ARE APPELLATE CLINICS EFFECTIVE?

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Law school clinics are integral to legal education, offering students practical experience while serving clients in need and affecting the law more broadly. But despite the enormous investments in experiential learning that law schools make each year, there remains a lack of comprehensive research assessing the efficacy of clinics in serving clients.

This Article aims to address this void by assessing the performance of fifteen appellate clinics across nearly three hundred federal court of appeals cases. The findings suggest promising evidence of clinical effectiveness. For example, in immigration cases, appellate clinics achieved a reversal rate of 55%, rising to 70% when all favorable case outcomes were considered (e.g., dismissals, reversals in part). For prisoner-plaintiff cases, the reversal rate was 41%, increasing to 71% with favorable outcomes included. These rates outpace national averages, even when compared to clients who are represented by non-clinic counsel. Such results provide empirical evidence confirming that law school clinics make a positive impact on case outcomes. The Article concludes by suggesting reforms—for law schools, courts, and other institutions—to facilitate the role of clinics as a resource for the public interest community.

Introduction

Measuring clinic effectiveness touches on one of the core promises of clinical education. As Steven Leleiko, a clinician at New York University, noted more than forty years ago, "clinical education introduces an empirical base to one's understanding of legal principles,"[1] because "[t]he core of the clinical experience is client representation in a real case within the legal system."[2] This scenario "presents clinical teachers and students with both the opportunity and responsibility to plan and conduct studies on specific components of the legal system with the objectives of contributing to our understanding of how the law

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[1] Steven H. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. Legal Educ. 149, 153 (1979).

[2] *Id.*

actually operates."[3] And it is through this opportunity and responsibility that clinical programs can help to provide better service to clients, further the education of law students, and improve the legal system.

Yet despite Leleiko's vision, there is today "scant data about how well law school clinic students perform on behalf of their clients."[4] Existing research tends to fall into three camps. The first uses observational tools to summarize a specific clinic representation or provides anecdotal conclusions from a small subset of clinic's cases.[5] The second attempts to measure a particular clinic's win rate.[6] And the third assesses outcomes among a group of clinics, but usually in only a specific subject area, such as employment or immigration.[7] These studies each help to conceptualize what clinics do and how they perform. But the insight they provide is invariably limited. Analysis of a single clinic's efficacy gives little insight into clinical impacts more broadly. And research into a specific subject area is, by definition, cabined to a particular type of case and thus cannot offer a more comprehensive look at how clinical representation might affect results in other types of cases.

Such difficulties in evaluation are not unique to clinics. Researchers have long struggled to measure the efficacy and impact of legal representation, and many scholars continue to question how much access to and availability of counsel improves case outcomes.[8] Some studies have

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[3] *Id.*; *see also* Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1321 (1947) ("An interest in the practical should not preclude, on the contrary it should invite, a lively interest in theory.").

[4] Colleen F. Shanahan, Jeffrey Selbin, Alyx Mark, & Anna E. Carpenter, *Measuring Law School Clinics*, 92 TUL. L. REV. 547, 549 (2018).

[5] *See, e.g.*, Amy D. Ronner, *Some In-House Appellate Litigation Clinic's Lessons in Professional Responsibility: Musical Stories of Candor and the Sandbag*, 45 AM. U. L. REV. 859, 874–81 (1996) (describing two case studies to illustrate clinical lawyering skills); Maureen E. Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1, 7–8 (1998) (using cases from the Idaho Appellate Clinic as a case study for gaining analytical, practical, and ethical skills and meeting client objectives).

[6] *See, e.g.*, Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340 (2007) ("Asylum seekers represented by Georgetown University's clinical program from January 2000 through August 2004 were granted asylum at a rate of 89% in immigration court."); Jeffrey L. Fisher, *A Clinic's Place in the Supreme Court Bar*, 65 STAN. L. REV. 137, 156 (2013) ("All of these statistics regarding the effects of specialists hold true with respect to the subset of specialists working with Supreme Court clinics. The clinics [with a focus on Stanford's clinic] have prevailed in 21 of the 30 cases . . . .").

[7] *See, e.g.*, Shanahan et al., *supra* note 4, at 559, 566 ("Our study draws on a large data set of unemployment insurance (UI) cases in the District of Columbia (D.C.) Office of Administrative Hearings (OAH)," with "[t]he clinical law students com[ing] from Georgetown, George Washington, American, and Catholic Universities."); Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 53 (2015) (analyzing case outcomes in immigration proceedings and showing that clinical representation resulted in relief at a rate comparable to that of law firms and nonprofits).

[8] *Compare* D. James Greiner & Cassandara Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*,

even suggested that having an attorney (including a student-attorney through a clinical program) may deliver worse client outcomes.[9] These circumstances underscore the need for rigorous and empirical analysis into clinical performance. After all, "[d]o no harm" is a fundamental tenet "instilled in every healthcare professional at the beginning of their clinical careers."[10] If legal clinics cannot hold true to this same principle, one might wonder whether the considerable investments into clinical education are justified.[11]

This Article contributes an important dataset towards such analytical efforts. It collects data from nearly three hundred federal circuit court cases, drawn from the work of fifteen law school appellate clinics, and tracks each case's outcome (e.g., reversal, affirmance, or dismissal). The Article focuses on appellate work because any decision in these cases not only affects a clinic's own clients, but also has a magnifying effect on the law by creating precedent across a circuit (and may ultimately prompt Supreme Court review).[12] Whether such clinics

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121 Yale L.J. 2118, 2175, 2198 (2012), *and* Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. Pa. L. Rev. 967, 991–92 (2012), *with* Mitchell Levy, Comment, *Empirical Patterns of Pro Se Litigation in Federal District Courts*, 85 U. Chi. L. Rev. 1819, 1830 (2018) ("However, the few reliable studies conducted thus far tend to suggest that providing access to counsel significantly improved outcomes for civil litigants."); *see also id.* (citing sources).

[9] *See, e.g.*, Erica J. Hashimoto, *The Price of Misdemeanor Representation*, 49 Wm. & Mary L. Rev. 461, 492 (2007) ("[P]ro se defendants consistently score better than represented defendants in all categories in which there are sufficient data from which to draw conclusions."); Greiner & Pattanayak, *supra* note 8, at 2124–25 (finding that clients' assistance by Harvard Legal Aid Bureau ("HLAB") had "no statistically significant effect on the probability that a claimant would prevail, but that the offer did delay the adjudicatory process," and that delay "probably meant that many of these claimants who were offered HLAB assistance suffered the harm of having to wait longer for their benefits to begin") (footnote omitted); *cf.* Shanahan et al., *supra* note 4, at 582 (showing that clinic students provide favorable outcomes slightly less frequently than experienced attorneys, but that difference is not statistically significant.).

[10] Kyriaki-Barbara Papalois, *'First, Do No Harm' . . .* A Call to Re-evaluate the Wellbeing of Healthcare Staff, 10 Int'l J. Med. Students 439, 439 (2022).

[11] *See, e.g.*, ABA Section of Legal Education and Admissions to the Bar, Standards and Rules of Procedure for Approval of Law Schools 2024-25 (2024) at Standard 303(a)(3) [hereinafter ABA Standards], *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf (requiring all law students to complete at least six credit hours of experiential learning); Robert R. Kuehn, Margaret Reuter & David A. Santacroce, Ctr. for the Study of Applied Legal Educ., 2019–20 Survey of Applied Legal Education 6, https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457f6d9c25cc6c1457af4_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf (noting that virtually every law school offers clinics to satisfy the ABA's experiential learning requirement, with an average of seven clinics offered per law school).

[12] About a decade ago, Nancy Morawetz and Jeffrey Fisher explored this question—whether clinics might create "bad" law for others—in a pair of law review pieces about Supreme Court clinics. *See, e.g.*, Nancy Morawetz, *Counterbalancing Distorted Incentives in Supreme Court Pro Bono Bar and Public Interest Practice Communities*, 86 N.Y.U. L. Rev. 131, 192 (2011) ("A case granted that leads to an argument but a bad outcome or bad dicta

are linked to favorable case outcomes is, thus, a particularly important question, with potential ramifications for millions of individuals.

By collecting and assessing this data, this Article aims to advance a conversation among three audiences: law schools that must decide how to deploy resources in clinical programs, groups that may be skeptical of or concerned about clinical programming, and courts and other institutions that are invested in improving access to justice.

The findings offer a favorable, albeit preliminary, case for clinical effectiveness. In immigration matters, appellate clinics obtained a reversal rate of 55%.[13] If all favorable case outcomes (e.g., dismissals, reversals in part) are included, that percentage rises to 70%.[14] These rates stand in contrast to the 6% for all federal immigration appeals.[15] In prisoner civil rights cases, appellate clinics obtained a reversal rate of 37%.[16] When all favorable outcomes are considered, the percentage increases to 71%.[17] Again, those rates significantly outpace the overall reversal rate, which hovers near 5%.[18] Appellate clinics likewise outperformed the overall reversal rates in criminal, habeas, and general civil matters.[19]

These results are, admittedly, not a product of randomized trials.[20] But my goal is not necessarily to add a perfectly designed experimental study to the existing empirical literature.[21] As I explain, trying to create a randomized trial would be both infeasible and counterproductive to learning. My aim is instead to provide a panoramic perspective of the results clinics are achieving and use these results as a platform for further discussion.[22]

This Article proceeds in four Parts. Part I reviews the existing literature. Part II summarizes the results of the study into appellate clinic performance, showing that such clinics outperformed the general population in each subject matter category: immigration, prisoner civil rights,

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might be good for the lawyers—who still have had the opportunity to handle a case before the Supreme Court—but it is surely not good for the client or others similarly situated."); Fisher, *supra* note 6, at 188 ("It turns out that unless one takes an extremely broad view of public interest communities' 'right' to control litigants' access to the Court, clinics actually seem to pose a minimal concern."); *id.* at 187–98 (addressing additional concerns behind clinical representation before the Supreme Court, including whether clinics can and should work on cases that may make "bad law," and whether clinics can screen for such cases). As outlined in Part I, if Supreme Court clinics merit such scrutiny, so too should appellate clinics—indeed, the case may be even more compelling. *See infra* Part I.A.

