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FEE-FOR-SERVICE CLINICAL TEACHING: SLIPPING TOWARD COMMERCIALISM

LISA G. LERMAN*

I. INTRODUCTION

The Report of the Task Force on Law Schools and the Profession (the MacCrate Report) observes that law schools are deficient in training students in the skills and values needed to practice law. The report urges curriculum revision to attend to these important objectives. Many law teachers—especially clinicians—agree at least in principle with the main message of the MacCrate report; the question is what to do and how to pay for it.

Clinical teaching tends to be more expensive than large lecture classes, if only because of the lower teacher-student ratio. This poses a barrier to massive expansion of in-house clinics, and renders it unlikely that live-client clinical programs will serve every law student.

The Chicago-Kent College of Law at the Illinois Institute of Technology has addressed the need to expand skills training with limited financial resources by constructing employment contracts with most of its clinical teachers in which the clinicians "pay for themselves" by representing clients who pay fees for legal services. The clients are charged as they would be for the services of a lawyer in a private law firm. If a teacher brings in more in client fees than is necessary to cover his or her salary and overhead, most of the excess is paid to the teacher as a bonus.

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2 See generally Peter deL Swords & Frank K. Walzer, Cost Aspects of Clinical Education, in ASSOCIATION OF AMERICAN LAW SCHOOLS—AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, CLINICAL LEGAL EDUCATION 133 (1980).

3 See e.g., MacCrate Report, supra note 1, at 254 n.36 (citing data on costs of in-house clinics and observing that "[a] goal of offering enrollment in a live client in-house clinic to every student before he or she graduates may not be feasible from a budgetary perspective for some time"). Dean Matasar indicated his goal that the clinical program at Chicago-Kent would serve half the students. AALS Tape, Matasar comments, infra note 6.
Before other schools start down this road in response to the MacCrate report or the possible demise of Title IX, it is worthwhile to take a close look at some of the pedagogical implications of this method of financing clinical legal education. Professor Gary Laser and Dean Richard Matasar have initiated this exploration through their articles in the last issue of the Clinical Law Review, and through their comments at a recent law teachers' convention. Before I present my questions about this pedagogical structure, I would applaud Dean Matasar and Professor Laser for their willingness to experiment in the design of their clinical program and for their decision to open this experiment for review by the community of clinical law teachers.

II. THE CHICAGO-KENT FEE-FOR-SERVICE CLINICAL PROGRAM

In many respects the clinical program at Chicago-Kent looks like other large clinical programs; there are about a dozen full-time teachers, some engaged in civil litigation, some in criminal defense work, one in health law, one in immigration, and some others. The student-teacher ratio varies from 8:1 to 11:1; the teachers have long-term contracts with the law school, and participate in every aspect of governance except tenure and promotion decisions.

What is most unusual about the clinic are the financial arrangements between the teachers and the law school, and between the law

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4 Title IX of the Higher Education Act currently provides approximately $14 million per year to law school clinical programs. The Republican Congress elected in late 1994 is considering proposals to eliminate the Law School Clinical Experience Program, through which this funding is allocated. If the program is eliminated, many clinical programs will need to find alternative sources of funding.


6 "Funding of Clinical Programs: The Relationship of Mission to Money," Joint Program of the Section on Clinical Legal Education and the Section on Professional Responsibility, Annual Meeting of the Association of American Law Schools, Jan 7, 1995, New Orleans, Louisiana. The session, which was planned and moderated by Professor Laser, was tape recorded. References to comments made during this meeting are cited in this essay as "AALS Tape" (available through Recorded Resources, Inc.—1995 AALS Annual Meeting, 9501, Tape 43; on file with author).

7 Before writing this essay I sent a list of questions to Professor Gary Laser so that my analysis of this clinical model could be informed by fuller information. I sent drafts of this essay to Professor Laser and Dean Matasar, and included in the drafts some additional requests for information about billing practices, pedagogy, and other topics. In response to these requests, Professor Laser reported that he is writing another article in which he will present more detailed information about the Chicago-Kent clinical program.

8 AALS Tape, supra note 6, Matasar comments.

9 Id.

school and the clients of the clinical programs. Most of the clinicians at Chicago-Kent have employment contracts that require the teachers each year to generate enough fees from clients served by the clinic to cover their salaries. The more senior clinicians must bring in the same amount in fees as they are paid in salary. If the fees earned by one of the clinicians exceeds the teacher's salary, the teacher keeps ninety percent of the excess unless it exceeds "a high rate"; at which point the teacher is obliged to pay a higher percentage of the surplus fees to the law school.\(^{11}\)

The clinicians hired more recently are required to bring in fees equal to 150 percent of their salaries, to cover overhead expenses. This group keeps 100 percent of the amount they bring in above salary and overhead, unless the fees paid exceed some high level, at which point they also pay the law school a higher percentage of the surplus fees.\(^{12}\)

This arrangement has proved financially desirable for at least some of the clinical teachers; Dean Matasar reports that the highest faculty salaries at the law school are earned by clinical teachers.\(^{13}\) If a teacher fails to generate the agreed amount of fees in a given year, that teacher, according to Professor Laser, "must pay back a penalty to the law school."\(^{14}\) Professor Laser reported that as of 1992, no clinical professor has had to pay a penalty under this provision of his or her employment contract.\(^{15}\)

The fee arrangements between the clinic and its clients cover most of the range of billing options that one would find in a private law firm; they include hourly fees, flat fees, "retainer" cases, contingent fee cases, fee-shifting cases, and pro bono cases.\(^{16}\) Each lawyer sets his or her own billing rate, some charging as much as $200 per hour. A committee of clinicians sets policy on what to bill for and at what price.\(^{17}\)

Professor Laser reported that the clinic does not bill for student time except in fee-shifting cases, in which student time is recorded and reported as part of a fee petition.\(^{18}\) Students do not receive any tui-

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\(^{11}\) AALS Tape, supra note 6, Matasar comments.

\(^{12}\) Id.

\(^{13}\) Id.

\(^{14}\) Id.

\(^{15}\) Laser, supra note 10, at 285.

\(^{16}\) Id.

\(^{17}\) Id.

\(^{18}\) Id.
tion rebate for working on fee-generating work, nor are they paid any wages or bonuses.19

III. QUESTIONS ABOUT FEE-FOR-SERVICE CLINICAL PROGRAMS

A. Balancing Teaching and Billable Client Service

Posit a hypothetical clinical teacher whose contract requires her to bring in fees equal to 150 percent of her salary, to cover overhead. Assume her salary is $100,000, so her obligation is $150,000. Her work is billed to clients based on hours worked, and her billing rate is $150 per hour. To fulfill her contract, the school must get paid for at least 1000 hours of her work per year.

