article attempts to build on Wizner and Curtis, not by revisiting their article, but by describing a portion of Yale's clinical program through case narrative, literally examining what we did in a single case and why we made particular decisions.

During 1986 and 1987, the Jerome N. Frank Legal Services Organization, Yale's clinical program, instituted three separate housing clinics: (1) Landlord-Tenant; (2) Workshop on Shelter for the Homeless; and (3) Homelessness. Each clinic is co-taught by two clinical faculty members who serve as supervising attorneys, has a separate classroom component and is modeled after a law firm with its own caseload.

* Clinical Professor of Law, Yale Law School. My thanks to Robert Ellickson, Chris Gillkerson, Catherine Iino, Jean Koh Peters, Jay Pottenger and Steve Wizner for their helpful comments. My gratitude and admiration for the many students who worked on *Savage v. Aronson*—you made it worth writing about.

[1] *See* Stephen Wizner & Dennis Curtis, *Here's What We Do: Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673 (1980).

[2] *Id.* at 673.

In the Landlord-Tenant Clinic, students represent tenants being evicted pursuant to Connecticut's summary process statute. Nearly all the cases are referrals from New Haven Legal Assistance Association, the local legal services provider. Therefore, by the time the clinic receives the case, the eviction process has commenced and the client has been screened for financial eligibility in accordance with Legal Services Corporation guidelines (125% of the federal poverty level).[3] The clinic focuses on litigation with an emphasis on oral and written advocacy and classes structured as litigation conferences. Because of the structure of New Haven's Housing Court and the nature of eviction cases, however, the students may also engage in supervised mediation and negotiation in many cases.

The Workshop on Shelter for the Homeless, which emerged from the Homelessness Clinic, attempts to broaden clinical legal education to include transaction-oriented lawyering skills. The clinic includes students from the business school and school of architecture, along with law students, and provides legal and consulting services to managers and developers of low-income housing. The origins and work of the Shelter Project are described more fully in various works written by students participating in the clinic, including a "how-to" handbook.[4]

The Homelessness Clinic was the second law practice in the country to offer its services to homeless people by providing outreach at homeless shelters.[5] Within a year of its founding, we extended our outreach program to soup kitchens and welfare motels. While we expected a large number of benefits problems and housing issues, we were surprised by the diversity of problems, which included questions of family, criminal and mental health law, workers' compensation, personal injury and veterans' rights. Each semester, in addition to regular weekly outreach, students participate in a major project, such as a class action challenging the City of New Haven's housing payments for

[3] *See* 42 U.S.C. §§ 2996(a) to 2996(l) (1988).

[4] *See* YALE SHELTER PROJECT, HOMES FOR THE HOMELESS: A HANDBOOK FOR ACTION (1990).

[5] At one of our first meetings in 1986, we invited Douglas Lasdon from the Legal Action Center for the Homeless in New York City. Lasdon told us that he took pride in starting every talk he gave by stating that the Legal Action Center was the only law practice in the United States providing legal services outreach to the homeless. From then on, he told us, he would change "only" to "first." We interpreted that as giving us a claim to "second."

individuals receiving general assistance,[6] litigation challeng Connecticut's emergency housing regulation (on two separ occasions),[7] a personal injury action based on lead paint poison ing,[8] litigation on behalf of public housing tenants,[9] litigati challenging admission policies at a subsidized housing projec and a variety of legislative initiatives.[11]

Judged by the successful resolution of court cases, t Homelessness Clinic has a remarkable record. In its first fi years of existence, the clinic instituted or intervened in six c seeking to affect the homelessness problem in Connecticu The clinic prevailed at the trial level in each case, either throu judicial decision or consent decree. The cumulative dollar va achieved in these cases on clients' behalf exceeded $100,000,000.[13] At least three of these cases resulted in deci sions that have been widely cited nationally.[14]

One of these cases, *Savage v. Aronson*, was reversed on ap peal.[15] Well before the appeal was argued, the case became co troversial both within and outside of Yale Law School. The cas was so widely publicized that during meetings involving housing advocates and government officials discussing homelessness pol icy, reference to the "emergency housing case," "motel case" or even "the lawsuit" was sufficient to put everyone on notice that

6 *See* Wright v. Lee, No. CVNH 8604-1754 (Conn. Super. Ct. Nov. 21, 1988) (consent decree).

7 *See* Savage v. Aronson, 571 A.2d 696 (Conn. 1990); White v. Heintz, No. N-86-502-AHN (D. Conn. 1987) (consent decree).

8 *See* Hardy v. Griffin, 569 A.2d 49 (Conn. Super. Ct. 1989).

9 *See* Concerned Tenants of Father Panik Village v. Pierce, 685 F. Supp. 316 (D. Conn. 1988).

10 *See* Hoyeson v. Prete, No. N88-128 (TFGD) (D. Conn. 1990) (settlement agreement).

11 The clinic drafted a "rent bank" statute, which was enacted and codified at CONN. GEN. STAT. ANN. § 17-619 (West Supp. 1991). The clinic, for the past three years, has also analyzed proposed housing and homelessness bills for the legislature.

12 *See supra* notes 6-10 and accompanying text (discussing cases instituted by the clinic).

13 The benefits in *Concerned Tenants* included rebuilding or purchasing a minimum of 600 housing units, in addition to other benefits, valued in excess of $60,000,000. *See Concerned Tenants*, 685 F. Supp. 316; Savage v. Aronson, 571 A.2d 696 (Conn. 1990); White v. Heintz, No. N-86-502-AHN (D. Conn. 1987) (consent decree). Each case resulted in large classes receiving extended housing benefits.

14 *See Savage*, 571 A.2d at 711-12 (right to shelter); Hardy v. Griffin, 569 A.2d 49 (Conn. Super. Ct. 1989) (Connecticut's first reported decision on lead paint poisoning in a landlord-tenant relationship); *Concerned Tenants*, 685 F. Supp. at 321 ("constructive demolition" states a cause of action).

15 571 A.2d 696 (Conn. 1990).

such reference was to *Savage*. Inside the law school, the case w criticized as constituting poor social and public policy.

Students spent an extraordinary amount of time on the c preparing witnesses, researching and writing. In an ironic tw the Connecticut Assistant Attorney General representing the fendant complained to the trial court that the Attorney Gener office, the largest law office in the state, could not keep up w the "superior resources" of the students, most of whom w drafting their first legal papers. Yet, for all the controversy (a partially because of it), *Savage* was an ideal clinical experienc that it presented virtually every element of what we try to tea Moreover, the real-life experience the case presented, parti larly the human dynamic of working for real clients, could not replicated by role-playing or hypotheticals.[16]

THE PROBLEM

Around Christmas, 1986, the clinic represented several ents living in "welfare motels" pursuant to Connecticut's Em gency Housing Program, a "special needs" program under to Families with Dependent Children (AFDC). Under this p gram, AFDC families who lost their housing through evict lockout or catastrophe were eligible for relocation to "emerge housing" for, at that time, up to eighteen months. In 1986 New Haven, emergency housing meant "welfare motels." conditions in the motels were generally awful, but the alter tives were the street or emergency shelters for adults, with provisions for children. As a consequence of their failure to c ply with the program's many onerous procedural requireme well over ninety percent of the participants were notified of p spective termination from emergency housing, which would l resulted in eviction from their motel rooms, their only hous Students in the clinic interviewed clients, prepared a compl and instituted the case of *White v. Heintz*,[17] challenging pr dural aspects of the Emergency Housing Program. After s stantial discovery and negotiation, the parties agreed t consent decree favoring the plaintiffs.