13 *See infra* Part III.

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 Greiner & Pattanayak, *supra* note 8, at 2121.

21 Random assignment is neither feasible nor prudent for clinical work, perhaps especially appellate clinic work. *See infra* Part III.A.

22 *See infra* Parts II & IV.

habeas, criminal appeals, and general civil litigation. Part III addresses possible methodological concerns. Part IV concludes with potential institutional reforms and avenues for further research.

I. The Case for Clinical Empirical Scholarship

A. Shortcomings in the Existing Literature

Although clinical education is entering its fifth decade, the field has rarely been the subject of empirical study.[23] As Robert Kuehn and David Santocroce observe, even basic questions—such as how many schools require or guarantee a clinical experience, how many students enroll in a clinic, and what types of clinics are offered—remain largely unanswered.[24] Unsurprisingly, given these deficits, research into the efficacy of clinical programs is in even shorter supply. Indeed, "[d]espite clinical education's focus on assessment and evaluation," "we have limited data on whether and how law school clinic students are learning to be lawyers."[25] And "[a]though many . . . *believe* law school clinics' low- and moderate-income clients are better off with the assistance of law students than without, we have limited empirical evidence to support our views."[26]

One study, conducted by James Greiner and Cassandra Pattanayak, found that an offer of clinical representation (rather than actual representation) by Harvard's Legal Aid Bureau did not measurably improve case outcomes for those seeking unemployment benefits.[27] In fact, offers of representation actually "delay[ed] the adjudicatory process,"[28] which might have ended up producing a *worse* outcome, since at least some clients had been unfairly denied benefits and a delay only meant a longer wait before reversal.

Another analysis, by Colleen Shanahan and several co-authors, reviewed the performance of four Washington, D.C.-based clinics, focused also (like the Greiner and Pattanayak study) on obtaining worker benefits for indigent clients.[29] Shanahan found "that clinical law students [were] using procedural tactics"—such as introducing evidence,

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[23] Robert R. Kuehn & David A. Santacroce, *An Empirical Analysis of Clinical Legal Education at Middle Age*, 72 J. Legal Educ. 622, 622 (2022).

[24] *Id.* at 8–10, 30–31.

[25] Shanahan et al., *supra* note 4, at 553; *see also* Yael Efron, *What Is Learned in Clinical Learning?*, 29 Clin. L. Rev. 259, 259 (2023) ("Do we really know what students in legal clinics learn? Those involved in clinical education define the intentions and rationales that guide their clinical pedagogy, but there is a dearth of research showing that what clinical instructors teach is indeed learned by law students.").

[26] Shanahan et al., *supra* note 4, at 556 (emphasis added).

[27] Greiner & Pattanayak, *supra* note 8, at 2149–63.

[28] *Id.* at 2124.

[29] Shanahan et al., *supra* note 4, at 561.

exchanging certain disclosures, and appearing and presenting arguments at hearings—"more often than [other experienced] attorneys."[30] Yet such uses of procedure did not meaningfully impact case outcomes. Experienced attorneys actually prevailed at higher rates than clinic-assisted clients.[31] Somewhat concerningly, Shanahan acknowledged that clinics' increased use of procedural maneuvers might, in some instances, result in "delays [to] the receipt of [unemployment] benefits"—thereby corroborating the concern spotlighted by Greiner and Pattanayak.[32]

A third study assessed immigration case outcomes among different categories of attorneys. This study found that, compared to small firms, medium firms, large firms, nonprofit organizations, "hybrid" representation involving multiple institutions, and pro se respondents, "[l]aw school clinical programs had the highest overall success rate of any attorney type for relief applications on behalf of non-detained clients."[33] A fourth and final study looked at asylum adjudications within Georgetown's immigration law clinic.[34]

Still, this handful of studies can hardly be considered enough for a field that has witnessed unprecedented investment and growth in recent years. Indeed, in 2014, the American Bar Association "mandated a six-credit experiential course graduation requirement for law schools."[35] In the decade since, many law schools have invested heavily in clinical education, with some "creat[ing] a dean for experiential education," others "appoint[ing] two or more individuals with experiential oversight responsibilities," and still others "requiring enrollment in law clinic and externship courses."[36] Given such significant investments, the answer to whether clinics deliver effective client representation should be something more definitive than "we think so, but we don't know for sure."

Along these same lines, many proponents of clinical education point to "student learning [and advancing] social justice" as the central "goals of clinical education"[37] Clinics that advance both goals obviously serve the law student and law school, as well as the public interest

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[30] *Id.* at 574.

[31] *Id.* at 577–78. That said, this finding was not statistically significant. Workers won 82% of the time when represented by an experienced attorney and 78% of the time when represented by a clinic student; that difference, given the population of the dataset, yielded a p-value of 0.293.

[32] *Id.* at 575 n.85.

[33] Eagly & Shafer, *supra* note 7, at 54.

[34] Ramji-Nogales et al., *supra* note 6, at 340.

[35] Allison Korn & Laila L. Hlass, *Assessing the Experiential (R)evolution*, 65 VILL. L. REV. 713, 713 (2020); *see also* ABA STANDARDS, *supra* note 11, at Standard 303(a)(3). The ABA Standards defined experiential courses as "simulation courses, law clinics, and field placements." ABA STANDARDS, *supra* note 11, at Standard 304(a).

[36] Korn & Hlass, *supra* note 35, at 719, 720, 730.

[37] Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLIN. L. REV. 39, 44 (2013).

community. But if clinics are developing student skills at the expense of their clients' interests, that should prompt a critical re-evaluation (if not a wider restructuring and examination) into the allocation of law school resources. Shanahan's finding that the use of procedural tactics can simultaneously advance clinical student learning while delaying clients' receipt of benefits sharply illustrates this point.[38]

Lastly, resources for indigent representation are invariably limited. "[B]oth nationally and in every state in which the issue has been analyzed, demand . . . for legal services outstrips supply."[39] Further, "legal services budgets have been hit hard in recent years by reductions in charitable giving, state funding, and proceeds from interest on lawyers' trust fund accounts."[40] Given this decline in funding, and the need for coordination and collaboration among the public interest bar, some scholars have pointed to clinics as an emerging hub for public interest advocacy.[41] Yet if clinics are to play such a role, then there should be a strong sense of how well they are doing in representing their clients.

B. Why Study Appellate Clinics?

To address these concerns, I examined the case outcomes in nearly three hundred federal circuit court cases litigated by appellate clinics. These clinics provide an ideal frame to examine clinical efficacy for three reasons: (1) availability and accessibility, (2) diversity, and (3) precedential impact and influence.

1. Data Availability and Accessibility

Several years ago, I created the National Appellate Clinic Network ("Network"). The Network is a collaborative project, comprising today more than a dozen law school clinics. Its centerpiece is a searchable database of several hundred legal briefs, collected from the work of Network members. There are briefs from nearly every federal court of appeals, as well as a handful of state appellate courts and federal agencies.[42] PACER and Bloomberg searches were conducted to ensure that the database included the full roster of a clinic's briefs. At the time of this writing, no other publicly available database encompasses such an

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38 See *supra* note 32 and accompanying text.

39 Greiner & Pattanayak, *supra* note 8, at 2122.

40 *Id.* at 2026.

41 Daniel Epps & William Ortman, *The Defender General*, 168 U. Pa. L. Rev. 1469, 1522–23 (2020); *see also* Andrew M. Perlman, *The Public's Unmet Need for Legal Services & What Law Schools Can Do About It*, 148 Daedalus 75, 76 (2019).

42 *Briefs and Filings Database*, Nat'l App. Clinic Network, https://www.law.virginia.edu/briefs-and-filings-database (last visited Jan. 10, 2024).

array and quantity of searchable clinical legal work, making the database an ideal candidate for further study.[43]

2. *Participant and Subject Matter Diversity*

The Network also offered heterogeneity in geography, law school, and subject matter. Participating clinics represent law schools spanning the country, from the West Coast (Berkeley and UCLA), Mountain West (Colorado), Midwest (Chicago, Northwestern, Iowa, Indiana, Washington University in St. Louis, Case Western, and St. Thomas in Minneapolis), and East Coast (Georgetown, Duke, Virginia, Cornell, and New York University).[44] This geographic distribution means that, altogether, Network participants brought cases in nearly every federal court of appeals, with several clinics routinely litigating outside their home jurisdiction.[45] That feature distinguishes the Network from prior research, which focused on a single law school or a group of law schools in the same geographic area.[46] Participating law schools cover a range of school rankings, ensuring that no group or type of law school is overrepresented.[47]

Furthermore, recall that prior studies into clinical performance focused on two specific topic areas: immigration and employment.[48] Such

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[43] The Network was recognized as a Top Ten Law School Innovation by Bloomberg Law. *See* Francis Boustany, *Bloomberg Law Announces Top 10 Law School Innovators*, Bloomberg L. (Jan. 17, 2023, 9:32 AM), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-bloomberg-law-announces-top-10-law-school-innovators.