This sounds like a very modest number. Many firms set targets or minimums of 1500 to 2000 hours for associates. But examine what would be required for her to bring in the requisite amount of income.

First, assume that some percentage of her time billed will not be paid,20 so she must bill perhaps twenty percent more hours to be confident that at least 1000 will be paid. This brings her “target” to 1200.21

Second, how many hours per week must she work to reach the 1200 target? One expert on hourly billing suggests that if one is billing only for properly billable professional activity, one must work three hours for every two billed.22 This covers time spent having lunch, chatting with co-workers, doing non-billable work such as reading to keep up in one’s field, cleaning off one’s desk, and the countless other activities that are necessary to the practice of law but are not professional services to a particular client. Some of this would overlap with time a clinician spent in a normal workday, but this figure does not assume that the lawyer has any teaching obligations. Those would be additional work hours. If the teacher needed to work three hours for every two billed, she would need to work 1800 hours to bill 1200.

Third, how many weeks of client service time are available to a clinical teacher whose terms of employment are roughly equivalent to those of tenure-track faculty?23 The activities of a law school clinical

19 AALS Tape, supra note 6, Matasar comments.
20 I have no data on this, but I imagine some clients would have financial problems, while others would object to the amounts billed.
21 This hypothetical assumes that a sufficient number of clients able to pay $150 per hour are available, and that the clinician is able to bill all her client service time at that rate.
23 At Chicago-Kent, clinicians employed on a long-term contract basis instead of a tenure or tenure-track arrangement. Dean Matasar described these as “405e-equivalent status
faculty member might (conservatively estimated) include the following non-client service activities:

- at least two weeks per year at conferences;\(^{24}\)
- at least four weeks of vacation time, including summer, Christmas break, and spring break;
- at least one week devoted to pro bono work;\(^{25}\)
- at least two weeks a year for participation in law school governance activities—faculty meetings, committee meetings, committee work;\(^{26}\)
- at least one week per year for bar association or other professional activities;
- at least one week per year for illness or other unscheduled absence from work.

This list includes eleven weeks of non-client-related activity. I have not yet listed any teaching time. If one assumed a happy marriage of client service and student teaching, and no writing at all, this would give the teacher 41 weeks a year to do client service. If during these weeks the lawyer worked 44 hours a week\(^{27}\) aside from teaching time, the lawyer could expect to get paid for 1000 hours of client service time.

The next question is how much time would be needed for work with students that would be additional to hours spent on client service. Estimating the time required for teaching is difficult, because law professors vary so much in schedules and habits. Nevertheless, assume the following hypothetical schedule. The clinician has ten students who work in teams of two, and teaches one two-hour seminar per week. The teacher meets with each team in tutorial format for an hour and a half per week, and spends three hours per week preparing for class. Tutorial meetings are spent discussing cases, but a primary objective of those meetings is to stimulate student reflection on matters arising in cases.

Time spent teaching students how to think about cases is mainly a service to the students and not to the clients. Likewise all in-class and

\(^{24}\) Hundreds of clinical teachers each year attend a four-day AALS Annual Meeting, an AALS Professional Development Workshop on Clinical Education, and a conference of the Clinical Legal Education Association. Most attend other conferences in addition.

\(^{25}\) The comments to Rule 6.1 of the ABA Model Rules of Professional Conduct suggest 40 hours a year as an appropriate minimum for pro bono service.

\(^{26}\) Dean Matasar explained that the clinicians at Chicago-Kent have nearly (but for hiring decisions) full participation in the governance of the law school. AALS Tape, supra note 6, Matasar comments.

\(^{27}\) This is based on dividing 1800 hours per year (estimated work time needed to get paid for 1000 hours) by 41 weeks of client service time.
class preparation time is not client service time. Such hours presumably would not be billable to clients. This conservative estimate adds another twelve and a half hours to each work week. In other words, during weeks in which there are no crises, disruptions, or unexpected developments in cases that require additional supervision time, the clinician should expect a work week of 56 ½ hours. This would translate into a schedule of 8 am to 7:30 pm five days a week.

A few observations emerge from this excursion into the schedule. First, the requirement to bill time adds enormous pressure to a clinician’s schedule and requires that clinicians work many more hours than tenure-track faculty. Second, it is very confusing to distinguish which hours are billable client service time and which are non-billable teaching time. The structure of the situation would encourage this clinician to avoid drawing clear lines between teaching and client service so that she could treat more of the time as billable. Third, it would be virtually impossible for this clinician to produce scholarship, unless she took no vacations, attended no professional meetings, or dropped out of governance. Her fee-generation obligations would greatly limit her professional development as an academic. Since many clinical teaching positions are tenure-track and require scholarship, this structure would reduce the likelihood that she could move on to another school. This situation is potentially more stressful than working in a private law firm, because only the clinicians would be facing billing pressure, so the expectations relating to governance are based on priorities other than income generation.

This hypothetical and the numbers I have used may diverge from the reality of work in the Chicago-Kent clinic in a number of different ways. But no matter what numbers one posits, one finds either pressure to reach the contract target or enormous financial incentives to exceed it. In either case, the teacher is pressed to keep her non-billable teaching time to a minimum to maximize her billing time.

B. The “Reflective Practitioner” in a Fee-for-Service Clinic

Professor Laser’s theoretical model for the pedagogy of the clinical program is greatly influenced by the ideas of Donald Schöen, who describes the process of teaching “the art of lawyering” through a “reflective practicum” in which students “learn by undertaking

28 I am assuming here that the time spent by the teacher reviewing draft documents, doing research, reading files, attending meetings with clients, etc., is included in the hours estimated for client service, even though it takes more hours to supervise students engaged in these activities than to do the work oneself.

29 This hypothetical undisrupted work week is proffered as humor. The work week of many live-client clinical teachers is swallowed by crises, disruptions and unexpected developments in cases that require endless amounts of additional supervision time.
projects . . . under close supervision . . . relatively free of the pressures, distractions and risks of the real [world], to which, nevertheless, it refers . . .” and in which, according to Professor Laser, “the clinical professor (as coach) should regularly engage in reflective activity with the student while the student is working on the lawyering activity assigned.”

Professor Laser posits that work in a fee-for-service clinic is more like law practice and therefore more realistic than teaching done in clinics that provide pro bono legal service to indigent clients. He states:

The MacCrate Report identifies a weakness in traditional in-house clinical education programs when it notes that they do not “duplicate the pressures and intensity of a practice setting.” . . .