16 This is not to denigrate the use of role-playing and hypotheticals. In fa use both in a variety of ways to teach interviewing, negotiation, trial skills and cal decisionmaking. *See* Jean Koh Peters, *Jose and Sarah's Story: The Usefuln Roleplay in an Ethically-Based Evaluation of the Present and Future Family Court*, 21 L.J. 897 (1990).

17 No. N-86-502-AHN (D. Conn. 1987) (consent decree).

Subsequent to *White*, in an effort to alleviate the problem of a growing motel population (costing approximately $3,000 per month per family), Connecticut instituted a Rental Assistance Program (RAP), providing a rental subsidy modelled on the federal Section 8 program. Through RAP and Section 8 certificates, the clients living in motels were able to move to permanent housing. New families moved into the motels pursuant to an interim emergency housing regulation (the old regulation having been effectively abrogated by the consent decree), but these clients were eventually able to move to permanent housing as well.

In 1988, the Connecticut Department of Income Maintenance (DIM) instituted a new emergency housing regulation that provided for a maximum payment of 100 days per calendar year for any family. Because the regulation did not go into effect until the fall of 1988, any recipient participating in the program on December 31, 1988, could restart the clock on January 1, 1989, a new calendar year.[18] Because of the limited availability of RAP and Section 8 certificates, along with broadened eligibility standards,[19] the number of families in motels increased dramatically through the second half of 1988. A large group of clients faced possible termination on April 10, 1989, the one hundredth day of that calendar year.

Throughout March, 1989, clients from the motels provided students with DIM notices advising the clients of the impending termination of their emergency housing benefit, with instructions to meet with a Connecticut Department of Human Resources (DHR) social worker. Students met with clients and negotiated with case workers, social workers and DIM and DHR officials, including the Commissioner of each department. The students were assured that client needs would be met and that alternative housing would be provided. Other legal services providers across the state were involved in the same negotiations and received the same assurances. Yet, clinic students, with greater access to the client community than any other legal service provider in the state, became increasingly concerned that a number of clients were being offered shelter that the clients considered unacceptable. Much of the housing was in congregate shelters far from the New Haven community; some was in boarded-up or otherwise deteriorated buildings, or in areas characterized by clients as containing unacceptably high drug involvement. Each family was, however, offered some form of housing. The students, and many recipients, came to believe that the client's minor children would suffer irreparable harm if forced to vacate the motels.

Legal services attorneys agreed with state officials to refrain from litigating. Whether this decision was because they accepted the State's good faith assurances,[20] because of the lack of resources or because they felt the case had no merit, an already complex case took on new dimensions. Aside from the difficult legal questions, should this case be brought at all? What was the role of our office in relation to our individual clients, potential members of a New Haven class of clients, potential members of a statewide class, and other attorneys who had been working with us on the same issue? How meritorious was our clients' claim? At what level does a case have so little merit that it should not be brought even if the client's own interests would be served by litigating? Did the fact that so many experienced attorneys decided not to bring the case go to the question of merit? What action was in the best interest of our clients? Could we hurt our clients' interests by bringing this case, by making bad law or social policy or by antagonizing government officials doing their best to help our clients?

By this time, students working on the case were divided into two subgroups. One subgroup developed the facts of individual clients' situations and the second subgroup researched the myriad legal questions that arose, including the existence of a cause of action, state and federal constitutional remedies, the scope of the possible remedy and even the power of Connecticut's executive to refuse to spend the full RAP funds appropriated by the legislature. The students as a group, however, had to consider the broader ethical and policy questions of whether the case should be brought at all. To resolve these questions, the

[18] The regulation has since been amended twice. The first amendment eliminated the "each calendar year" language and limited emergency housing benefits to 100 days per 365-day period. The second amendment reduced the 100-day limit to 80 days.

[19] *See* Robert C. Ellickson, *The Homelessness Muddle*, 99 PUB. INTEREST 45, 46-52 (1990) (arguing that liberal eligibility standards for shelter beds draw families and individuals primarily from other housing and not from the street). As Ellickson noted, there is little evidence of homeless families on the streets in New Haven. In addition, Ellickson argued that the State created financial incentives for AFDC families to become homeless by providing rent-free housing without reducing the AFDC grant, additional food vouchers for families in emergency housing and priority access to permanent housing subsidies. *See id.*

[20] The Commissioner of Human Resources, a former legal services attorney, made personal assurances that no one would be homeless.

discussion focused on the ethical question of the lawyer's obligation to individual clients, ultimately breaking the question down to the basic elements of lawyering, i.e., what it means to zealously represent a client's interest in a complex situation including competing interests.

While some of these decisions as to how to proceed with a case may be obvious to the experienced practitioner, this planning process is critical to law students grappling with ethical considerations and client needs. While it would be easy and efficient to tell a class that a desired public policy cannot necessarily override a client's individual goals, that third parties cannot control the lawyer's relationship with the client, that not all harm can be remedied and that judicial relief may be extremely limited, it is crucial that students be allowed and even required to fully discuss these issues to resolution.

While we spent hours discussing these issues instead of minutes explaining them, the value of experiential learning far outweighed the question of time. With their peers and supervisors, students learned to advocate for real people with real problems. The result was an understanding that law is not mechanistic, but a creative and thoughtful process in which the advocate carefully determines the client's needs and explores possible solutions, advises the client and acts on the client's wishes to achieve the best possible result. After days of analysis, the students and their supervisors consulted and determined that, contrary to the position taken by state officials and legal services attorneys, clients were suffering injuries and a cause of action existed to remedy those injuries. Thereafter, the clients authorized litigation and we began drafting the pleadings to institute *Savage v. Aronson* as a class action on behalf of the individuals and all other AFDC recipients similarly situated.[21]

The Remedy

To induce motels to accept homeless families, the State paid as much as $80.00 per night per family. With food vouchers at

[21] Savage v. Aronson, 571 A.2d 696 (Conn. 1990). The definition of the class became an issue later in the litigation. All of our evidence concerned New Haven clients. The State objected to certification of a class that would result in the State treating New Haven recipients differently from those elsewhere in Connecticut. Although we did not feel we could prove that statewide recipients were similarly situated (in fact, other communities had family congregate shelters and New Haven did not), we decided strategically to push open the door leading to a statewide class. To the State, this was the lesser evil.