[44] *People*, Nat'l App. Clinic Network, https://www.law.virginia.edu/people-national-appellate-clinic-network (last visited Jan. 10, 2024). Participating clinics included the Ninth Circuit Practicum (Berkeley), the Prisoners' Rights Clinic (UCLA), the Appellate Advocacy Practicum (Colorado), the Jenner & Block Supreme Court and Appellate Clinic (University of Chicago), the Federal Appellate Clinic (Northwestern), the Federal Criminal Defense Clinic (Iowa), the Habeas Litigation Practicum (Indiana), the Appellate Clinic (Washington University), the Appellate Litigation Clinic (Case Western), the Appellate Clinic (St. Thomas), the Appellate Courts Immersion Clinic and Appellate Litigation Clinic (Georgetown), the Appellate Litigation Clinic (Virginia), the Appellate Litigation Clinic (Duke), the Asylum and Convention Against Torture Appellate Clinic (Cornell), and the Appellate Litigation Clinic (NYU). There are other clinics that have joined the Network, but only a subset contributed briefs to the database and those that did not were excluded from the analysis.

[45] Among the clinics studied, none had matters before the Federal Circuit, which reflects the special content focus of that circuit's docket.

[46] *See supra* notes 6–7.

[47] Admittedly, higher ranked law schools tended to participate in the Network. But that may be a product of this group of law schools being more likely to offer appellate litigation experiences. *See, e.g.*, Adrienne Jennings Locke, *Encouraging Reflection On and Involving Students in the Decision to Begin Representation*, 16 Clin. L. Rev. 357, 363 (2017) (acknowledging that some "[l]aw school administrators may view clinics as recruiting tools and develop prestigious clinics designed, in part, to enhance law school rankings," and including Supreme Court clinics as an example).

[48] *See supra* notes 6–7.

a specific focus, combined with a spotlight on only a small subset of clinics (usually one, no more than four), cannot provide a complete picture of clinical performance.[49]

By contrast, appellate clinic litigation frequently draws on variegated concepts and subject matters, from civil procedure to constitutional law to criminal law to statutory interpretation. Diversity in such matters means that an analysis of case outcomes can offer a glimpse into not only whether appellate clinics are effective, but also where they might be most or least effective and whether the efficacy or lack thereof depends on variables connected to the specific subject matter. For example, the Shanahan and the Greiner and Pattanayak studies examined employment benefits where the delay from litigation ended up decreasing the amount recovered by the client. But in many types of appellate advocacy, there may be a benefit to clients in fully litigating a case and using the full toolbox to do so.

To show this subject matter diversity, I organized the Network's database into several categories.[50] To start, criminal and civil work were separated from one another. In virtually every criminal matter, the clinic was appointed to represent a criminal defendant under the Criminal Justice Act ("CJA"). That Act provides for the appointment of counsel to indigent individuals in federal criminal proceedings.[51] Most of the Act's funding goes toward federal defender programs, since more than 95% of indigent individuals are represented by a public defender.[52] Yet some jurisdictions do not have a defender's office.[53] Even in districts

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[49] *Id.*

[50] Several clinics also undertook work before state courts and federal administrative agencies. However, these matters were a small handful within the corpus of appellate clinic work. Much state court work, moreover, was in the form of an amicus brief on behalf of a third-party organization rather than direct representation of a client, making it difficult to measure whether the clinic's advocacy was effective. Finally, as covered in greater detail below, *see infra* Part III.A, there is no available benchmark for state courts to compare against.

[51] 18 U.S.C. § 3006A(c).

[52] Federal defender organizations include both federal public defenders and community defenders. Federal public defenders are federal entities, and their staff are federal government employees. Community defenders are nonprofit organizations which receive grants or contracts from the federal judiciary. *See Defender Services*, U.S. Cts., https://www.uscourts.gov/services-forms/defender-services (last visited July 16, 2023). From 2015 to 2018, 96% of indigent defendants were represented in district court by a defender organization. *See* Kelly Roberts Freeman, Bryce Peterson & Richard Hartley, Urb. Inst., Counsel Type in Federal Criminal Court Cases, 2015–18 12 (May 2022), https://www.ojp.gov/pdffiles1/bjs/grants/304552.pdf. Although no such data is available at the appellate level, there is nothing to suggest a significant difference between representation by a federal defender and representation by community defenders.

[53] These districts are the Southern District of Georgia, Eastern District of Kentucky, and District of the Northern Mariana Islands. Charles Bethea, *Is This The Worst Place To Be Poor*

that do have a federal public defender, a conflict of interest (e.g., a case involving multiple defendants with potentially opposing legal strategies) may preclude a defender organization from representing all defendants.[54] And a breakdown in the relationship between a defendant and their public defender may require a change of counsel.[55] In these sorts of cases, the court appoints counsel from a panel of attorneys, with the criteria for panel membership set by the governing court.[56] Many clinical faculty are members of the CJA panel for at least one, if not multiple, circuits, and CJA cases typically represent a significant source of appellate clinic litigation.

After separating these criminal cases, the most challenging division was distinguishing between habeas and prisoner civil rights matters.[57] The traditional understanding is that habeas cases are legal "challenge[s] [that] attack[] the . . . validity of [a] continued conviction or the fact or length of the sentence," but nonetheless lie outside of (or, more specifically, collateral to) any issues raised in a direct criminal appeal.[58] They are typically brought under 28 U.S.C. §§ 2255, 2254, or 2241: § 2255 corresponds to actions to vacate federal sentences, § 2254 corresponds to actions to vacate state sentences, and § 2241 provides a "catchall" for when §§ 2255 and 2254 are "inadequate" or inappropriate.[59] On the other hand, prisoner civil rights cases arise when a favorable outcome on appeal will not change the conviction or sentence but could relate to a condition of confinement (e.g., deliberate indifference of prison medical care).[60] Yet notwithstanding

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and Changed with a Federal Crime?, New Yorker (Nov. 5, 2021), https://www.newyorker.com/news/us-journal/is-this-the-worst-place-to-be-poor-and-charged-with-a-federal-crime.

54 *See, e.g.*, United States v. Cain, No. 06-0551, 2007 WL 1745617, at *9 (D. Md. June 12, 2007) ("Ordinarily, in multiple defendant cases, the Federal Public Defender shall be appointed to represent the allegedly most culpable defendant requiring the appointment of counsel.").

55 *See, e.g.*, United States v. Lee, No. 18-2391, Dkt. No. 5 at 1 (6th Cir. Dec. 11, 2018) (motion by public defender to withdraw because "there has been a breakdown in the attorney-client relationship that would render further representation unreasonably difficult").

56 United States v. Parker, 469 F.3d 57, 62 (2d Cir. 2006) (describing procedures and processes for CJA appointments).

57 "Prisoner" is used as a shorthand to refer broadly to any suit that was filed when a plaintiff was incarcerated, whether that be in a jail, prison, or other setting, and vice-versa for use of "non-prisoner."

58 Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002); *see also* Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) ("When a state prisoner is challenging the very fact or duration of his physical confinement… his sole federal remedy is a writ of habeas corpus."); Heck v. Humphrey, 512 U.S. 477, 486 (1994) ("We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement.").

59 Lester v. Flournoy, 909 F.3d 708, 710 (4th Cir. 2018).

60 *Leamer*, 288 F.3d at 542; *see also Heck*, 512 U.S. at 487 ("[I]f the district court determines that the plaintiff's [§ 1983] action, even if successful, will *not* demonstrate the

these distinctions in theory between habeas and § 1983, courts in practice "have reached inconsistent results in [their] efforts to delineate [] precisely the claims which may [or may] not be brought in habeas."[61] To minimize the difficult line-drawing exercises between habeas and § 1983, for this dataset I coded a matter as a "habeas" case whenever the plaintiff filed suit under §§ 2255, 2254, or 2241. All other matters filed by an incarcerated individual were classified "Prisoner Civil Rights."

After sorting criminal, habeas, and prisoner civil rights matters, the remaining matters fell naturally into several categories: labor and employment, immigration, non-prisoner civil rights, and complex civil and other litigation (e.g., class actions or international law).[62] The findings are summarized in the Table below.

Table 1: Appellate Clinic Matters by Type of Case

Category	No. of Cases	% of Total
Prisoner Civil Rights	74	26.5%
Habeas	63	22.6%
Criminal	54	19.4%
Labor and Employment	24	8.6%
Complex Civil & Other	24	8.6%
Immigration	21	7.5%
Non-Prisoner Civil Rights	19	6.8%
Total	**279**	**100%**

As Table 1 reflects, appellate clinics practice in a wide variety of subject areas.

One potential concern, given this heterogeneity, is whether appellate clinics were doing quintessential "clinic" work—i.e., "providing legal representation to low-income clients"[63]—or whether their focus on

invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed.").

61 Nettles v. Grounds, 830 F.3d 922, 933 (9th Cir. 2016). Such inconsistency is a result of a long line of Supreme Court decisions, which reflect a shifting understanding between what is covered under habeas, what is covered under § 1983, and what may be covered by both. *See*, *e.g.*, *Heck*, 512 U.S. at 480–81 ("This case lies at the intersection of the two most fertile sources of federal-court prisoner litigation—the Civil Rights Act of 1871 and the federal habeas corpus statute. Both of these provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials." (citation omitted)); Muhammad v. Close, 540 U.S. 749, 752 n.2 (2004); Nance v. Ward, 597 U.S. 159, 167 (2022) ("This Court has often considered, when evaluating state prisoners' constitutional claims, the dividing line between § 1983 and the federal habeas statute.").