Our in-house clinical program far more closely approximates a real practice setting, because it is the concern with fees that creates much of the pressure and intensity that the MacCrate Report finds lacking.

There may be an inverse relationship between the economic efficiency of legal work and its pedagogical value. Some of the best learning is accomplished through a lengthy reflective dialogue in which the student is able to raise and explore a wide range of questions about how to address a legal problem. Careful thought, observation, and reflection produce meaningful learning. A profit-driven organization is not an environment conducive to this type of academic activity. Financial or other pressure on lawyers and teachers can make it more difficult for a professional to give full attention to the ethical, strategic and pedagogical questions that arise in the practice of law.

I offer two stories, one from a live-client clinic and one from an externship program, to illustrate the quality of reflection that is possible in academic clinical teaching. My hypothesis is that fee-for-service clinical teaching offers significant disincentives to this type of teaching.

31 Id.
32 Laser, supra note 5, at 439, quoting the MacCrate Report, supra note 1, at 234. Professor Laser does not identify what sort of clinical programs he is comparing to the one at Chicago-Kent; I infer that he is referring to non-fee clinics because of the reference to fees.

The passage in the MacCrate report to which Professor Laser refers states:

While even well-structured law school clinical programs would rarely be able to duplicate the pressures and intensity of a practice setting, law schools provide a unique opportunity for exposing students to the full range of these practice skills, an opportunity that might not be readily available in actual practice. Id.
1. **A Call to Opposing Counsel**

I taught for two years at the Center for Applied Legal Studies, a clinical program at Georgetown University Law Center. In an article about our teaching methodology, I and my colleagues there reported that a phone call to opposing counsel asking for a week’s delay in a hearing date might be discussed at several case team meetings. The case team might discuss whether the request should be made by telephone, letter, mailgram or personal contact; who should make the call and to whom she should speak; and how the request might be phrased. Team members might anticipate the range of possible responses, and might consider whether anything had to be given up as the price of making the request; this inquiry might lead to a re-evaluation of the decision to ask for the postponement. The interns might rehearse the contact with the lawyer by role-playing it. After the actual contact was made, another case team meeting might be used to review the outcome. This retrospective review might include significant emphasis on process, such as an examination of whether the interns followed up any leads of the opposing counsel (such as hints about settlement) and if so, whether they did so by design or out of deference to the opposing counsel’s greater experience. The case team might look at which intern did the most talking during the contact, and why, and at the emotions of the call and how they affected the outcome. The advisors would raise questions that the interns did not themselves identify, until the subject had been covered thoroughly. The meeting might conclude with an intern-run evaluation of what they had learned from this scrutiny of a minor incident.

This hypothetical describes the intense scrutiny that we often applied to conduct regarded by practitioners as entirely routine. In private practice such a minor event would be unlikely to be discussed in any depth. Law students are often reluctant to ask too many questions of employers or teachers because the questions might reveal ignorance of some basic information about the legal profession. Yet, these supervisory discussions are particularly valuable as an introduction to law practice. They provide students with an opportunity to explore in

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33 I was a Clinical Fellow at the Center for Applied Legal Studies from 1982 to 1984. I taught a clinical course using similar methodology at the University of West Virginia College of Law from 1984 to 1985. I refer to these temporally distant events because my more recent teaching responsibilities have not included live-client clinical courses. More recent work that informs my perspective on fee-for-service clinical teaching includes supervision of students doing legal externships for academic credit (1987 to the present) and my research on lawyer billing practices. See articles cited infra at note 55.

detail their questions and observations about their first representa-
tional experiences.

2. *An Overheard Conversation*

The second story involves a student who was working in a prosecu-
tor's office for academic credit, and was participating in an extern-
ship seminar that I was teaching. One day the student came to my
office to discuss an incident that had occurred at the prosecutor's of-

day she overheard a police

The student went to see her supervisor and reported what she
had heard in the hallway. The reaction of the supervisor was sort of
neutral—something like "These things happen all the time." The stu-
dent remonstrated with the supervisor, and asked whether this per-
jured testimony should be reported to the judge. The supervisor
declined to take any action, and indicated to the student that she was
being naive.

The student was agitated when she came to tell me about this.
Was she crazy or was there something wrong here? We went over the
relevant ethical rules together, and concluded that the prosecutor may
have had an obligation to report the matter to the judge. After
some deliberation, the student decided not to pursue the matter any
further in the prosecutor's office, but to make a presentation about it
in class. The class spent a rather intense hour evaluating the conduct
of the supervisor and the student, discussing the difficulties presented
when a subordinate notices unethical conduct by a supervisor, and the
prosecutor's attitude toward the perjured testimony. The class ran
twenty minutes past the end time. The student decided she was no
longer interested in pursuing a career in criminal law.

Some would argue that as a member of the bar I had an obliga-
tion to report the prosecutor to the disciplinary authorities for viola-

35 If a lawyer becomes aware that perjured testimony has been presented, the lawyer
must in many jurisdictions take steps to ensure that the tribunal is informed that the testi-
mony was perjured. *See American Bar Association Standing Committee on Ethics
and Professional Responsibility, Formal Opinion 87-353* (April 20, 1987) (interpre-
ting Rule 3.3(a)(2) of the Model Rules of Professional Conduct to require a lawyer who
"knows the client has committed perjury [to make] disclosure to the tribunal . . . to avoid
assisting the client's criminal act"). While this analysis refers to testimony by a client, simi-
lar analysis might lead to disclosure of perjured testimony by a witness whose testimony
was presented by a prosecutor.
tion of a disciplinary rule. At the time I did not consider taking this action because I regarded my tutorial relationship to the student as analogous to a lawyer-client relationship, in that the possibility of open communication between externs and their faculty supervisors depends on the externs having confidence that events relating to fieldwork disclosed in tutorial discussions will not be revealed to the supervisors. In hindsight I believe I should have explored this question in more detail with the student. Such a discussion might lead the student to consider the possibility of talking further with the supervisor or with another lawyer at the placement organization. A student might decide to make a report to the bar disciplinary authorities or to authorize me to do so. Regardless of whether the discussion led to further action, the full exploration of options and obligations in responding to misconduct by a supervisor offers rich learning opportunities.

In a fee-for-service clinic this type of reflection would be unlikely to occur. The patterns of practice would be set by the supervisory habits of the practitioners teaching in the clinic, and would be unlikely to follow this "academic/reflective" model. Reflective dialogue in a live-client clinic is extremely time-consuming. In a fee-for-service clinic, it is likely that the primary objective would be to get work done for clients, and not to stimulate the students to engage in serious thinking about their work.