local restaurants factored in, the State estimated the average expenditure per family at $10,000 for every 100 days.[22] Students had argued against the wasteful and ineffective use of motels since the inception of this practice by meeting with state officials, writing op-ed pieces and drafting proposed legislation.[23] Thus, seeking injunctive relief to keep clients in motels seemed paradoxical and, to some students, unacceptable. We discussed seeking alternative remedies, such as injunctive relief requiring the State to provide rental subsidies to all AFDC families qualifying for the Emergency Housing program. Based on reports from the legal research sub-group, however, we finally concluded that the court would not be prone to consider relief beyond enjoining the State from terminating benefits under the program.[24] The client subgroup reported that a number of clients said they had nowhere to go if forced to leave their motel rooms and wanted representation to extend their stays in the motels until they found suitable alternative housing. The students and instructors decided on a two-fold approach: (1) seek injunctive relief enjoining the State from terminating any AFDC recipient from the Emergency Housing Program until such time as the State provided alternative, decent, safe and sanitary housing, thus allowing the State to reduce the motel population through a variety of means including rental subsidies; and (2) work with the state legislature to develop, on a track parallel to but separate from the litigation, an economic cost-analysis of a RAP compared to the $10,000 cost of a 100-day motel stay. The analysis started as an informal working arrangement with several state legislators, but resulted in a more formalized written analysis prepared for the legislature and general public during the Spring of 1990.

The Legal Theory

It is the nature of students to ask: "What is the law?" It i

[22] Testimony of Lorraine Aronson, Connecticut Commissioner of Income Maintenance, *Savage v. Aronson*, 571 A.2d 49 (Conn. Super. Ct. 1990). Transcript on file with the author.

[23] Students met with and provided analysis to an ad hoc group of legislators showing that permanent housing could be provided at a lesser cost than the State was paying for its temporary emergency solution, even when factoring in a 50 percent federal reimbursement.

[24] Again, supervisors refrained from simply explaining that mandatory injunctions are difficult to obtain, and almost impossible in the context of a preliminary injunction. The balancing act facing a supervising attorney is to provide the highest quality legal services while allowing students to develop legal theories. The balance is sometimes described as a conflict between being directive and being collaborative in interactions with students.

the nature of law professors to return the question. Each semester, we teach and reteach students to reexamine statutes with an open mind, never accepting someone else's interpretation of the law without examination. The most valuable answer a clinician can give to a student's question of law is: "What does the statute (or case law) say?" The goal is not simply for the student to learn the law or even to learn that reading the statute is important, but to ingrain in the student a process of critical reading, with a sense that each reading is a fresh one, with a possibility of new interpretation. We examine cases in which lawyers interpreted statutes differently than their predecessors and which resulted in historic decisions expanding clients' rights. We teach students that challenging accepted notions is a critical element in lawyering.

We also teach the precept: "If it offends your sense of justice, there is a cause of action."[25] While somewhat at odds with the maxim that not every right has a remedy, this precept challenges students to think creatively to develop a legal theory when faced with perceived injustice. We begin by brainstorming, listing all possible causes of action, then breaking down each cause of action into its elements and each element into facts we would have to prove, along with any unresolved legal issues.[26]

In *Savage*, this process led to an exhaustive analysis of constitutional, statutory and common law theories. The discussion around theories was free-wheeling, with students supporting their theories before the group. Occasionally, students convinced other students to work with them to develop their theories further, sometimes they were convinced that their ideas needed more work before being presented to the group again and at

25 I first heard this in 1977, from Florence Roisman of the National Housing Law Project. I have repeated it so many times, students only need to hear "If it . . . " to complete the phrase. As a result, Florence Roisman has been accused of stealing the line from me. This is my public admission that the reverse is true.

26 We have since institutionalized this process as a separate class within the course. In the Fall 1990 term, we analyzed the question of whether public housing tenants or waiting list applicants for public housing could sue the housing authority for failing to fill vacant apartments. As this article is being written, we are applying the same process to the question of whether persons suffering from AIDS have a claim when they are rejected from private nursing homes. This process works best with a real case that makes use of the tremendous energy students develop around service, using their skills creatively to improve a client's situation. I would go so far as to state that this process, with a live client and real problem, convinces some dubious students that the law is a worthwhile profession. The process also works, however, with a hypothetical or an actual, concluded case. The analytical process is the same; what is lost is the real client, which can be a driving force.

other times they concluded that a theory that looked good a a.m. did not necessarily make sense during a daytime analys these discussions, the clinician's role was to serve as a devil vocate—to ensure that all ideas were fully developed and firm analytical base, and that each theory received its proper sideration. Yet, much of the clinician's role was to listen, to students to grope through novel ideas, feeling their way to thesis of opinion. Ultimately, the students coalesced aro statutory theory based on Connecticut's AFDC statute, tha vided: "[A]ny relative having a dependent child or depe children, who was unable to furnish suitable support theref his own home, shall be eligible to apply for and receive th authorized by this part . . . ."[27] Although this language has part of the statute and its predecessors since 1941, we coul find any reported decision that determined whether this pl was a condition of eligibility[28] or part of a standard of ne The latter position was augmented by a Connecticut statute viding that the Commissioner "shall grant aid in such am determined in accordance with levels of payments establish the Commissioner, as is needed in order to enable the appl to support himself, or in the case of aid to dependent childre enable the relative to support such dependent child or chil and himself, in health and decency."[30]

Students researching causes of action concluded that statute set a standard of need. While this interpretation did conflict with any case law we could find, we were concerned the statute had stood unchallenged in a jurisdiction where l services attorneys actively litigated entitlements issues for twenty years. That raised two questions: (1) did it matter tha administrative agency never referred to the statute in rec mending benefit levels to the legislature, a practice in which legislature acquiesced by voting on benefit levels without any erence to real-world need; and (2) could we convince the c that the current circumstances facing AFDC recipients diff from the historical application of the statute? Supervisors a

27 CONN. GEN. STAT. ANN. § 17-85 (West 1988).

28 For example, a requirement that recipients of AFDC funds be situat homes to care for their minor children.

29 For example, a legislative pronouncement that the Commissioner of In Maintenance, who elsewhere in the statute is granted the authority to set A levels (with legislative approval), must provide a grant sufficient for the recipi provide shelter.

30 CONN. GEN. STAT. ANN. § 17-82d (West 1988).

students what factors caused courts to revisit prior decisions: How could a case that was lost have been won? How did we get from *Plessey v. Ferguson*[31] to *Brown v. Board of Education*?[32]

Resolving those questions led to a breakthrough on the part of students in understanding the importance of developing the trial record and that case law takes different turns depending on the factual record cultivated by the litigator. While that may seem like a basic proposition, the case method trains students to examine law through appellate decisions. Students generally think of litigation as a test of brief-writing and oral-persuasive skills, with facts falling into place, and the chance of developing new rights depending on writing a better brief and making an argument superior to that of one's adversary. Here, as in all cases, the supervisors challenged the students to develop a theory of the case in which the factual basis they developed could compel the court to look at the statute differently.