62 When a case involved discrimination in the workplace, the matter was included under Labor and Employment.

63 Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L. Rev. 1929, 1935 (2002); *see also* Stephen Wizner & Jane Aiken, *Teaching and*

bringing cases before a specific court required a trade-off in the type of client the clinic represented. To investigate that question, I looked at whether a clinic client was represented in district court and, if so, by what type of counsel. For ease of organization, I separated clients who retained paid representation from clients who proceeded pro se, were represented by a public defender service, or were represented by a legal aid service.

Table 2: Appellate Clinic Caseload by Type of Case and Status in Lower Court / Agency

Category	No. of Cases	No. Pro Se, Defender, or Legal Aid Below	% Pro Se, Defender, or Legal Aid Below
Prisoner Civil Rights	74	71	96.0%
Habeas	63	62	98.4%
Criminal	54	54	100%
Labor and Employment	24	10	41.7%
Complex Civil & Other	24	20	83.3%
Immigration	21	20	95.2%
Non-Prisoner Civil Rights	19	13	68.4%
Total	**279**	**250**	**89.6%**

As Table 2 reflects, appellate clinics often represent clients who, absent clinic involvement, would have been unable to afford representation on their own on appeal. In fact, the clinics within the dataset represented individuals who tended to be worse off than the typical client within their specific subject category.

Among all federal appeals, for instance, more than 80% of prisoner petitions (habeas and prisoner civil rights) are pro se;[64] between 65 and 70% of immigration cases in removal proceedings are pro se.[65] For clinics within the dataset, though, 96% of their prisoner civil

Doing: The Role of Law School Clinics in Enhancing Access to Justice, 73 Fordham L. Rev. 997, 997 (2004) ("[I]t seems obvious that the obligation [to address access to justice issues] is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems."); Shanahan et al., *supra* note 4, at 556 (describing clinics as sites of service and citing sources); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. Rev. 1461, 1475 (1998) (explaining that clinical learning "furthers social justice imperatives . . . through the provision of services" to indigent or otherwise vulnerable communities).

[64] *See U.S. Courts of Appeals – Judicial Business 2021*, U.S. Cts., https://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2021 (reporting that more than 84% of prisoner petitions (including habeas and prisoner civil rights) were pro se).

[65] Eagly & Shafer, *supra* note 7, at 16; Ryan D. Brunsink & Christina L. Powers, *The Limits of Pro Se Assistance in Immigration Proceedings: Discussion of* NWIRP v. Sessions, 122 Dick. L. Rev. 847, 849 (2018) (noting that respondents in removal proceedings are

rights clients and 95% of immigration clients were unrepresented below.[66] The upshot is that, because most appellate clinic clients were unrepresented or underrepresented below, the clinics themselves were not poaching or competing for cases with other attorneys, organizations, or clinics. Rather, they were *additive* to work undertaken by such entities, which is a core mission of clinical education.

3. Potential Precedential Impact

A final reason behind the focus on appellate clinics is their potential precedential impact. As scholars have noted, jurisdiction at the federal court of appeals is generally mandatory: "[A] civil litigant or criminal defendant that loses in district court can seek review before their regional circuit court of appeal as a matter of right, and the circuit court must thereafter issue a decision."[67] And given the relative rarity of Supreme Court review, federal "[c]ircuit court decisions often represent the final word on issues of federal law."[68] Such decisions become "the last resort for most litigants," and, in the case of a published opinion, also become binding precedent for millions of similarly situated individuals within a circuit's jurisdiction.[69]

That said, many federal appellate decisions are not published. Overall, "eighty-seven percent of federal appeals [are] resolved in unpublished opinions."[70] And "self-represented appellants [are] twelve times less likely to receive a published opinion than appellants represented by counsel": "[J]ust 2.1% of [non-incarcerated] self-represented [individuals] and 5.3% of incarcerated persons received

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represented between 14 and 37% of the time); Nina Bernstein, *In City of Lawyers, Many Immigrants Fighting Deportation Go It Alone*, N.Y. Times (Mar. 12, 2009), https://www.nytimes.com/2009/03/13/nyregion/13immigration.html (discussing lack of quality representation for immigration cases within New York and finding that "nationwide, only about 35 percent have any kind of lawyer").

66 Likewise, overall, non-prisoner civil rights plaintiffs were pro se around 34% of the time in district court, and labor and employment plaintiffs were pro se between 20 and 24% of the time. Victor D. Quintanilla, Rachel A. Allen, & Edward R. Hirt, *The Signaling Effect of* Pro Se *Status*, 42 L. & Soc. Inquiry 1091, 1094 (2017). Those overall rates are both higher than the rates for the clinic clients in the dataset.

67 Xiao Wang, *In Defense of (Circuit) Court-Packing*, 119 Mich. L. Rev. Online 32, 33 (2020); *see also* Ramji-Nogales et al., *supra* note 6, at 361 ("As a practical matter, the last chance for an unsuccessful asylum applicant is to appeal an adverse Board decision to a U.S. Court of Appeals.").

68 Wang, *supra* note 67, at 33; Paul W. Mollica, *Employment Discrimination Cases in the Seventh Circuit*, 1 Emp. Rts. & Emp. Pol'y J. 63, 63 (1997) ("[I]f one wants to study where the law is really made," then the starting point should be "the federal courts of appeals.").

69 Wang, *supra* note 67, at 33.

70 Rachel Brown, Jade Ford, Sahrula Kubie, Katrin Marquez, Bennett Ostdiek, & Abbe R. Gluck, *Is Unpublished Unequal? An Empirical Examination of the 87% Nonpublication Rate in Federal Appeals*, 107 Cornell L. Rev. 1, 2 (2022).

published opinions in their cases."[71] These decisions obviously impact the individual client, but have far less of an impact on the law more broadly.

Nevertheless, one reason I wanted to study appellate clinics more systematically was because I had, through the Network, gotten a sense that appellate clinics were handling a significant number of important, precedent-setting cases. In the past few years alone, for instance, appellate clinics have been lead counsel in matters redefining the requirements for federal employment discrimination claims in the Fifth, Sixth, and D.C. Circuits, overturning decades-old precedents in the process.[72] They have expanded the First Amendment rights of high school students in the Fourth Circuit.[73] And they have prevailed in Eighth Amendment challenges to prison conditions in the Ninth Circuit.[74]

Such anecdotal observations prompted me to take a closer look into the data, to see whether appellate clinics were in fact handling a disproportionate number of cases that resulted in published opinions. To flesh out this analysis, I drew on a recent study by Abbe Gluck and various co-authors, which examined the rate of publication at the federal courts of appeals for civil rights, benefits, commercial, immigration, prison conditions, habeas, and labor and employment cases.[75] These groups map on relatively well to the category breakdown in Tables 1 and 2, and Table 3 compares these rates against one another. For Table 3, pending matters were excluded from the corpus, since it is unclear whether these cases will result in precedential or non-precedential opinions.

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[71] *Id.* Unpublished decisions, of course, still hold significant persuasive value. FED. R. APP. P. 32.1 ("A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been designated as 'unpublished,' 'not for publication,' 'non-precedential,' 'not precedent,' or the like.").

[72] *See* Threat v. City of Cleveland, 6 F.4th 672, 679 (6th Cir. 2021); Chambers v. District of Columbia, 35 F.4th 870, 882 (D.C. Cir. 2022) (en banc); Hamilton v. Dallas County, 79 F.4th 494, 497–98 (5th Cir. 2023) (en banc). These cases were brought by the Georgetown Appellate Courts Immersion Clinic.

[73] Starbuck v. Williamsburg James City Cnty. Sch. Bd., 28 F.4th 529, 536–37 (4th Cir. 2022) (University of Virginia Appellate Litigation Clinic).

[74] Von Tobel v. Johns, No. 20-16853, 2022 WL 1568359, at *2 (9th Cir. May 18, 2022) (University of St. Thomas Law School Appellate Clinic).

[75] Brown et al., *supra* note 70, at 56.

Table 3: Publication Rates, Clinic Cases vs. Overall

Category	Published Decisions (Network)	Total Decided Cases (Network)	Publication Rate (Network)	Publication Rate (Aggregate, from Gluck)
Prisoner Civil Rights	37	59	62.7%	3.5%[76]
Habeas	35	56	62.5%	3.4% to 4.7%[77]
Criminal	38	52	73.1%	N/A
Labor and Employment	16	24	66.7%	38.0%[78]
Immigration	5	20	25.0%	6.3%[79]
Complex Civil & Other	15	20	75.0%	49.0%[80]
Civil Rights (Non-Prisoner)	9	15	60.0%	19.4% to 22.1%[81]
Total	**155**	**246**	**63.0%**	**12.2%[82]**

Table 3 confirms the significant precedential impact of appellate clinics. More than 60% of appellate clinic matters resulted in a published decision, over five times the rate in the overall population. In some categories, the differences were especially pronounced, with gaps of over 50% in habeas and prisoner-plaintiff matters.[83]

These figures present a potential double-edged sword. They are, on the one hand, a positive sign that appellate clinics are working on significant cases and establishing new legal precedent. Yet because these

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[76] *Id.* at 57.