C. The Impact of Billing Time on Pedagogical Decisions

Some clients of the Chicago-Kent clinic are billed on the basis of how many hours are spent by the clinical teachers in providing service

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36 I am a member of the DC Bar. Rule 8.3 of the DC Rules of Professional Conduct provides:

A lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

37 It is this commitment that leads me not to specify which ethical rules the student and I consulted. That revelation might enable a reader to identify which prosecutor's office was involved. This could violate my commitment to my student.

38 Rule 8.3 of the D.C. Rules of Professional Conduct, which requires reporting of lawyer misconduct, "does not require disclosure of information otherwise protected by Rule 1.6." The student-teacher relationship is not an attorney-client relationship, but in this course becomes another sort of confidential relationship.

Of course in this situation, even absent the confidential relationship, my obligation to report is far from clear, since my "knowledge" is third-hand, and the rule imposes an obligation only if I make a subjective judgment that the violation "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

39 In this instance I did talk with the student about the possibility of the student's pursuing the question at her placement, but I deferred to her judgment that she had done all that she could do as an extern.
to the clients. Among American lawyers, hourly billing is the dominant method of determining fees to be charged to clients.\textsuperscript{40} This discussion explores the potential impact of hourly billing on live-client clinical teaching.

1. \textit{To Limit Supervision Time}

I mentioned earlier the question of what if any part of the student supervision would be billable to a client in a fee-for-service clinic. A clinician who regarded income generation and teaching as two separate activities would take the position that supervision time should not be billed. This clinician would be constrained then to limit supervision time in order reach the billing target.

A more flexible approach might be that time spent by a teacher with students discussing action to be taken on a case should be billable, especially since the student time on the matter is then donated to the client. However, tutorial time spent in discussion of matters not directly beneficial to the client would not be billable. This would preclude billing for educational time—\textit{e.g.}, time spent reflecting on or critiquing a hearing or a settlement negotiation or a telephone call, to the extent that the purpose of the discussion was to benefit the student and not the client. A clinician who followed this analysis might then keep a calendar handy during tutorial meetings to record how much time was spent on which matters. The teacher might be constrained however, to limit the time spent in supervision meetings discussing questions that were not directly relevant to service to be performed by the client, because it would be practically impossible to keep a running record of which time was spent on student-focussed issues and which time was spent on client-focussed issues.

A teacher who experienced no such constraints and billed clients for time spent in non-task-specific reflection with students would be in an ethically awkward posture unless clients were informed and had consented to pay hourly fees at professional rates for time spent by their lawyers training law students. More appropriate is to limit the supervision time or to keep the supervision time very task-focussed.

\textsuperscript{40} See Herbert Kritzer, Austin Sarat, David M. Trubek, Kristin Bumiller & Elizabeth McNichol, \textit{Understanding the Costs of Litigation: The Case of the Hourly-Fee Lawyer},” 1984 Am. B. Foun. Res. J. 559, 565 n.16 (over half of 1,382 lawyers surveyed bill by the hour: “56 were paid on a flat fee basis, 757 on an hourly basis, 431 on a contingent fee basis, and 138 on some other basis (i.e., they were employees of corporations, legal aid, prepaid legal service plans, or their fee was to be paid on some combination of hourly, flat, and/or contingent)”).
2. To Maintain a High Caseload

Many clinics engage their students in extensive planning and reflection in part by maintaining low caseloads. When I was teaching at the Center for Applied Legal Studies, for example, we dropped the caseload from three cases per team of two students to two cases per team of two students because we found that a three-case load imposed time pressure that made it difficult for the students to do thorough representational work and interfered with our ability to explore the cases with the students in adequate depth.

If a clinician has an annual billing target, the number of cases accepted would be likely to be dictated primarily by the relative billing potential of each case and the number needed to meet the target. The financial demands of the employment contract would constrain the teacher's judgment about how many cases could be handled by a student⁴¹ consistent with the goal of leaving sufficient time for extensive planning, reflection, and extra care to compensate for the inexperience of the student practitioners.

3. To Select Cases Based on Potential Fees

In the Georgetown clinic where I taught we hand-picked small cases from the Small Claims Court file, and called pro se parties to volunteer pro bono assistance. We picked small cases because we believed that students learn best in a posture in which they have primary responsibility for representation of a client, and in which they handle every aspect of a case from intake through enforcement of a judgment. This was best accomplished through small cases. Often it was possible for the students to complete these cases in the course of one semester; this meant the next semester's students could begin at the beginning with new clients.

Some of the best teaching cases had little dollar value. We accepted one case on behalf of a client who had hired some workers to trim a large tree that stood in front of the client's house. The workers had seriously damaged the tree. The client had sued for a refund of the $75 paid for the pruning.⁴² In the course of representing this client the students learned an enormous amount about interviewing, legal research, fact investigation, court procedure, and negotiation. The cli-

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⁴¹ As discussed below, this structure also might lead the teacher not to "assign" cases to each student, but to retain primary responsibility for the cases, only delegating specific tasks to students.

⁴² The teachers debated whether we should accept this case. I believed that it was of particular interest because of the disproportion between the amount of the monetary claim and the degree of injury perceived by the plaintiff. During the investigation of the case the students learned that the value of the tree far exceeded the cost of the defective service, so the damages claimed in the initial pro se petition were understated.
ent cared deeply about the tree, but the stakes were low enough to allow the students to work without fearing dire consequences from some unknown error.

When I was in private practice my firm accepted a case involving a client who had been bitten by a poisonous snake. The case would have been an excellent teaching case; it involved complex fact investigation, jurisdictional and other legal questions. After a short time the firm transferred the case to another firm because the risk of non-recovery was simply too great to justify any further investment of resources. Perhaps if the firm had been housed within a law school we would have kept the case—but if the clinic had been a fee-generating office the case might have been transferred out for the same reasons as my firm decided to assist the client in finding other counsel.

The point is that financial pressure may limit the teacher’s ability to select cases based on their pedagogical potential.44

4. To Subordinate Public Service Goals to Earning Fees

Some clinical teachers believe that the most significant teaching objective in a clinical program is to expose the students to issues of poverty and issues of injustice to economically disadvantaged people.45 Teachers at Chicago-Kent are encouraged to do pro bono work, and some are paid from grants and do not charge fees, but the fee-for-service clinicians must fit their pro bono work in with their fee generation obligations, just like lawyers in private practice. The clinical program does not make the provision of legal service to indigent clients a central objective.