The factual aspect of the case now became a top priority, with students developing individual stories and expert testimony to establish the necessary factual conclusions. The students suspected that an historical distinction existed that would enable them to bring the court beyond past decisions: however low the AFDC grant may have been, the cost of housing relative to the total grant was such that a recipient could afford to pay for housing from the grant. In fact, until the early 1970's, when Connecticut adopted a "flat grant" system, the AFDC grants included a district shelter component, which a recipient could receive only if she resided in housing that cost at least as much as the shelter allowance. The students' interviews with their clients, however, led the students to conclude that the cost of available apartments in New Haven now exceeded the total AFDC grant.[33] Ultimately, the key witness in proving this aspect of the case was a Connecticut "home finder," an independent contractor with real estate

[31] 163 U.S. 537 (1896) (establishing the "separate but equal" doctrine).

[32] 347 U.S. 483 (1954) (declaring "separate but equal" doctrine unconstitutional with respect to educational facilities).

[33] The Homelessness Clinic's continuity as a law practice was helpful in this regard. Although none of the students had participated in *White v. Heintz*, our previous attack on the Emergency Housing Program, supervisors could direct students toward our work in that case concerning the affordability of housing. In January, 1987, a clinic student took that day's edition of the *New Haven Journal Courier* (a morning newspaper, now defunct) and called *every* apartment listing, from the perspective of a mother with two children receiving an AFDC grant. She could not find a single apartment that she could afford on a monthly AFDC grant.

experience retained by DHR to find apartments for AFD(ents living in motels.

The students learned everything they could homefinders, not only interviewing them, but examini they succeeded and why they failed in finding housing fo ular clients.[34] One fact stood out: the homefinder foun(ments only for families with Section 8 or RAP subsidies. the subsidies, the homefinders concluded that rents w high to merit what would inevitably be a fruitless sear homefinders, the State's own experts in locating affordabl ing for AFDC families, would testify that rental rates in t Haven area were equal to or greater than the entire AFD(The realization that one of our crucial elements would b lished by a witness retained by the defendant resulted in r and infectious enthusiasm by students and supervisors alik hard work was paying off.

The Pleadings

It would be difficult to conceive of a hypothetical wit extensive pleadings than those in *Savage v. Aronson*. A co list of the trial court pleadings is attached as an append each pleading, the students continued to work collabor The complaint listed seven students as participating in th ing; the motion in support of a temporary injunction list students. Other memoranda listed anywhere from two students.

Taking the complaint as an example, this collaborativ consisted of students working singly or in pairs to devel individualized facts for each of eight named plaintiffs,[3 other students drafted sections on statutory and consti legal theories. As the parts were put together and the co was assembled and revised, a smaller number of students on drafting a cohesive document. This was not a process would recommend as an efficient way to produce pleadin numerable drafts circulated through what seemed to be nite number of hands, with arguments into the early m

[34] We had prior experience with the homefinder program. Membe clinic had worked with Yale University undergraduates to start a similar

[35] Students met clients at regularly scheduled "outreach" programs a tels where the students provided legal services to homeless families and ind We decided early in the process that each student would retain personal bility for representing his or her client(s) throughout the trial, including d facts and presenting testimony.

hours over particular wording or whether a constitutional claim made sense. Yet, efficiency aside, each student working on the project not only had the opportunity to draft a complaint, but to consider the strategy of raising particular claims, the problem of overstating facts that would later have to be proved and the strategic value of disclosing or withholding information through a complaint. In short, students participated in the often tense process by which litigators approach a case as a way of solving a difficult and complex problem.

The number of pleadings produced in a short period of time was extraordinary. In addition, the diversity of subject matter was unexpectedly wide. While we could predict a motion to dismiss, it was more difficult to foresee a motion for a protective order to foreclose depositions (on the grounds that the deponents were available to testify in court). Students were surprised initially by the frequency of motions and the lack of advance notice, but were energized by the give-and-take of the courtroom. The State routinely filed motions at the start of a day's testimony. Because these motions frequently raised jurisdictional issues, we had to choose between proceeding immediately or delaying the preliminary injunction hearing. Invariably, we proceeded.

In one instance, the State's memorandum cited two cases that, if they stood for the propositions cited, were disastrous on the question of sovereign immunity. The State had barely started its argument before the relevant law books appeared in the courtroom, although the courthouse itself did not have a law library. One of the students had literally run the four blocks to the Yale Law School library. The holdings of the cases had been badly overstated. The ability to respond immediately to the State's argument, amidst students hurrying in and out of the courtroom and a flurry of activity at the counsel table, created a high level of excitement for not only the students, but also for the clients and other observers in attendance, including the press.

The process of creating the initial papers (complaint, motion for temporary injunction, memorandum in support of motion for temporary injunction) was not replicated to the same degree as the case continued, for responsibilities became more diverse and students accepted primary responsibility for certain motions. All work continued to be collaborative, however, and each document circulated through several students and two or three supervising attorneys.

On April 10, 1989, we advised the Attorney General's Office

of our intent to seek a temporary restraining order and arran to meet later that day with the judge presiding over housing m ters. Four students and two supervisors presented the mot for a temporary restraining order to the court in chambers. T State was represented by two Assistant Attorneys General a two administrators—one each from DIM and DHR.[36] The s dents presented the case for restraining DIM from terminat the recipients' emergency housing benefits. While we prepa extensively for the argument, once in chambers, the supervis played a supporting role, introducing the students to the jud and allowing them to make our argument. The State's represe atives assured the court that alternative housing would be fou for all recipients and that no one would be harmed. Based these assertions, the court denied the temporary restraining o der, but scheduled an injunction hearing for April 14, 1989. W knew that any chance we had to prevail on April 14th depend on our ability to show harm.

Preparation—The Preliminary Injunction Hearing

Up to this point, the case involved research, drafting, ca discussions and preparation. Office work is forgiving, with large margin for error, as student work is always reviewed by a attorney before leaving the office. Even the motion for a r straining order, while a good introduction to the judge, was i formal, without the rigor and formality of the courtroom. Tri work, particularly for first-year students with limited, if any, pri exposure to the rules of evidence, provided new difficulties.[37]

We also had to consider whether to limit the number of st dents participating in court. We resolved the latter question i favor of including as many students as were actually working o the case. While this approach could lead to a disjointed prese tation in some cases and might irritate some judges, *Savage* wa tried in the Housing Session by a judge who had a great deal o experience with students appearing before him.[38] We were co

[36] Although the DIM Commissioner was the only defendant as the payor o emergency housing payments, DHR provided social services and made motel plac ments for recipients. The State treated the case as though both agencies we defending.

[37] Connecticut's student intern rule permits students to be certified to represe clients in court after completing two semesters of law school, or one semester i participating in a faculty supervised law school clinical program. *See* Conn. Prac Book § 67-75.

[38] Students from Yale Law School's Landlord-Tenant Clinic appeared in seve

hours over particular wording or whether a constitutional claim made sense. Yet, efficiency aside, each student working on the project not only had the opportunity to draft a complaint, but to consider the strategy of raising particular claims, the problem of overstating facts that would later have to be proved and the strategic value of disclosing or withholding information through a complaint. In short, students participated in the often tense process by which litigators approach a case as a way of solving a difficult and complex problem.