[77] *Id.* at 62. This is the rate for petitions brought pursuant to 28 U.S.C. §§ 2241, 2254, and 2255. It excludes capital cases; there was, from my review, only a single capital case in the National Appellate Clinic Network, making this an apt comparison.

[78] *Id.* at 64.

[79] *Id.* at 60.

[80] *Id.* at 59.

[81] *Id.* at 58 (publication range for civil rights cases, excluding voting cases (no clinic participant had litigated a voting rights case), civil rights employment cases, and prisoner-plaintiff cases).

[82] *Id.* at 4. Note that this figure is based on 2015 to 2020 data, while Gluck and her co-authors focused on case dispositions from 2008 to 2018. However, as Merritt McAlister has chronicled, the rate of non-publication has remained fairly constant (if anything, it has slightly increased) over the past several decades. *See* Merritt E. McAlister, *Rebuilding the Federal Circuit Courts*, 116 Nw. U. L. Rev. 1137, 1152 (2021) ("Today, unpublished decisions are as prevalent as they ever have been—even though the courts see nearly 20,000 fewer cases than they did at the caseload zenith in 2005, when the unpublication rate was lower than it is today.") (footnote omitted).

[83] Gluck and her co-authors did not separately examine direct criminal appeals, but it is reasonable to infer a publication rate in the ballpark of habeas and prisoner-plaintiff matters. Brown et al., *supra* note 70, at 66, 111.

decisions are published, they not only decide the legal issue presented by a specific client, but also set the law more broadly within a circuit—potentially creating "good" or "bad" law for millions of other groups and individuals. Further, the number of appellate clinics has swelled: thirty-two law school clinics reported focusing on appellate work in 2007;[84] fifty-six did so in 2017.[85] Such increases, combined with their precedential reach and comprehensive geographic scope, underline the case for examining their efficacy.

II. Measuring Appellate Clinic Effectiveness

With Part I having addressed why this Article focuses on appellate clinics—the data is readily available, these clinics handle a diversity of subjects, and appellate clinic cases have precedential implications—Part II examines the natural follow-up question: How often do appellate clinics win? The short answer is "quite a lot," and almost always more than a client's next-best alternative (proceeding pro se or even going with a non-clinic attorney). But getting to that answer requires first addressing some challenging questions about study design and methodology.

A. Study Design and Methodology

Any study into clinical efficacy must, as a starting point, have a baseline—otherwise, there would be little indication whether clinics were doing better, worse, or the same as a non-clinic plaintiff or defendant. The problem, though, is that no such perfect, publicly available baseline exists. The most comprehensive source of data is maintained by the Administrative Office of the U.S. Courts ("AO"). The AO tracks decisions in the federal courts of appeals by circuit and nature of the proceeding, among other metrics.[86] It organizes cases into eight buckets: Criminal, U.S. Prisoner Petitions, Other U.S. Civil, Private Prisoner Petitions, Other Private Civil, Bankruptcy, Administrative Agency Appeals, and Original Proceedings & Miscellaneous Applications.[87]

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[84] David A. Santacroce & Robert R. Kuehn, Ctr. for the Study of Applied Legal Educ., Report on the 2007–2008 Survey 8, https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5da859d2990d0a932118b8b6_CSALE.07-08.Survey.Report.pdf.

[85] Robert R. Kuehn & David A. Santacroce with Margaret Reuter & Sue Schechter, Ctr. for the Study of Applied Legal Educ., Report on the 2016–17 Survey 9, https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457da3c8fe346a0508cee_Report%20on%202016-17%20CSALE%20Survey.REV.5.2022.pdf.

[86] B-5, U.S. Cts., https://www.uscourts.gov/data-table-numbers/b-5 (last visited Aug. 7, 2023).

[87] *Table B-5: U.S. Courts of Appeals—Decisions in Cases Terminated on the Merits, by Circuit and Nature of Proceeding, During the 12-Month Period Ending March 31, 2023*, U.S. Cts., https://www.uscourts.gov/statistics/table/b-5/federal-judicial-caseload-statistics/2023/03/31 (last visited May 27, 2024).

And the AO identifies, for each of these buckets, the number and percentage of cases where the court of appeals affirmed or reversed the district court. These buckets correspond reasonably well with the case categories identified in Part I, making an apples-to-apples comparison possible between clinic performance and the AO's baseline. Still, there are three significant limitations to the AO's dataset.

1. Affirmances in Part / Reversals in Part

First, parties often seek review of many claims, and a court might affirm the district court on some but reverse and remand on others. But the AO does not distinguish between a case that is affirmed in full and one that is affirmed in part and reversed in part. Case decisions are always classified as "affirmed" even if the appellate court reversed on multiple counts and only affirmed on one.[88]

That metric, if used for this study, would significantly understate favorable outcomes in clinic cases. Consider *Real v. Perry*.[89] Plaintiff Mamberto Real had been staying at a shelter for almost a year after losing his job.[90] The shelter discharged him in February 2017, and he started "living in his vehicle," which he "parked in the shelter's parking lot."[91] A week later, two police officers approached Real's vehicle. One officer shined a flashlight into Real's car and declared that "you have five (5) seconds to leave or I am going to shoot you N*****."[92] The officer counted to five, removed his gun, and pointed it at Real's face. At this point, the other officer "intervened by placing his body between the gun and Real."[93] Real filed suit, alleging claims of excessive force by the first officer and a *Monell* violation by the city.[94] The district court granted motions to dismiss both claims.[95]

Georgetown's Appellate Courts Immersion Clinic represented Real on appeal. The Eleventh Circuit ultimately affirmed in part and reversed in part. It held that "there was without question an initial 'show of authority' when [the officer] pointed his gun at Real."[96] Real had therefore pleaded a plausible Fourth Amendment claim against

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[88] *Table B-5*, *supra* note 87, at n.1 ("Affirmed includes appeals affirmed in part and reversed in part.").

[89] 810 F. App'x 776 (11th Cir. 2020).

[90] *Id.* at 778.

[91] *Id.*

[92] *Id.*

[93] *Id.* (alteration omitted).

[94] *Id.* at 780. Under *Monell*, a city may only be held liable for the actions of law enforcement officers when an official city policy or custom caused a violation of constitutional rights. *Id.* (citing Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978)).

[95] *Id* .at 778.

[96] *Id.* at 779.

the officer, contrary to the district court's earlier finding. As to Real's *Monell* claim, though, the Eleventh Circuit determined that "Real did not allege any facts to support this claim in the district court."[97] Indeed, Real did "not even discuss this claim in his brief on appeal."[98]

Virtually every lawyer would agree that the clinic's decision to abandon the *Monell* claim was a strategic one, and one that obviously paid off for the client. After all, recent Supreme Court precedent has made it "exceedingly challenging for plaintiffs to prevail in claims against officers and local governments" through *Monell*.[99] "[P]leading failures" by self-represented plaintiffs like Real are especially "common."[100] Continuing to litigate a claim without sufficient (or in Real's case, *any*) substantive allegations, particularly against this tide of unfavorable precedent, would only deflect the court from focusing on well-pleaded and plausible claims that could, if successful, make a plaintiff whole. Doing so might also undercut a lawyer's credibility. Consequently, although *Real* might be only a partial victory in name, the ultimate result reflects the best-case scenario for the client on appeal. Similar circumstances apply to several other clinic cases.[101]

But under the AO's dataset, *Real* would not have been considered a reversal, instead being coded as an affirmance because the district court's decisions on *some* of Real's claims were affirmed on appeal. Yet that is, by any reasonable perspective, inaccurate. Although the clinic obtained the best-case scenario for Real on appeal (reversal on the only plausible claim brought, with the possibility of full damages on remand), the AO would categorize such a result the same as if a clinic had not been involved at all and Real had litigated his case and lost on every one of his claims—both would be deemed "affirmances." No one would consider these situations equivalent.

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97 *Id.* at 780.

98 *Id.*

99 Joanna C. Schwartz, *Backdoor Municipal Liability*, 132 Yale L.J.F. 136, 137–38 (2022); Alexander Reinert, Joanna C. Schwartz, & James E. Pfander, *New Federalism and Civil Rights Enforcement*, 116 Nw. U. L. Rev. 737, 754–55 (2021) ("[T]he Supreme Court's limitation on municipality liability operates as a significant barrier to relief for those injured by unconstitutional conduct.").

100 Nancy Leong, Katelyn Elrod & Matthew Nilsen, *Pleading Failures in* Monell *Litigation*, 73 Emory L.J. 801, 801 (2024). "[A]n analysis of the complaint in every case that resulted in a federal appellate decision in 2019 reveals that 56.5% of complaints filed by represented parties failed even to state the elements of any theory of municipal liability." *Id.*

101 *See, e.g.*, United States v. Musgraves, 831 F.3d 454, 469 (7th Cir. 2016) (reversing three convictions, vacating sentence in its entirety, and remanding for re-sentencing on two remaining convictions, which carried significantly less prison time) (Northwestern Appellate Advocacy Center); Starbuck v. Williamsburg James City Cnty. Sch. Bd., 28 F.4th 529, 538 (4th Cir. 2022) (reversing district court dismissal as to claims against individual officials but affirming dismissal as to the School Board) (University of Virginia Appellate Litigation Clinic).

Consequently, for my analysis I have separated out partial affirmances and partial reversals. Doing so helps align my dataset with the aggregate data organized by the AO, for a still-imperfect apples-to-apples comparison. But by separating these partial reversals, the study can also show and measure the other favorable outcomes that clinics obtained, which would be obscured were it only examining reversals in full.