The law school administration expresses encouragement for pro bono work, but the terms of the clinicians’ employment contracts do

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44 This point was made at the AALS meeting by Professor David Chavkin of The Columbus School of Law, The Catholic University of America. AALS Tape, supra note 6, Chavkin comments.

45 See, e.g. Gary Bellow, Clinical Studies in Law, in Looking at Law School: A Student Guide from the Society of American Law Teachers 292, 297, 299-300 (Stephen Gillers ed., 3d rev. ed., 1990) (clinical education helps students “to see the law in operation ‘from below’ as well as ‘from above,’” to see “the impact of race, gender and class on the functioning of law and lawyers,” and thereby to develop “a normative concern for the fairness, accessibility, and justness of the legal system and its influence on the social order of which it is a part”); Arthur B. LaFrance, Clinical Education and the Year 2010, 37 J. Legal Educ. 352, 354 (1987) (clinics that serve indigent clients “provide[ ] an ethical and social education for students that simply cannot be replicated in any other settings”). Professor Randolph Stone of the University of Chicago Law School identified teaching about poverty and injustice to economically disadvantaged people as among his primary objectives as a clinical teacher. AALS tape, supra note 6, Stone comments.
not. The agreements speak not in terms of a certain number of hours worked, but in terms of a certain number of dollars paid to the law school by the teacher’s clients. The bottom line is money.

This policy contrasts with some private law firms which set an annual target for hours billed, but count pro bono hours toward satisfaction of the target. By placing pro bono work on an equal footing with fee-generating work, these firms offer meaningful encouragement to lawyers to do pro bono work.46

Perhaps the law school administration would respond that the terms of the employment contract set modest requirements for income generation compared to many private law firms, and that this leaves much opportunity for pro bono work. I would simply point out that the law school expects from its clinicians a large amount of other non-billable work, in the face of which pro bono service to clients might be marginalized.

5. To Make Decisions About Conduct of Cases Based on Fee Issues

Once cases are accepted, the fee-for-service structure must impose some pressure on the clinical teachers, as it does on lawyers in private practice, to make decisions that will be most financially rewarding (or least damaging) to the lawyer. A hypothetical example:

A lawyer is handling four matters: one pro bono case about to go to trial, a divorce in which the client is a middle-income woman with limited resources, a criminal case in which a substantial non-refundable retainer has already been paid, and a contract negotiation on behalf of a corporation that is paying $200 for every hour billed by the lawyer. Assume that all these matters suddenly require immediate action. How is the lawyer to divide his time?

Dean Matasar observed that the clinicians at Chicago-Kent are very good at resisting the pressure to allow economics to drive their decisions about how to practice law. He says that each lawyer must balance how much a case is worth, how much effort can be put into that case on behalf of a client, how much time has to be written off in order to do an effective job on behalf of that client, ethically representing that client, and taking the lump that will come with the fact that it is not going to be remunerative to do the work. Balancing pro bono is part of the obligation. Our students are brought into the loop at every stage.47

If the hypothetical clinician in my example were not charging fees for service, he would be freer to divide his time based on the real


47 AALS Tape, supra note 6, Matasar comments.
needs of his clients and his students. Introducing the fee arrangement creates a significant conflict between his own financial interests, his obligations as a teacher, and his obligations as an attorney. Of course this type of conflict is regarded as quite normal in private practice, but in a teaching institution, it may result in less attention to the educational mission.

6. To Relegate the Students to the Role of Law Clerks

Another likely consequence of structuring a clinic as a fee-for-service operation is to reduce the amount of responsibility that the teacher is willing to turn over to the students. The teacher is the “partner” who has brought in the clients; to satisfy them and to ensure payment of fees, the lawyer may retain the most visible role on most matters. If he does not bill for student time he must invest enough of his own time and do enough of the work himself that there will be a substantial fee. If he charges a higher fee for time spent in court, how likely is he to allow a student to conduct a hearing while he sits in the back of the room?

Likewise, many clients of law school clinics are concerned that the margin of error is higher if the students take substantial responsibility for providing the services than if the services are provided by their teacher. In a non-fee-generating clinic, the level of student responsibility is disclosed at the outset, and both teachers and students work to ensure that the service provided is of high quality. A fee-paying client, however, would expect the personal service of a lawyer for whose time the client is being billed. Therefore the level of student responsibility would be more comparable to that of a law clerk than to that of a student in a live-client litigation clinic.

Another consequence of the “law clerk/associate role” in which students find themselves at Chicago-Kent might be a lesser degree of engagement in clinical work than one might find at a non-fee clinic. The degree of engagement tends to track the level of responsibility assigned to students in performance of legal work.

48 Professor Laser acknowledged that students assume less responsibility for cases at the Chicago-Kent clinic than at some other clinics, but he urged that this structure was pedagogically desirable because of the value of modeling as a teaching technique. He reported that the students at Chicago-Kent worked in a relationship with their teachers “similar to the partner-associate model . . . and the law students learn not only by performing but by observing a role model.” AALS Tape, supra note 6, Laser comments.

49 In the clinics where I taught, the quality of service usually far exceeded that provided to clients who paid lawyers for similar services; the principal reason was that the clinic students spent far more time researching and developing the cases than any client could have afforded to pay. A low caseload and intensive supervision often can more than compensate for the risks to a client hiring inexperienced counsel.
How then would a student’s work in a fee-for-service clinic differ from a student’s work in a law clerk position in which the student might earn $12-15 per hour? Presumably the difference is in the teacher’s engagement of the student in reflective dialogue. As I explained above, however, the structure of the institution is less conducive to such dialogue than a non-fee clinic or an externship seminar.

D. The Ethics of Billing Clients: Can It Be Taught in a Fee-for-Service Clinic?

Difficult ethical issues are raised by the conflict of interest between lawyer and client that arises whenever the lawyer and client agree that the lawyer will provide services and the client will pay a fee. In organizations in which the lawyers’ earnings are not affected by the number of clients served or the amount of service provided, lawyers are in a better position to fulfill the fiduciary obligation to decide what services to provide based on the client’s needs. Even in the absence of payment of fees, the lawyer’s self-interest can affect decisions made on behalf of clients. Some work may result in positive or negative attention to the lawyer. Some work may be so time-consuming as to interfere with other work or personal time. However, the pervasive conflict of interest presented by the lawyer’s financial interest in her client’s money is sharper and more problematic than many of these other “self-interest” conflicts.