The number of pleadings produced in a short period of time was extraordinary. In addition, the diversity of subject matter was unexpectedly wide. While we could predict a motion to dismiss, it was more difficult to foresee a motion for a protective order to foreclose depositions (on the grounds that the deponents were available to testify in court). Students were surprised initially by the frequency of motions and the lack of advance notice, but were energized by the give-and-take of the courtroom. The State routinely filed motions at the start of a day's testimony. Because these motions frequently raised jurisdictional issues, we had to choose between proceeding immediately or delaying the preliminary injunction hearing. Invariably, we proceeded.

In one instance, the State's memorandum cited two cases that, if they stood for the propositions cited, were disastrous on the question of sovereign immunity. The State had barely started its argument before the relevant law books appeared in the courtroom. Although the courthouse itself did not have a law library, one of the students had literally run the four blocks to the Seton Hall Law School library. The holdings of the cases had been overstated. The ability to respond immediately to the argument, amidst students hurrying in and out of the courtroom and a flurry of activity at the counsel table, created a high level of excitement for not only the students, but also for the [illegible] other observers in attendance, including the press.

The process of creating the initial papers (complaint, motion for temporary injunction, memorandum in support of motion for temporary injunction) was not replicated to the same degree as the case continued, for responsibilities became more specialized. Students accepted primary responsibility for certain tasks, but the work continued to be collaborative, however, and drafts were circulated through several students and supervising attorneys.

On April 10, 1989, we advised the Assistant Attorneys General

of our intent to seek a temporary restraining order and arranged to meet later that day with the judge presiding over housing matters. Four students and two supervisors presented the motion for a temporary restraining order to the court in chambers. The State was represented by two Assistant Attorneys General and two administrators—one each from DIM and DHR.[36] The students presented the case for restraining DIM from terminating the recipients' emergency housing benefits. While we prepared extensively for the argument, once in chambers, the supervisors played a supporting role, introducing the students to the judge and allowing them to make our argument. The State's representatives assured the court that alternative housing would be found for all recipients and that no one would be harmed. Based on these assertions, the court denied the temporary restraining order, but scheduled an injunction hearing for April 14, 1989. We knew that any chance we had to prevail on April 14th depended on our ability to show harm.

Preparation—The Preliminary Injunction Hearing

Up to this point, the case involved research, drafting, case discussions and preparation. Office work is forgiving, with a large margin for error, as student work is always reviewed by an attorney before leaving the office. Even the motion for a restraining order, while a good introduction to the judge, was informal, without the rigor and formality of the courtroom. Trial, particularly for first-year students with immediate and [illegible] to the rules of evidence, presented new difficulties.[37] We also had to consider whether to limit the number of students participating in court. We resolved the latter question in favor of including as many students as were actually working on the case. While this approach could lead to a disjointed presentation in some cases and might irritate some judges, *Savage* was assigned to the Housing Session by a judge who had a great deal of experience with students appearing before him.[38] We were con-

[illegible] the DIM Commissioner was the only defendant as the payer of housing payments, DHR provided social services and made most placements. The State treated the case as though both agencies were [illegible]

[illegible]'s student intern rule permits students to be certified to represent [illegible] after completing two semesters of law school or one semester if [illegible] supervised by a clinic program. See Cert. Pra[illegible]

[illegible] Law School's Uniform Tenant Clinic appeared in several

fident that, under the circumstances, the educational value to students of presenting testimony and argument did not conflict with our duty of zealous representation of our clients and, indeed, might enhance it in the eyes of this particular judge. This allowed each student to concentrate on preparing and presenting the testimony of a single client with whom the student had been working throughout the litigation.

Client preparation presented some unique problems. We wanted to assemble the clients in a group to talk about the case before preparing them individually. While we wanted a prompt hearing, the short time between the April 10 denial of the restraining order and the April 14 injunction hearing limited our chances of getting the entire client group together. Added to this were the facts that our clients each had a child or children, often of pre-school age, depended on public transportation and had difficulty planning meals because they depended on food vouchers for specific restaurants near their respective motels.

To meet everyone's needs, the students organized a client preparation session at Yale Law School. While some students were responsible for transporting clients to and from the session, others were in charge of food and still others responsible for child care while the clients were prepared for their testimony. While the event was unusual, clients were able to focus their attention on court preparation without distractions. As an unexpected side benefit, the session helped bring about a strong sense of camaraderie among the entire team of clients, students and supervisors.[39]

Students preparing witnesses wrote drafts of proposed questions, which were reviewed and revised with supervising attorneys. At the preparation event, the students reviewed the questions with the clients and ran through a trial examination. In each case, a second student cross-examined the client. By the end of the session, we were convinced that the clients were well prepared and that we could present a compelling showing of harm.

Our discussions about what students could do included tasks

cases each week before the same judge. Those cases were considerably less complex than *Savage*. A few of the Homelessness students also appeared before the same court earlier in the semester.

39 This closeness survived the litigation. Several clients who never before worked together (although they lived in the same building) formed support groups and provided child care for each other. One of the clients has since participated in our class, lending the viewpoint of an individual client in class action litigation.

some students felt uncomfortable performing. As intimidating a standing up in a courtroom and actually speaking may be, w have found the experience to be one that students prize highly At the same time, students have a good sense of what is reason able and what is overwhelming for them. Generally, direct exam ination is easier than cross-examination, fact witnesses are easie than expert witnesses and the handling of physical evidence ca evoke terror if there is an objection. We agreed that supervisin attorneys would examine the Commissioner of Income Mainte nance (whom we called as an adverse witness), present our ex perts on homelessness and education, and cross-examine certai of the defense witnesses.

The Hearing

On April 14, 1989, the hearing began with the State's mo tion to dismiss, raising defenses of sovereign immunity and fail ure to exhaust administrative remedies. The court, having rea the State's motion and memorandum, requested that the plain tiffs argue first, in response to the written arguments. The cas began with a first-year student, in his first appearance on the rec ord, arguing in opposition to the State's motion. After argu ment, including rebuttal by the State, the court denied th motion.

That, however, did not resolve preliminary matters. On th morning of the hearing, the State filed two additional motions one to join the Secretary of the United States Department o Health and Human Services as a necessary party and another t join the Commissioner of the Connecticut Department of Chil dren and Youth Services as a necessary party. These motion were received immediately prior to the hearing, and the student and supervisors agreed that the response should be made by supervising attorney. As it happens, it was during this argumen that students produced the text of the cases cited in the memo randum while the State was making its argument. The court de nied both motions, which lead to further discussion on th record. After oral argument and colloquy, comprising seventy four pages of transcript and taking up most of the morning, th plaintiffs were able to call their first witness, an expert on chil dren's welfare and development. He was interrogated by a su pervising attorney.