2. Voluntary Dismissals and Settlements

Next, the AO does not consider a voluntary dismissal a favorable termination on the merits and hence does not include such dismissals as part of its data. Such results are instead categorized as a termination on procedural grounds and are part of a separate AO data sheet.[102] Yet, in actual practice, voluntary dismissals can sometimes be considered favorable outcomes for clinics and clients alike. For example, voluntary dismissals in criminal and immigration matters typically reflect a favorable outcome because the government agrees to drop the case.[103]

In a Ninth Circuit immigration appeal involving the University of Virginia Appellate Litigation Clinic, for instance, the government moved to remand to the Board of Immigration Appeals ("BIA") before oral argument. That move represented a "complete victory" for the client because, had the case proceeded to argument and decision by the Ninth Circuit, the very best result would have been the same for the client: granting the client's petition for review, vacating the agency decision below, and remanding to the BIA.[104] On the other hand, some dismissals are, consistent with the AO's assessment, purely procedural—i.e., dismissals that are due to a lack of appellate jurisdiction.[105]

Given these considerations, I have separated voluntary dismissals and settlements from the dataset. Individual clinic faculty were then consulted to determine whether these dispositions should be categorized as favorable or neutral/procedural outcomes for their clients.

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102 *See, e.g.*, *Table B-5A: U.S. Courts of Appeals—Cases Terminated on Procedural Grounds, by Circuit and Nature of Proceeding, During the 12-Month Period Ending September 30, 2021*, U.S. Cts., https://www.uscourts.gov/file/39456/download (last visited Aug. 7, 2023).

103 *See, e.g.*, United States v. Roberts, No. 19-1979 (8th Cir. July 23, 2019), ECF No. 16 (Iowa Criminal Defense Clinic) (voluntary dismissal of appeal). Prior studies have generally treated a voluntary or stipulated dismissal as a sign of "litigation success," since the client likely received some sort of relief against their claims. *See* Joanna C. Schwartz, *Civil Rights Without Representation*, 64 Wm. & Mary L. Rev. 641, 677 (2023) [hereinafter *Civil Rights Without Representation*] (internal quotation marks omitted).

104 Melissa Castro Wyatt, *Appellate Clinic Students Succeed at 9th Circuit: Win Protects Ukrainian National Facing Deportation in Oregon*, UVA Law (Jan. 4, 2024), https://www.law.virginia.edu/news/202401/appellate-clinic-students-succeed-9th-circuit.

105 United States v. Jones, No. 14-1665 (7th Cir. Jan. 29, 2015), ECF No. 28 (Northwestern Appellate Advocacy Center) (dismissing appeal for lack of appellate jurisdiction).

3. *Appellants and Appellees*

Third, the AO does not identify which party prevailed below. That means it cannot segregate when an affirmance would be considered a win for the clinic, such as when a clinic represents a party opposing appeal, from when an affirmance would be deemed a loss, as when a clinic represents a party seeking appeal.

That concern is at least partially offset because Network clinics generally represented appellants before a federal court of appeals. They did so in every criminal and immigration case from the Network's database. That makes sense. In criminal matters, the government rarely loses in district court; when it does, it may be unable to appeal an adverse result because of double jeopardy concerns.[106] Similarly, immigration proceedings typically begin in immigration court, with the respondent (the immigrant) on one side and government attorneys from Immigration and Customs Enforcement ("ICE") on the other. Either party may appeal the immigration judge's decision to the BIA, an appellate body within the Department of Justice ("DOJ").[107] But only the individual immigrant may appeal an adverse BIA decision to a federal circuit court; the government does not appeal because ICE and BIA are both executive branch entities.

There were, however, some cases in which clinics represented appellees—i.e., the client had won below and sought counsel on appeal to defend the lower court's decision. In *Thompson v. Winn*, for example, the district court granted Anthony Thompson's habeas petition, holding that Thompson's "Sixth Amendment rights were violated by the trial court's use of mandatory sentencing guidelines."[108] Thompson had been pro se in district court.[109] On appeal, the government did not contest the grant of habeas.[110] Instead, it challenged the remedy, arguing that re-sentencing was inappropriate and the district court should have ordered a more limited proceeding, a *Crosby* remand.[111] Given the nature of such questions, which involved Michigan Supreme Court

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106 *See, e.g.,* United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977) ("Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that a verdict of acquittal could not be reviewed, on error or otherwise, without putting a defendant twice in jeopardy, and thereby violating the Constitution.").

107 *See* 8 C.F.R. § 1003.1(b).

108 Thompson v. Winn, No. 2:18-cv-13959, 2020 WL 1847967, at *1 (E.D. Mich. Apr. 13, 2020).

109 *Id.*

110 Brief for Respondent-Appellant at 3, Thompson v. Winn, No. 20-1448 (6th Cir. Nov. 19, 2020), ECF No. 18 ("The issue in this case is not whether the district court properly granted federal habeas relief on a Sixth Amendment sentencing claim."). A *Crosby* remand is a "remand to the trial court to determine whether the court would have imposed a materially different sentence had it not been constrained by [a state's] previously mandatory sentencing guidelines." *Id.* (citing United States v. Crosby, 397 F.3d 103 (2d Cir. 2005)).

111 *Id.*

precedent, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), and U.S. Supreme Court case law, the Sixth Circuit appointed Washington University of St. Louis's Appellate Clinic to represent Thompson on appeal.[112] The clinic prevailed as appellee, obtaining a full (rather than *Crosby*) remand.[113]

Thompson is an unambiguous clinic win. But the AO's data would not necessarily be able to distinguish it as such. That is because most habeas petitioners *lose* in district court, meaning that usually (but not always) a reversal, rather than an affirmance, is a sign of success on appeal—not, as in *Thompson*, the other way around. To account for this gap, this study generally compares clinic reversal rates against the AO's reversal rate in each category, but separately identifies matters where the clinic, representing the appellee, obtained a favorable outcome through an affirmance on appeal.

B. Study Results and Findings

Each of the foregoing issues—partial affirmances, dismissals and settlements, clinics as appellees—makes comparison of clinical performance against the AO baseline challenging. Further, although the AO collects information on all federal appellate dispositions, its data naturally fluctuates from year to year. Consequently, in what follows, I used a simple weighted average of the AO's data from 2020 to 2023 (the Network was established in 2021) as a sort of "baseline" of the outcomes in all appeals.[114] As a cross-check, I drew on available relevant secondary source information. I then compared clinic performance in specific areas (e.g., immigration, criminal, habeas, etc.) against this baseline.

1. Immigration

Prior scholarship has suggested that clinical assistance significantly benefits individuals in immigration removal. In *Refugee Roulette*, Jaya Ramji-Nogales, Andrew Schoenholtz, and Philip Schrag found that unrepresented asylum seekers were granted asylum 16.3% of the time in immigration court, for cases brought between 2000 and 2004.[115] For represented respondents, this number increased to 45.6%.[116] And for those represented by Georgetown's clinic, the figure was higher still, at

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112 Order at 3, Thompson v. Winn, No. 20-1448 (6th Cir. July 20, 2020), ECF No. 10; *see also* 6TH CIR. I.O.P. 22(c) ("When a pro se applicant is the appellee in a 28 U.S.C. §§ 2241, 2254, or 2255 case, the clerk will appoint counsel if the applicant is indigent.").

113 Morrell v. Wardens, 12 F.4th 626, 628 (6th Cir. 2021).

114 This calculation relied on a simple average of the twelve-month B-5 Tables ending in March 31, 2023; March 31, 2022; and March 31, 2021.

115 Ramji-Nogales et al., *supra* note 6, at 341.

116 *Id.*

89%.[117] Another study of immigration courts, by Ingrid Eagly and Steven Shafer, substantially corroborated these findings.[118] Self-represented individuals obtained relief in 13 to 23% of cases.[119] Represented individuals obtained relief between 48 and 63% of the time.[120] The rate for clinics was between 56 and 77%.[121] My analysis finds that this same trend holds true at the appellate level, showing significant effectiveness of clinic counsel in obtaining immigration relief.

For federal court of appeals matters, the AO's dataset does not separately consider immigration appeals among its "nature of proceeding" categories. But it does include information on "Administrative Agency Appeals" and immigration appeals represent almost all such filings: in 2021, appeals of BIA decisions "constituted 87 percent of administrative agency appeals."[122] Over the past three years, the reversal rate in administrative agency appeals was about 7.2%.[123]

Independent studies substantially corroborate this low reversal rate. In 2005, the DOJ reported a reversal rate of between 8.5% (if partial reversals are excluded) and 14% (if partial reversals are included).[124] Such rates had, according to the Justice Department, largely stayed consistent since 1983.[125] Independent secondary research has suggested a rate of about 15%.[126] Against this approximate baseline, I reviewed the disposition of clinic immigration cases, exclusive of pending cases.

Table 4: Favorable Outcomes in Immigration Appeals, Clinics vs. Overall

	Appellate Clinic Network	**All Appeals**
Full Reversal	55.0%	~ 6.2% to 8.0%
Affirmed in Part, Reversed in Part	10.0%	~ 5.5% to 7.0%
Dismissed	5.0%	
Total	**70.0%**	**~ 11.7% to 15.0%**

117 *Id.*

118 Eagly & Shafer, *supra* note 7.

119 *Id.* at 51.

120 *Id.*

121 *Id.* at 53.