Professor Laser urges that the Chicago-Kent program is a better teaching environment because of its fuller replication of a private law firm environment than a typical poverty law clinical program. If one could be immersed in private practice and then step back to a remote location from which to critically reflect on the practice environment, this exposure to “the realities of practice” would produce significant learning. How effectively can a teacher separate himself from his

50 See text accompanying notes 30-39.
51 These organizations include government agencies, legal services organizations, non-profit organizations and traditional clinical programs.
52 Laser, supra note 5, at 439. Laser urges that the Chicago-Kent program is more realistic because it includes pressures related to fees that are absent from most clinics. But then he says that students need protection from some of the pressures of practice. Id.
53 See discussion of reflective dialogue in externship classes at text accompanying notes 35-39. In my Professional Responsibility classes I distribute a questionnaire called “Working with Lawyers” in which I ask each student to identify an experience he has had working with lawyers which affected his view of the profession or his ideas about becoming a lawyer, and then to describe it in detail and explain its impact. In response to this questionnaire I receive many stories about billing fraud and the students' reactions to billing practices they have seen in law firms where they have been employed. I know of no law students and only a small number of lawyers who have attempted to communicate with others in the firm about questionable billing practices.
own self-interest and teach students about the ethical issues presented by billing questions while billing clients?

A fee-for-service clinician might endeavor to model appropriate billing practices, to keep squeaky-clean records of time spent, and to make thoughtful and conservative decisions about what to bill for. The teacher might invite the students to review time sheets, to observe and participate in staff discussions of billing practices, and might assign readings to assist the students to understand ethical questions about billing practices.

The teacher might engage the students in discussions of what should be the impact of a lawyer's fiduciary obligations to clients on decisions about padding bills, billing for recycled work, or double-billing. The class might discuss whether it is ethical to bill a client for time spent eating, sleeping, watching a movie, mowing the lawn, or taking a shower. If the lawyer is thinking about the case, travelling for a client, or working late, does this justify billing for time spent engaged in these non-work activities? The class might discuss whether and under what circumstances a lawyer billing for such activities is obliged to disclose those facts to a client. They might discuss what type of disclosure would discharge the fiduciary obligation to a corporation.

A fee-for-service clinic could provide this type of important educational opportunity, but such discussions might lead to felt constraints that would reduce the income of the clinical teachers. The discussions would be more likely to occur if fees earned by the clinic had no impact on the teachers’ earnings.

Even in a fee-for-service clinic in which the ethics of billing practices was part of the curriculum, would a student be in a good position to raise a question about a teacher’s billing practices? A hypothetical example:

Assume that after careful consideration the clinic has decided to bill its clients at 22 cents a page for photocopying, thereby charging less than the cheapest firms in town for photocopying. Assume a student knows that copies can be had at Kinko’s for 5 cents a page, and has read ABA Opinion 93-379, and believes the 22 cents to be arguably unethical because the law school is then earning a profit on administrative services. Some students would raise this type of

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54 See AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, Formal Opinion 93-379 (Dec. 6, 1993) for a discussion of these and other questions about hourly billing practices.

question with their teachers. Most would just talk to their friends about it. Some would worry that if the student brought it up it could affect the grade the teacher would give him or her in the clinical course.

E. Impact of Salary Structure on Faculty Relations and Position of Clinic Within the Law School

ABA Accreditation Standard 405(e) represents a broad consensus in American legal education that the terms of employment of clinical teachers should be “reasonably similar to those provided to other full-time faculty members.” During the last fifteen years, law schools have worked to eliminate the status hierarchy between clinical and non-clinical teachers by placing clinical positions on the tenure track or providing long-term contracts with equivalent salary and benefits.

Fee generation obligations such as those imposed by contract on many clinical teachers at Chicago-Kent would tend to re-institute and extend the status hierarchy that once was common between clinical and non-clinical teachers. This structure represents a dramatic divergence from recent changes at other law schools to integrate clinical courses, teachers and teaching methods into the law school curriculum.

Faculty at most law schools have the freedom to select academic interests regardless of income potential. Likewise, law faculty generally are free to work without institutional pressure to generate income for the law school and without fear of personal financial consequences if they fail to generate income. Most law faculty, including many clinicians, have nine-month employment contracts. This allows them to spend the summer months writing, developing teaching materials, engaging in other professional activity, and taking vacations.

Many non-fee clinical programs select cases that are likely to be completed at the end of each semester. Some clinical programs hire lawyers other than the full-time teachers to handle clinical casework during the summers. These structures allow many clinical teachers to

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56 *American Bar Association, Standards for Approval of Law Schools and Interpretations*, Standard 405(e) provides:

The law school should afford to full-time faculty members whose primary responsibilities are in its professional skills program a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided to other full-time faculty members by [other] Standards. . . . The law school should require these faculty members to meet standards and obligations reasonably similar to those required of full-time faculty members by [other] Standards . . . .

57 I am not aware of any other clinical program that contracts with clinical teachers to generate income to cover their own salaries.
enjoy the same professional and personal freedoms as their non-clinical counterparts during the summer.

The structure of a fee-for-service clinic might greatly reduce the freedom of the clinical teachers to select cases that will end by summer; each lawyer who has a fee generation contract must seek to represent clients able to pay fees that will help the lawyer to satisfy his or her obligation to the law school. Also if the teachers spend substantial time engaged in non-billable teaching from August through April, the summer months may provide an opportunity to bill more hours doing client service than is possible during the academic year.

As if these inequities were insufficient, there is a second tier of status hierarchy within the Chicago-Kent clinical program. One division is between Professor Laser, the director, who is tenured, and presumably is exempt from fee generation, the long-term contract clinicians, who must produce fees, and the grant clinicians, who have salaries but shorter-term contracts. Another layer of stratification exists among the fee-generating clinical faculty, between those hired earlier and those hired more recently, the latter required to produce 150 percent as much in fees as the former.

Some readers might ask: “So what? Hierarchy exists in all institutions, and is necessary for any organization to function.” I would respond that one of the best features of law faculties is the relative absence of hierarchy, and the formally equal teaching and governance responsibilities of the most and least senior faculty. Non-clinical faculty are generally expected to carry equal teaching loads regardless of seniority. Especially contrasted with the steep hierarchy within private law firms, the law school faculty culture is egalitarian.

One potential harm from requiring clinical teachers to earn their salaries by generating fees might be to marginalize the clinical program, to treat clinical teaching as secondary to the mission of the law school. Also the clinicians individually might be less valued, less respected, and more burdened by the law school than other faculty.