The next four witnesses were fairly brief. Three were in volved in managing homeless shelters where the State sought t

place class members; each was interrogated by a different student, one of whom had argued in opposition to the motion to dismiss. The testimony showed that the shelters were not equipped to meet individual transportation or educational needs. The fourth witness, the Director of Testing for the New Haven Public Schools, testified that missing as few as ten school days could have a substantial effect on a young student's future reading ability. This testimony was important, as DIM proposed moving New Haven clients to family congregate shelters in other towns, which would likely result in missed school. By coincidence, the New Haven Board of Education had recently completed testing the effect of absenteeism on reading. The Director was examined by a supervising attorney. At that point, we were ready for what we all thought was the crucial part of the day and for which our clients had waited so patiently: the testimony of the clients themselves.

During the afternoon session, we examined three witnesses, all of whom were clients. Students questioned each witness. Supervisors intervened rarely and only on issues unrelated to the testimony, as on a question of class certification that arose during the questioning of one witness. At the end of the day, we renewed our motion for injunctive relief. A supervisor made the argument. After argument, the court stated that, in denying the motion for a temporary restraining order:

> I was assured that nobody would be homeless as a result of the action that I did not take. And I hear testimony today that that has not really been the case . . . .
>
> [B]ut what I am confronted with is a situation where the people who have come into this Court looking for help are being told to wait, we'll get to you. Now many times the court system does that. But occasionally, a court is in a position to give them some immediate action, and we have given them immediate action.
>
> I'm not suggesting that it's an emotional issue, but what it is, I think, is on the plaintiffs side, there are actual hardship examples, there is actual heartbreak, there's actual anxiety, and there are people whose lives—at least by their own perception and by what I perceive—their immediate future is a little gloomy, to say the least. . . .
>
> I turned them down Monday because I wanted to see what this was all about. I think today they are entitled to their temporary relief.[40]

[40] Transcript, Savage v. Aronson, 571 A.2d 696 (Conn. 1991).

With that, the injunction was granted. It is impossible to express on paper the jubilation the students, clients and supervisor felt. We set out to prove harm and that was precisely what the court found after the day's testimony. The case, however, was just beginning, and the next day of testimony was set for April 18, 1989.

On April 18, we began with the testimony of the State's homefinder, who was a DHR contractor. He was questioned by a student who had become especially expert concerning the homefinders' work, through which approximately five hundred families (each of them recipients of Emergency Housing benefits) had been placed in permanent housing. The homefinder testified that the families he served had monthly incomes of $434 for a one-child family, $534 for a family with two children, $627 for a family with three children, and $717 for a four-child family.[41] After being qualified as an expert as to the market rents for the New Haven community, the homefinder testified that the average rents for an apartment where the tenants had to pay utilities would be in the area of $450 to $475 for a one-bedroom apartment, $550 to $57 for a two-bedroom apartment and $650 to $700 for a three-bedroom apartment. The homefinder testified that of the five hundred families, he was able to place only two families without rental subsidies.

The latter number visibly surprised the judge. The transcript reads as follows:

> Q. How many of those families were without subsidies that you described?
>
> A. Two.
>
> Q. Okay.
>
> THE COURT: How many?
>
> THE WITNESS: Two.
>
> THE COURT: Two out of five-hundred did not have subsidies, is that what you said?
>
> THE WITNESS: During the two-and-one-half-years, I placed two families without subsidies—or assisted two families in finding housing.[42]

The only intervention on the record by a supervisor during direct examination, which took twenty-seven pages, occurred when a supervisor requested that opposing counsel make objections to the court and not address the student directly.

[41] These figures corresponded to AFDC figures. Interestingly, the State did not present testimony about the value of food stamps or medical benefits.

[42] Transcript, Savage v. Aronson, 571 A.2d 696 (Conn. 1990).

The homefinder had been taken out of order to meet his
ule, as yet another unexpected legal matter had to be resolve
April 14, the court had provisionally certified a class to all
plaintiffs to locate class members to determine if any were s
harm due to the defendant's actions. The State was conc
about the release of names because state and federal law pr
the confidentiality of benefits recipients. The court required
sure to the plaintiffs, but with a protective order limiting disc
to the purpose of the litigation. On April 18, however, th
refused to disclose the names of class members because the
tive order had not yet been drafted and entered, a prerequi
Assistant Attorneys General had not raised on April 14. Th
ter was resolved in favor of the plaintiffs and we were re
proceed.

The next four witnesses were clients. Our strategy, ho
changed somewhat since the prior day's testimony. Because t
junction had been in place for four days and the court was s
that at least some class members were suffering harm, we wa
disprove other elements of the State's case, particularly the
assertion that no one in the class had been made homeless.
case of the first witness, the student questioning her conce
on her efforts to seek permanent housing. In part, the te
included a long description of difficulties the client had wit
fair termination from Section 8 housing, showing that not on
government agencies not helping her find permanent housi
that they were making relocation difficult. The second half
testimony showed the tremendous amount of stress on her
and children. Particularly compelling was the plaintiff's te
that the State had offered her and her family a one-way t
Puerto Rico if she would agree to leave Connecticut.

With the next three witnesses, the students emphasized
availability of alternative housing and the stress this caused t
dren. One witness testified that the State offered her an ap
in an area where drugs were sold openly in front of the ho
that she refused to move there with her thirteen-year-ol
There were additional difficulties with the Section 8 office,
clients who were approved for Section 8 certificates. One cl
tified that she refused to go to a family shelter outside of Ne
because she would have had to withdraw her son from scho
other clients testified that they had been sent by the Section 8
to apartments that were already rented; one found an apartm
suburban town, but the Section 8 office in the town refused

er a New Haven Section 8 certificate.[43] One client testified
her son attended special education classes in New Haven and
no arrangements were made for transportation to his school.
accumulated testimony successfully presented a picture of a
bureaucracy that made promises with one hand that the other
failed to keep. On April 14, we had shown that the State's
nce to the court was inaccurate because people were, in fact,
d. On April 18, we showed that the State's assurance that it
providing alternative housing was just as false. We felt that we
hown that the State could not successfully implement its sup-
plan for relocating class members.

As our last witness, we called the Commissioner of Income
enance as an adverse witness. We wanted to tie DIM into the
promises of substitute housing made by DHR and the Section
es, thereby establishing an overall plan—instituted by the de-
t DIM—to "relocate" people when it terminated emergency
g benefits. A supervising attorney was interrogating the
issioner when the matter was adjourned until April 25, 1989.

While strange things happen in any complex litigation, April
989, started with a particularly odd event. The plaintiffs had
an amended complaint in accordance with Connecticut Rules
t which permit filing an amendment as of right prior to the
day."[44] Although this was the plaintiff's indisputable right,
fendants objected. When the court ruled that the objection
not possibly stand, but that the State could have a continu-
if it desired, one Assistant Attorney General argued: "[W]e
think we should be compelled to go forward. We think we
be prejudiced by going forward,"[45] while the second Assis-
Attorney General stated: "[A]t this point, though, I think we
forward with the complaint as it stands, we're. . . ."[46] The
attorney, visibly upset, interrupted with "excuse me, Your
, can I . . . ."[47] The judge stated, amidst laughter, "I think
better step in the back room and get your act together. Go
." The resolution was that we would conclude the Commis-

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roblems of Section 8 "portability," i.e., the ability to use one town's certifi-
another town, have been legally resolved by a change in the statute, but not
ly in practice. The Homelessness Clinic began addressing this problem
ring, 1990.