122 *U.S. Courts of Appeals – Judicial Business 2021*, U.S. Cts., https://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2021 (last visited July 23, 2023).

123 *See supra* note 114.

124 Sydenham B. Alexander III, *A Political Response to Crisis in the Immigration Courts*, 21 Geo. Imm. L.J. 1, 14 (2006).

125 *Id.*

126 Ramji-Nogales et al., *supra* note 6, at 362. This represents the rate of reversal on appeal, not (as referenced above) asylum outcomes in immigration court.

On the whole, all immigrant petitioners obtained a favorable outcome on appeal about 14% to 15% of the time. Clinics delivered favorable outcomes in more than two thirds of cases: eleven cases were reversed in full, one case was dismissed, and two were reversed in part.

2. Prisoner Civil Rights

As with immigration cases, the AO's dataset provides a helpful yet incomplete baseline for prisoner civil rights matters. Such matters fall into two categories, U.S. Prisoner Petitions and Private Prisoner Petitions. Over the past three years, the reversal rate for these two categories has been between 4.5% and 5.5%.[127] The AO, however, bundles prisoner civil rights matters and habeas petitions together, reflecting the hazy line between these two types of cases discussed above.[128]

Such grouping could produce a distorted reversal rate for prisoner civil rights cases. About two thirds of prisoner plaintiff appeals were habeas petitions, while one third related to civil rights.[129] If the reversal rate for habeas cases was very low (which would seem to be the case, at least anecdotally[130]), then the AO's dataset might camouflage a far higher reversal rate in prisoner civil rights matters.

To better get at the "true" reversal rate, I reviewed several independent studies that looked strictly at prisoner civil rights matters. The first studied appellate decisions from 1995 and found a reversal rate of between 2.3% and 2.5%, with another 1.3% to 2.5% reversed in part and affirmed in part.[131] This study did not uncover a significant gap in reversal rates between habeas and prisoner civil rights cases.[132] A second study, undertaken by Kevin Clermont and Theodore Eisenberg, studied reversal rates between 1988 and 1997.[133] Their review yielded a reversal rate of around 8%; Clermont and Eisenberg's calculation also

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127 *See generally supra* note 114.

128 *See* John Scalia, U.S. Dep't of Just., Bureau of Just. Stat., Prisoner Petitions in the Federal Courts, 1980–96 at 13 (Oct. 1997), https://bjs.ojp.gov/content/pub/pdf/ppfc96.pdf; *see also supra* notes 57–61 and accompanying text.

129 *Id.*

130 *See, e.g.*, Harrington v. Richter, 562 U.S. 86, 102–03 (2011) (explaining that the AEDPA standard is intentionally "difficult to meet," requiring a petitioner to "show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement").

131 Scalia, *supra* note 128, at 13.

132 *Id.*

133 Kevin M. Clermont & Theodore Eisenberg, *Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instruments*, 2002 U. Ill. L. Rev. 947, 954–55; *accord* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1597 n.121 (2003) ("Inmate plaintiffs occasionally appeal, though they do not often win their appeals."); *see also id.* (confirming Clermont and Eisenberg's findings).

included full reversals and reversals in part.[134] Clermont and Eisenberg similarly found that habeas cases were reversed at a slightly higher rate than prisoner civil rights decisions.[135]

Importantly, Clermont and Eisenberg found a statistically significant difference in reversals between defendant-oriented appeals and plaintiff-oriented appeals. When prisoner-plaintiffs lost below, and sought a different result on appeal, they succeeded between 5.7% (if the appeal was taken after trial) and 8.2% (if the appeal was taken pretrial) of the time.[136] When defendants (i.e., prison officials) lost below, and sought a different result on appeal, they succeeded between 37.7% (appeal after trial) and 57.5% (appeal before trial) of the time.[137] Put differently, if a prisoner won below, it was much more likely that prison officials would win on appeal by obtaining a reversal than vice versa.

Although these studies are somewhat dated, their overall conclusion substantially corroborates that of the AO. These secondary sources suggest a reversal rate in the rough range of 5% and 8%, inclusive of reversals in part and affirmances in part; the AO's, which includes only reversals, was about 4.5% to 5.5%. As before, this baseline range was compared against the disposition of all prisoner civil rights clinic matters.

Table 5: Favorable Outcomes in Prisoner Civil Rights Appeals, Clinics vs. Overall

	Appellate Clinic Network	**All Appeals**
Full Reversal	40.7%	~ 2.5% to 5.8%
Affirmed in Part, Reversed in Part	20.3%	~ 2.0% to 3.0%
Affirmed (as Appellee)	5.1%	
Dismissed	5.1%	
Total	**71.2%**	**~ 5.0% to 8.0%**

Again, the data shows significant gaps between clinical representation and the overall population. Of the Network's fifty-nine prisoner civil rights cases that have been decided, clinics achieved a favorable outcome in forty-two matters. When the clinic represented an appellant, it obtained a full reversal or remand in twenty-two matters, a partial reversal in twelve matters, and a favorable voluntary dismissal in three matters. In three other cases, the clinic represented an appellee.[138]

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134 Clermont & Eisenberg, *supra* note 133, at 951, 954, 967.

135 *Id.* at 954, 967.

136 *Id.*

137 *Id.*

138 *See* Thomas v. Baca, 827 F. App'x 777, 777 (9th Cir. 2020) (appeal of district court's denial of summary judgment to defendants) (Georgetown Appellate Courts Immersion Clinic);

It prevailed in each case—a notable result since, according to Clermont and Eisenberg, prisoner-plaintiff victories in district court are usually reversed rather than affirmed on appeal.

3. Habeas

The process for examining the Network's habeas matters charted a similar course. Clermont and Eisenberg estimated a reversal rate of 9.7 to 10.8% in habeas cases, with a similar discrepancy between reversals of defendant-oriented and plaintiff-oriented appeals.[139] That is, just as in prisoner civil rights cases, habeas grants were affirmed at a significantly lower rate than habeas denials. The Bureau of Justice Statistics reported a lower reversal rate for cases: 3.3% to 3.7% full reversals, and 1.2% to 1.5% reversals in part.[140] A separate DOJ study substantially corroborated these ranges.[141]

There is, however, good reason to believe the "true" habeas reversal rate today is far lower than this range. Congress enacted AEDPA in 1996, which imposed stringent additional requirements for individuals seeking habeas relief from state court decisions. Clermont and Eisenberg studied cases pre-AEDPA; the BJS and DOJ studies were also generally pre-AEDPA.[142] The DOJ commissioned a follow-up study in 2007 into habeas litigation in federal district courts in the decade after AEDPA's passage. Based on a random selection of 2,500 non-capital matters, the study authors found that "only 7 petitioners received relief, a rate of 1 in every 341 cases filed." That would be less than 0.3%.[143] The rate for evidentiary hearings (a form of partial relief) was only marginally higher, at 0.41%.[144]

Unfortunately, there has not been a similar study undertaken in the decade and a half since. But there is little reason to imagine a substantial uptick in habeas grants since 2007. If anything, more recent

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Knighten v. Ramsey, No. 22-5078, 2023 WL 2998424, at *1 (10th Cir. Apr. 19, 2023) (appeal of district court's denial of motion to dismiss) (Colorado Appellate Advocacy Practicum).

139 Clermont & Eisenberg, *supra* note 133, at 951, 954, 967.

140 Scalia, *supra* note 128, at 13.

141 Carol G. Kaplan, U.S. Dep't of Just., Bureau of Just. Stat., Habeas Corpus – Federal Review of State Prisoner Petitions 5 (Mar. 1984), https://bjs.ojp.gov/library/publications/habeas-corpus-federal-review-state-prisoner-petitions#:~:text=It%20found%20that%203.2%20percent,requirement%20for%20further%20judicial%20review (3.2% of habeas petitions granted in whole or in part).

142 *See, e.g.*, Brown v. Davenport, 596 U.S. 118, 134 (2022) ("Today, then, a federal court must *deny* relief to a state habeas petitioner who fails to satisfy either this Court's equitable precedents or AEDPA. But to *grant* relief, a court must find that the petitioner has cleared both tests.").

143 Nancy J. King, Fred L. Cheesman II & Brian J. Ostrom, U.S. Dep't of Just., Off. of Just. Programs, Executive Summary: Habeas Litigation in U.S. District Courts 9 (Aug. 2007), https://www.ojp.gov/pdffiles1/nij/grants/219558.pdf.

144 *Id.* at 5.

Supreme Court decisions have made it even more challenging for habeas petitioners by imposing significant barriers to petitioners seeking evidentiary hearings,[145] ruling that petitioners must overcome harmless error even if AEDPA is satisfied,[146] and holding that a state court decision is an adjudication on the merits even when the decision offers no substantive reasons.[147] Given such circumstances, this analysis anchored the total reversal rate in habeas petitions to hew much closer to the low single digits, rather than the high single digits reported by Clermont and Eisenberg.