58 For a contrary view, see Duncan Kennedy, Legal Education and the Reproduction of Hierarchy, 32 J. LEGAL EDUC. 591 (1982).
59 An exception, of course, is the promotion and tenure process, in which senior faculty often have more decisional authority.
60 Professor Martin Guggenheim of New York University School of Law pointed this out at the AALS meeting in New Orleans, saying “I can’t imagine you saying to a faculty member: ‘We would welcome you here if you promise to pay your own freight fully.’ The fact that that is an unimaginable conversation to have with non-clinicians suggests how deeply offensive this is to clinicians.” AALS Tape, supra note 6, Guggenheim comments.
61 Professor Guggenheim characterized the salary arrangements as a statement that “We have decided there is a central mission here and you [the clinicians] are not part of it.” Id.
Even with these burdens, fee-for-service clinical teaching positions may be attractive to many lawyers compared to private practice.\(^6\) But the fact that the market tolerates this inequality among the teachers does not mean that this structure is beneficial to the pursuit of the educational mission of the school.

Teaching, scholarship and professional development are all inextricably intertwined. Law teachers who are precluded from some forms of scholarship and other professional development are unlikely to teach as well as they might if they were more valued by their institutions; ultimately they tend to be ghettoized and isolated from the academic community within the law school.

**F. Use of the Privileges of a Non-Profit Educational Institution by a Profit-Making Clinic**

Another set of questions about the fee-for-service clinic idea concerns the use of the facilities and resources of a not-for-profit educational institution either for the personal enrichment of teachers or for the enrichment of the organization. If a law school pays no taxes\(^6\) because its purpose is educational, but one wing of a law school is organized in its fee structure and compensation system much like a for-profit law firm, questions arise about the propriety of use of the not-for-profit resources by the profit-making clinical program.\(^6\)

**1. Using Unpaid Student Labor to Raise Money**

Dean Matasar described the favorable position of a Chicago-Kent clinician trying to attract fee-paying clients to the clinic. He described one person who had been an equity partner in a law firm, who brought a group of clients with him when he came to the law school. He told the clients that they would get the same services at a lower hourly rate, and that they would benefit from the library services and the free student assistance available at the law school.\(^6\) The law school is essentially giving away free student labor as a method of attracting fee-paying clients to the clinic.

If the student labor assists what is essentially a fund-raising operation, should the students not be paid for their work, or given a partial

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\(^6\) Dean Matasar reported that the clinicians at Chicago-Kent enjoy their positions. AALS Tape, *supra* note 6, Matasar comments.

\(^6\) I will not explore here whether there are legal questions raised about whether this type of arrangement would be inconsistent with 501(c)(3) status, but will explore instead the propriety of this arrangement.

\(^6\) These same questions arise if a professor within a law school sets up a lucrative practice or consulting business which she conducts using law school resources and while being paid a law school salary.

\(^6\) AALS Tape, *supra* note 6, Matasar comments.
tuition rebate? Perhaps they are being paid in educational benefits, but the students have paid a large amount of money for those educational benefits—in tuition dollars. This is particularly worrisome because some of the funds generated by the clinic become the private earnings of the clinicians.

Another concern about financial “use” of student work by the law school is that the clinical program, though it does not bill clients directly for student time, tracks and reports student hours in fee-shifting cases in the “hope that because of the student time they won’t reduce our hours too much.” So here the student labor—which is meant to be for the student’s educational benefit—is being used to increase the number of fee dollars awarded to the law school by judges. At the very least this might result in some blurring of the teacher’s perception of the purpose of the student labor.

2. The Relationship Between the Clinic and the Private Bar

One potentially harmful consequence of the fee-for-service structure of the Chicago-Kent clinic might be resentment from private practitioners who have to pay bills to support all the services that the law school clinicians receive without cost. These services include not only Lexis, Westlaw, and library research services, but also rent, utilities, salaries for administrative support staff, law clerk wages, and other administrative costs that may far exceed the fifty percent of salary that the clinicians are required to raise to cover overhead. In essence the clinicians might be viewed as having unfair advantages in competing for client business.

Concern among private practitioners in the community in which the law school is located is not a litmus test of what is or is not appropriate behavior for a law school. But this possibility is worthy of attention because of the ways that such resentment could be expressed. One issue is that many private practitioners in any community are alumni of and contributors to a law school. Some donate services to the law school by judging moot court competitions or offering guest lectures. Withdrawal of such support could be harmful to a school. More worrisome possibilities could include allegations of unauthor-

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66 This might be impermissible under Interpretation 1 of ABA Accreditation Standard 306(a), which provides that “Student participants in a law school externship program may not receive compensation for a program for which they receive academic credit.” American Bar Association, Standards for Approval of Law Schools and Interpretations.

67 AALS Tape, supra note 6, Laser comments.
ized practice by students in the clinic, or other legal action alleging unethical or substandard law practice.68

G. Slipping into Commercialization

Legal education originated in the United States as a commercial enterprise; the first law schools emerged from law firms that discovered that it was more lucrative to train apprentices than to represent clients.69 With tuition at private schools rapidly approaching $20,000 per year, it would be difficult to maintain the assertion that the law schools are not now in some respects commercial enterprises. So it should not surprise us, despite the widespread curricular uniformity among the law schools, to find that one school is using clinical legal education as a “profit center” for the law school and for its clinical teachers.

One fundamental question here is whether the educational mission of a school is harmed by its assuming some of the attributes of a commercial enterprise.70 If so, then most of the law schools are in some degree of trouble. Questions could be raised about high tuition, high faculty salaries, the use of law schools by universities as “cash cows”,71 and various profit-making ventures within the law schools, such as continuing legal education programs and publishing ventures.72 The problem is one of competing missions: education and income generation, and the potential of the latter to undermine the former.

The question is whether and in what respects we might constrain the development of commercialism within our schools. Assume that legal education is going to be so expensive in the 21st century that law school administrators must constantly search for new and creative ways to bring in more dollars to the law school. I offer a few snap-

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68 Many clinicians in non-fee-for-service clinics have encountered opposing counsel who are unhappy with the operation of the clinics, sometimes because of the extensive representational resources being devoted to clients who would otherwise be unrepresented. Many deans have had occasional calls expressing concern about the activities of a clinical program. If a clinic is competing for business with the private bar, the discomfort might be greater.


71 Matasar, supra note 6, at 470.

72 Dean Matasar listed CLE programs and publication of electronic teaching materials as among other commercial efforts at law schools. AALS Tape, supra note 6, Matasar Comments.
shots of where we might find ourselves as we blur the lines between being a school and being a store.