Connecticut practice, this date is comparable to the filing date in other
ions.

ranscript, April 25, at 7, Savage v. Aronson, 571 A.2d 696 (Conn. 1990).
at 8.

The transcript does not reflect the laughter.

sioner's testimony and then adjourn for the day.

Although a supervisor was questioning the Commissione
had spent a great deal of time with the students planning stra
While we planned a very limited scope of questioning, we po
out the trap that one can fall into by developing a lengthy cr
examination of one's own witness. We all agreed that the best t
the State could do was to forego cross-examination and proc
with its own case. The State, however, fell into the trap, questio
the Commissioner well beyond the scope of the direct. We did
object because this provided us with our second opportuni
cross-examine the Commissioner as part of our own case. The
script shows that the second and third attempts were much
damaging to the defendant than the first. From an educa
standpoint, the students knew what to look for and could appre
the strategy's success as it unfolded. Additionally, once we
cussed the possibility of a substantial redirect testimony, stu
had a number of questions to put to the Commissioner. This
the redirect exciting for all of us.

At the conclusion of the Commissioner's redirect, the pla
presented one final witness, a social worker who operated she
for homeless families and provided social services in New York C
Questioned by a student, the witness testified that transfer f
shelter to shelter had a deleterious effect on families, especially t
children's education. He also described the resulting disrupti
medical care, separation of families and increased mental h
problems. With the conclusion of this testimony, the pla
rested.

The defendants called the district manager of DHR to ex
the emergency housing program and the difficulties the Sta
countered in trying to place families in permanent housing.
witness was one of the state officials who, in chambers on Apr
convinced the court that a restraining order was unnecessary
cause all of the families in question would be promptly reloca
permanent housing in New Haven. With this witness, the Sta
tempted to separate DIM from the administration of the Sec
program, but not from DHR. She blamed Section 8 ineffici
and errors for failures in a well-planned DIM/DHR operation.
witness also testified as to particularities of the placements o
named plaintiffs, shifting blame for unsuccessful relocation e
from the State to the plaintiffs. On cross-examination, however,
witness admitted that the State grossly underestimated how lo
would take to relocate families in the Emergency Housing prog

d admitted that the State failed to meet its own April 10 projec-
s. She also testified on cross-examination that moving families
porarily would result in educational displacement, particularly
a special education situation. A supervisor conducted the cross-
mination.

The State presented the testimony of two social workers, in an
pt to discredit the individual plaintiffs' reasons for not secur-
permanent housing. The final witness, on April 28, 1989, was
Commissioner of Income Maintenance, which provided us with
rd chance to cross-examine the Commissioner. The supervisors
s-examined each of these witnesses. At the conclusion of the
missioner's testimony, the hearing adjourned with a briefing
edule set.

On June 29, 1989, the parties made closing arguments. The
intiffs' argument was made by a student who had not yet ap-
red before the court, but who had participated in preparation
had a summer job nearby. He did an excellent job.

The proceedings were not lengthy. Our direct case involved
en students presenting twelve witnesses, with supervising attor-
s questioning three more. An eighth student made our closing
ment. The transcript exceeded four hundred pages, the bulk of
ch reflected students' active participation. On September 1,
9, the court and the parties agreed, in open court, that neither
had any additional testimony on the question of a permanent
nction and the court consolidated the question of the prelimi-
y and permanent injunctions. On September 20, 1989, the court
ounced its decision granting a permanent injunction in favor of
plaintiffs, finding, among other things, that our statutory theory
correct and the state statute effectively created a right of shelter
AFDC families.

The Appeal

When we prevailed at the trial level, the State appealed. The
llate court, acting by a single judge, granted a stay of the
court's ruling. Strangely, the State did not act any differ-
y after the stay than before, taking no action to terminate our
nts' emergency housing benefits. Thus, the sole result of hav-
the stay granted was that, under federal law, the State lost the
percent federal reimbursement benefit for the Emergency
sing Program and had to absorb the program's full cost.
nwhile, on its own motion, the Connecticut Supreme Court
med jurisdiction from the appellate court. While students

worked frantically, preparing a motion and argument to lift the stay, the supreme court accelerated argument and scheduled the case for January 9, 1990.

Our supreme court brief listed thirteen students as having worked on it; four were new to the case, recruited by the students already working on the brief. The collaborative process described earlier continued, with increased angst and too many 2:00 a.m. discussions. The student who had argued against the State's motion to dismiss and played a major role in the trial was, by consensus, selected to argue the supreme court appeal.

While at least two, and generally more, practice arguments (moots) is our norm, by the student's choice, he was mooted eleven times by eleven separate panels consisting of clinical and academic faculty, private practitioners, legal services attorneys and students. While this regimen is not recommended for everyone, we put together as many panels as the student wanted. As supervisors, we had mixed emotions about the large number of moots. Virtually everyone reviewing the briefs and sitting on a panel had a theory of the supreme court argument. We were concerned that the mixed messages would lead to a confused and disjointed result. In this student's case, however, the regimen worked. Before a large crowd of students, faculty, legal services attorneys and state employees, he made an outstanding argument, showing a deep understanding of the case and a facility for answering the many questions asked by the justices, who sat *en banc*. The supreme court, however, on March 20, 1990, reversed by a vote of 6-1.[49]

Who Won?

The supreme court ruling came almost one year after DIM's April 10, 1989, termination of emergency housing benefits. By the time of the decision, over 1,400 families consisting of over 5,000 people were residing in emergency housing.[50] While some may have been able to double-up with families or friends, and, as we knew, most families had nowhere else to go except to street or congregate shelters geographically removed from current schooling and support systems. With the supreme court

[49] The *Connecticut Law Tribune* included the *Savage v. Aronson* decision in its list of the ten worst Connecticut Supreme Court decisions of 1990.

[50] To improve conditions, the State began renting apartments instead of motel rooms, but at the same exorbitant nightly rates the motels had charged. These were known as "creative apartments."

decision, the large majority of these families was subject to immediate termination of their emergency housing benefits. Because the State refrained from enforcing its litigation victory as to current recipients, none of them was displaced. Here, just as when the appellate court stayed the trial court judgment, DIM kept the families in their motel rooms or "creative apartments."

We can speculate as to reasons for the State's actions. The large numbers of families in emergency housing overwhelmed the system. Legal obligations aside, evicting 5,000 persons, most of whom were children, would have put more strain on the Connecticut Department of Children and Youth Services than its system could bear. Cities and towns could not have coped with the problem either. New Haven was already engaged in litigation requiring the City to provide emergency shelter for single adults.[51] Nobody wanted to evict 5,000 people.

Significantly, 1990 was an election year. By the time of the decision, William O'Neill, Connecticut's incumbent governor faced a battle for delegates at a June convention, with a primary likely to follow.[52] A large increase in the homeless population, with accompanying publicity, would have been a political liability. On the other side of the political scale, legislators, also facing election, saw a pressing need to address the "motel" problem. Any permanent remedy for our clients depended on the Connecticut state legislature.