Some law schools might decide to follow the lead of certain undergraduate institutions, and to sell advertising time during class. They could follow the television model, and have commercial breaks every ten minutes. During the commercial breaks a professor might play a short video advertisement—say for a commercial outline covering the subject she is teaching. She might (perhaps for a higher fee) sing jingles written by companies selling computer equipment, beer, or cheap airline tickets. She might (for a price of course) distribute literature describing a bar review course, or pass out free samples of soap or breakfast cereal.73

Some law schools might turn to the expertise of their faculty as a relatively untapped source of revenue. A law school might offer financial incentives to faculty for generating a certain amount of consulting income. A percentage of this income would be turned over to the law school by the faculty member earning it. In fact unpaid scholarship might become obsolete. Constitutional scholars could contract to produce scholarship taking agreed positions on issues in exchange for the generous honoraria offered by those who oppose abortion or gun control.74 Health law specialists could evaluate legal issues under the sponsorship of pharmaceutical companies. Some law schools could establish in-house legal consulting firms, and require that each faculty member devote fifteen hours per week to work for the consulting firm.75

Another easy source of cash would be to set a premium tuition rate—say double the rate for regular admissions—and sell places in each class to any student willing to pay the higher price. Eventually

73 Professor Philip Schrag of Georgetown University Law Center raised the following question with Dean Matasar:

Why stop at clinics? Have you considered requiring your faculty members to do a day a week of practice and devote some fraction of that to the law school? Have you considered having your faculty sell commercial time in the middle of their lectures, for Coca-Cola or other products to bring in revenue for the school? . . . If it is good for clinics why isn't it good for the rest of the school?

Dean Matasar responded "It is good for the rest of the school. The question is how do we do it in a way that is consistent with the rest of the educational mission?" He pointed out that Chicago-Kent takes overhead from faculty grants, sells CLE programs, and shares income with faculty from electronic teaching materials. AALS Tape, supra note 6, Schrag and Matasar comments.

74 Ronald K.L. Collins, Letter, Scholarly Ethics (December 7, 1994) (not yet published) (urging legal scholars whose work is supported by corporate or other sponsors to disclose such sponsorship).

75 One example of the increasing recognition of law professors as a desirable commodity is the development of consulting firms such as the Legal Resource Network in Los Angeles, which finds law professors to do piecework for firms needing expertise.
the current admission criteria could be abandoned, and each place in each law school class could be sold at an auction to those wishing to attend.

A final entrepreneurial idea would be for the law schools of the twenty-first century to establish little shopping malls within the law school that would serve their students' every material need. Shoes, clothing, luggage, cosmetics, pharmaceuticals—the law schools would collect the profits from all these sales, and would employ buyers and managers and store clerks along with the secretaries and the computer support staff.

What is disturbing about these examples is how little our institutions would need to change to fit this picture. In at least one important respect private law schools already are commercial enterprises, selling educational services for as high a price as the market will bear. Most of our students finish law school with debtloads that will severely constrain their career choices—requiring them to give first priority to the top dollar—and that will financially cripple many of them for one or two decades after graduation from law school. Many of them enter law school without doing any financial planning. I sometimes ask second and third year law students what most worries them about their professional futures. Debt is always at the top of the list. I then ask how much they will owe, what their monthly payments will be, and what they need to earn. Most have no idea of the answers to any but the first of these questions. I agree with Dean Matasar that

We can no longer shift the cost to these kids, as we have been doing in an unconscionable fashion over the last two decades, and assume that the private sector will bear this cost through outrageous salaries that get passed on to clients, who cannot afford the services that we are providing to them. It is a pyramid that will collapse.

The system depends on the willingness of our students to continue to take on heavy debt responsibilities to pay our high tuitions in the face of a job market inadequate to provide most of them with income sufficient to support their loans. If the system continues to

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76 The Law School Admissions Services reported a dramatic increase in law student debt burden between 1989-90 and 1991-92. In 1989-90, 29.1 percent of law graduates had borrowed between $40,000 and $79,000. In 1991-92, 52.4 percent of law graduates carried student loans ranging from $40,000 to $79,000. A student at the bottom of this range would have a ten year obligation of approximately $506 per month. A person in this position who earned $60,720 per year would pay ten percent of gross income toward this loan obligation. NATIONAL ASSOCIATION FOR PUBLIC INTEREST LAW, THE NAPIL LOAN REPAYMENT ASSISTANCE PROGRAM REPORT 1994 Introduction (Revised Edition). Consider, then, the terrible financial position of a student with $80,000 in loans and a $30,000 salary.

77 AALS Tape, supra note 6, Matasar comments.
function, it is in part because of the financial inexperience of many of our students.

Where my views may diverge from Dean Matasar's is on the question of how far into the commercial realm we should allow our law schools to drift. Of course the law schools need to continue to develop new ways to generate dollars to reduce tuition dependency and to reduce the burden of student loans. However, the law schools should be circumspect about entrepreneurial ideas that would encroach at all on their educational and academic missions.

The Department of Education direct loan program, if it survives the current Congress, may offer important relief to many students from unmanageable loan obligations. Under this plan, many students would be eligible to consolidate their loans and elect to participate in an income-contingent repayment plan, which would allow a repayment period of twenty-five years, but would set the monthly payments at a maximum of fifteen percent of income.\(^7\)

Law schools should avoid fundraising that would interfere with teaching or research. Fund-raising from alumni and other sources does not have a significant impact on the work of the faculty or the students. Increasing use of on-line research services could reduce the need for each school to maintain a vast and costly library collection. The schools could require faculty to pay a portion of their consulting income to the law school.\(^8\) Such a policy might have some negative impact on consulting, but that would free up faculty from moneymaking activities to focus on other teaching and research activities.

**IV. Conclusion**

This essay articulates some questions about constructing clinical programs using a fee-for-service model. Some questions are focussed on the structure of the Chicago-Kent program; others are more abstract. Chicago-Kent may have avoided many, and perhaps even all, of the potential problems I describe in this essay. However, issues of pedagogical compromise, faculty status, and alumni relations are likely to arise in a fee-for-service clinic; they defy easy solution.

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79 At the AALS meeting, Professor Gary Palm of the University of Chicago pointed out that many law professors earn a great deal of extra income from consulting fees. He suggested that a portion of this income should be shared with the law school since the faculty use law school resources to do the work. AALS Tape, *supra* note 6, Palm comments.
Schools that consider establishing a fee-for-service clinic must consider carefully the potential perils of this structure along with its obvious fiscal advantages.

In an era in which increasing resources are unlikely to be available to pay for expansion of clinical legal education, creativity and experimentation will be needed to sustain and to expand clinical programs. I suggest that the academic integrity of our law schools may be better preserved if we decline to allow our classrooms, our clinical programs or our research activities to become directed or defined by fundraising activities.