The Legislative Effort

Throughout 1989 and the first half of 1990—while the litigation was pending—students met with legislators, drafted legislation and analyzed for legislators a series of initiatives dealing with housing proposals. While little happened in 1989 legislatively, arguably because of the injunction in *Savage*,[53] our efforts bore fruit in 1990. In addition to regular meetings with a group of legislators, students performed two separate functions. First, students analyzed every proposed housing bill from the perspective of our statewide class of homeless clients, with a recommendation for passage or rejection. Second, students produced a comprehensive analysis of the RAP subsidy, with suggestions for

[51] *See* Hilton v. City of New Haven, CVNH 8904-3165 (Conn. Super. Ct. 1989).

[52] Governor O'Neill subsequently withdrew as a candidate, prior to the convention.

[53] The injunction was in place from April 14, 1989, to October, 1989. By the time the appellate court stayed the

expansion. The results were mixed. The students' greatest
forts went into a modified RAP program; it drew some initial
port, but died in committee. The students' analysis of pend
bills was more successful. Ultimately, the legislature appro
ated funds to expand the RAP program to relocate the curr
motel residents to permanent housing and to better fund a re
bank[54] to help prevent homelessness, and thereby lessen t
number of families requiring emergency housing in the futu
Any long-term solution was put off to another day.

CONCLUSION

According to the Yale Law School Bulletin, "[t]he prim
educational purpose of the Yale Law School is to train la
yers."[55] Judged by the standard of training lawyers, clinical le
education may well be the core of the law school curriculu
teaching not only law, but the lawyering process. That view be
the question, however, because it does not answer the critic
questions: "What do we do?" and "Why do we do it?" *Savag*
Aronson was not simply a successful clinical project, but, wit
clinical models, represents the success of real-world experie
learning as opposed to hypotheticals, role-plays or simulati
While simulations offer a controlled setting, the passion of re
life is irreplaceable.

In *Savage v. Aronson*, this increased level of excitement
exemplified not only by the students working on the case, but
the law school and New Haven communities. A full year after
trial, Professor Robert Ellickson, a critic of both our strategy
Savage and the trial court's decision, discussed homelessness p
icy with the Homelessness Clinic, using *Savage* as an exampl
bad housing policy. Ellickson pointed out that *Savage* served
perpetuate an emergency housing system that created "perve
incentives" by encouraging families otherwise doubled-up wi
family or friends or living in market-rate housing to intentiona
become homeless to enter the motels, which served as a gate
to subsidized housing.[56] This presentation led to yet another di
cussion concerning the attorney's role in problem-solving, the
torney's relationship with a client and an attorne
responsibilities to the client and society. This exchange was,

[54] *See* CONN. GEN. STAT. ANN. § 17-619 (West Supp. 1991).

[55] BULLETIN OF YALE UNIVERSITY, YALE LAW SCHOOL, Series 87, No. 8,
(1991).

[56] *See* Ellickson, *supra* note 19 for a full discussion.

ny ways, as passionate as our first discussions. This dialogue
s a direct offshoot of the case. Without real advocacy on be-
lf of real clients, no one would have cared a year later.

Experiential learning in a collaborative setting is difficult.
he experiential part is unpredictable and does not conform to
re-packaging. The collaborative part is time consuming and
efficient. The product, however, is well worth the effort.

APPENDIX

No.	Date	Pleading
1	4/11/89	Application for Waiver of Fees and Payment of Costs
2	4/11/89	Complaint
3	4/11/89	Motion for Temporary Injunction, Order to Sho Cause, and Memorandum
4	4/12/89	Motion for Class Certification and Memorandu
5	4/12/89	Defendant's Motion to Dismiss and Memorand
6	4/12/89	Plaintiff's Motion to Take Depositions
7	4/13/89	Defendant's Objection to Further Proceedings Memorandum
8	4/14/89	Defendant's Motion to Join U.S. Secretary of Health and Human Services as a Necessary P and Memorandum
9	4/14/89	Defendant's Motion to Join Commissioner of Children and Youth Services, State of Connec as a Necessary Party and Memorandum
10	4/18/89	Defendant's Motion to Reargue Granting of Temporary Injunction
11	4/25/89	Protective Order
12	4/28/89	Memorandum in Opposition to Motion to D
13	4/28/89	Amended Complaint
14	4/28/89	Supplemental Memorandum in Opposition to Motion to Dismiss
15	5/23/89	Memorandum in Opposition to Temporary Injunction
16	5/23/89	Motion and Memorandum in Opposition to C Certification
17	5/23/89	Motion for Articulation
18	5/30/89	Reply Memorandum in Support of Applicatio Temporary Injunction
19	6/29/89	Memoranda to Questions Propounded by Jud
20	8/11/89	Motion to Dissolve Interim Order of Court
21	8/19/89	Objection to Motion to Dissolve
22	8/31/89	Memorandum in Support of Motion to Dissol
23	9/20/89	Defendant's Application for Stay of Injunctio
24	9/20/89	Answer
25	9/29/89	Appeal filed
26	10/3/89	Motion for Review

TEACHING APPELLATE ADVOCACY IN AN APPELLATE CLINICAL LAW PROGRAM

*J. Thomas Sullivan**

The predominantly urban location of most American law ools offers a particularly fertile environment in which clinical l education thrives. Proximity to major court systems and a icant potential client population, which is typically indigent underrepresented by legal services programs and *pro bono* entation projects,[1] affords law school clinical programs the necessary base for operation and access to litigation in- ions that make clinical training uniquely valuable within the chool curriculum.

Clinical legal education does not, of course, function primar- a means to provide representation for a potential client ation otherwise unable to obtain counsel due to lack of eco- resources. In fact, it may not even encompass live client entation at all to qualify as "clinical" course content within rriculum.[2] "Live client" clinical programs, however, do arily provide some measure of representation assistance to conomically disenfranchised. In so doing, these programs part of the total package of uncompensated legal services ble to the population, though a clearly less significant one ms of caseload or numbers of clients served, to more formal directly targeted at the need for indigent representation,

* ociate Professor of Law, University of Arkansas at Little Rock; Director of ppellate Clinic, 1984-86; formerly Appellate Defender, New Mexico Public der Department. The author has practiced in the appellate courts of Texas, Mexico and Colorado, the Fifth, Eighth and Tenth Circuits Courts of Appeals, the United States Supreme Court. The author wishes to acknowledge the com- and support offered by Professor Roark M. Reed, Director of the SMU Crim- ice Clinic.

1 For lively discussion on the emerging role of pro bono projects as a response needs of indigent and near-indigent clients, see Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 MD. L. REV. 1 (1990) (considering whether pro bono representation should be mandatory and enforcea- remain essentially voluntary in nature).

2 The ABA Comm. on Guidelines for Clinical Legal Education, Report of the ciation of American Law Schools—A.B.A. COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, (1980)[hereinafter *AALS/ABA Guidelines*]. The Com- report included a broad definition of "Clinical Legal Studies" encompassing student performance on live cases or problems, or in simulation of the law- role. . . ." *Id.* at 12.