Table 6: Favorable Outcomes in Habeas Appeals, Clinics vs. Overall

	Appellate Clinic Network	**All Appeals**
Reversed	25.0%	~ 4.5% to 5.5%
Affirmed in Part, Reversed in Part	5.4%	
Affirmed (as Appellee)	8.9%	
Dismissed	3.6%	
Total	**42.9%**	**~ 4.5% to 5.5%**

Clinics obtained reversals of unfavorable district court decisions 25% of the time in habeas matters. When dismissals, partial reversals, and affirmances where the clinic represented the appellee are factored in, clinics obtained a favorable outcome in 42.9% of habeas matters. These rates are significantly higher than the baseline, whether taken from Clermont and Eisenberg's work or from the more recent 2007 DOJ study. Even so, clinics did obtain a lower rate of favorable outcomes in habeas matters than in immigration and prisoner civil rights cases (where the rate is around 70%). After these percentages were presented to clinical faculty and practitioners, each respondent pointed to the increasingly challenging legal landscape for habeas claims.[148] Many noted that a habeas petitioner had not succeeded in the Supreme Court in many years. Given these headwinds, even if the caselaw arguably favors a petitioner, circuit judges may be especially

[145] Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (holding that, for 28 U.S.C. § 2254(d)(1) petitions, review "is limited to the record that was before the state court that adjudicated the claim on the merits").

[146] *Brown*, 596 U.S. at 134–35. There are persuasive arguments that this approach—"negative habeas equity"—is atextualist and inconsistent with habeas history. *See* Lee Kovarsky, *The New Negative Habeas Equity*, 137 Harv. L. Rev. 2222 (2024).

[147] Harrington v. Richter, 562 U.S. 86, 99 (2011) ("[D]etermining whether a state court's decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state court's reasoning.").

[148] Interviews with clinical faculty (on file with author).

hesitant to grant habeas, out of a concern for possible reversal by the Supreme Court.[149]

4. Criminal

There were fifty-two criminal decisions in the Network's database. The clinic represented the appellant in virtually all matters.[150] This circumstance made it easier to distinguish and identify clinic successes. If a sentence or conviction was affirmed, the clinic "lost." If a conviction or sentence was reversed or vacated, the clinic "won." And if a case was dismissed, that typically favored the defendant, too. Furthermore, on criminal matters, the AO's dataset offers a reasonable baseline: the dataset isolates criminal appeals and finds, over the past three years, that those appeals resulted in reversals in 7.7% of cases.[151] This overall reversal rate appears to have stayed roughly the same over time: "A comprehensive study of the federal circuit courts for the years 1925–1996 found that . . . 'outright reversal' occurs in just 6 percent of appeals."[152] And, consistent with criminal matters handled by appellate clinics, most criminal appeals more generally are brought by defendants, rather than the government.[153] Table 7 plots this baseline rate against favorable outcomes in appellate clinic cases.

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[149] Cassano v. Shoop, 10 F.4th 695, 696–97 (6th Cir. 2021) (Griffin, J., dissenting from denial of rehearing en banc) (cataloging twenty-two instances where Supreme Court had reversed Sixth Circuit in habeas matter).

[150] The one exception was *United States v. Loniello*, 610 F.3d 488 (7th Cir. 2010), a case handled by the Northwestern Federal Appellate Clinic. But that case was a continuation of a prior matter, *United States v. Thornton*, 539 F.3d 741 (7th Cir. 2008), which was handled by the same clinic. In *Thornton*, the earlier case, the Seventh Circuit reversed the defendant's conviction because of insufficient evidence. It observed, however, that although the evidence was insufficient to support a conviction under one paragraph of the charging statute, the defendant's "acts appeared to violate" another, separate paragraph of the statute. *Loniello*, 610 F.3d at 490. The prosecutor subsequently charged the defendant under this separate paragraph. The district court concluded that such charging constituted double jeopardy. *Id.* at 491. But the Seventh Circuit reversed, to the detriment of the clinic's client. *Id.* at 492.

[151] *See supra* note 114.

[152] Michael Hannon, *A Closer Look at Unpublished Opinions in the United States Courts of Appeals*, 3 J. App. Prac. & Process 199, 219 & n.101 (2001).

[153] *See* Margaret D. McGaughey, *When the United States Loses: The Government Appeal Process*, 18 J. App. Prac. & Process 297, 297 (2017). Both informal political factors, such as prosecutorial discretion and limited resources, and formal legal guardrails, such as double jeopardy, play a role in the government declining to appeal many criminal matters.

Table 7: Favorable Outcomes in Criminal Appeals, Clinics vs. Overall

	Appellate Clinic Network	All Appeals
Reversed	9.6%	6.0% to 7.7%
Affirmed in Part, Reversed in Part	9.6%	
Dismissed	1.9%	
Total	**21.1%**	**6.0% to 7.7%**

Appellate clinics achieved a favorable result in criminal appeals about 20% of the time. Based on reversals alone, that rate is well above that of overall criminal appeals. But it is not as far above this baseline rate as the other categories above (immigration, prisoner civil rights, etc.). Two reasons explain this smaller gap in apparent clinical effectiveness.

First, as discussed above, partial reversals should be considered wins—particularly so in criminal cases. *United States v. Jaffal*, brought by Virginia's Appellate Litigation Clinic, is illustrative.[154] The clinic asserted that, at trial, the district court had made improper evidentiary rulings and failed to provide a lesser-included-offense instruction.[155] Either route would have granted Jaffal relief in the form of a new trial. Presenting both routes, however, allowed counsel to spotlight several favorable factual circumstances before the panel, thus providing the court a more complete story of the client's situation. The Sixth Circuit ultimately held in Jaffal's favor on the jury instruction argument but affirmed the district court's evidentiary rulings.[156]

Though technically an affirmance in part and reversal in part (and thus an "affirmance" in the AO's dataset), most lawyers would consider the result in *Jaffal* a win. For one, the client obtained the same result (a retrial) as he would have had he prevailed on all of his arguments. His evidentiary challenges were a more uphill argument compared to his jury instruction argument. And had he prevailed on his evidentiary challenges, he would have had a more favorable environment on retrial. But had he not brought them at all, there is a chance he would not have been afforded *any* relief. Securing meaningful relief that improves the client's situation should be treated as a win, reflective of synergistic and strategic lawyering.

Second, the Sixth Amendment guarantees criminal defendants a right to counsel through their first appeal; that constitutional mandate

154 United States v. Jaffal, 79 F.4th 582 (6th Cir. 2023).
155 *Id.* at 589.
156 *Id.*

is, as discussed above, funded through the CJA.[157] One would reasonably expect, given those circumstances, for clinics to have a more muted effect in criminal cases. After all, unlike civil appeals, where many individuals proceed pro se,[158] virtually every criminal defendant has a lawyer on appeal. It's simply a question of what type of lawyer that defendant will have: public defender, private retained counsel, CJA-appointed attorney, or legal clinic. All that said, the data still indicates that clinics provide some benefit above that of a run-of-the-mill attorney. Clinics obtained full reversals about 10% of the time, against an overall baseline rate of 6% to 8%.

Moreover, among non-clinic attorneys—public defenders, private counsel, and CJA-appointed attorneys—clinics are likely best compared to the last group, CJA lawyers. That is because both groups draw from the same population of cases: clients who are not being represented by a public defender and clients who cannot afford to retain private counsel. There is compelling evidence to suggest that reversal rates for CJA-appointed attorneys are likely much lower than the overall baseline rate of 6% to 8%.

Research comparing public defenders to CJA-appointed attorneys has found that appointed attorneys generate worse outcomes for their clients in terms of (1) the probability of being convicted, (2) the likelihood of incarceration, and (3) sentence length.[159] A 2011 study on defendants charged with felony offenses found that defendants represented by public defenders had a 73% chance of conviction. Defendants represented by CJA-assigned counsel faced a 78% chance of conviction.[160] Those in the latter group also received on average a twelve-month-longer sentence. Another study of cases produced similar results. Defendants based in San Francisco who were represented by a federal public defender faced a 10.5%-shorter prison term and were 22% less likely to face a prison sentence compared to those represented by an appointed attorney.[161]

Commentators suggest that CJA-appointed attorneys fare significantly worse because they often have limited experience and skills and cannot compete with the institutional knowledge, resources, and

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157 Gideon v. Wainwright, 372 U.S. 335, 345 (1963); Douglas v. California, 372 U.S. 353, 357 (1963) ("[W]here the merits of the one and only appeal an indigent has as of right are denied without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor."); 18 U.S.C § 3006A.

158 Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 26–27 (1981).

159 Thomas H. Cohen, *Who is Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes*, 25 Crim. Just. Pol'y Rev. 29 (2014); Yotam Shem-Tov, *Make-or-Buy? The Provision of Indigent Defense Services in the U.S.*, 104 Rev. Econ. & Stat. 819 (2017).

160 Cohen, *supra* note 159, at 38–39.

161 Shem-Tov, *supra* note 159, at 824.

connections that public defenders or paid private counsel may possess.[162] Some of these concerns are offset in the clinical setting. Although student-attorneys have limited litigation experience, many appellate clinicians come from backgrounds in public interest or criminal defense work.[163] That background provides the training, knowledge, skills, and institutional connections that a non-clinic CJA attorney may lack.

5. Remaining Civil

Finally, I examined all remaining civil matters, which included labor and employment, complex civil and class actions, and non-prisoner civil rights cases. These categories were combined for two reasons. First, there were few individual cases within each category. A single favorable result might therefore severely distort the data. And similarly, the AO's dataset does not distinguish between these three categories; instead, it broadly lumps these matters into two groups: (1) civil cases where the United States is a party and (2) all other private civil cases. Reversal rates were substantially similar between these two groups: 12.4% of private civil cases were reversed on appeal; 15.9% of civil cases involving the United States as a party were reversed.[164]

These rates mirror the secondary literature. As Barry Edwards has chronicled, "[t]he best available data on federal and state court appeals indicate that the overwhelming majority of lower court decisions are affirmed on appeal."[165] Edwards observed that appeals courts affirm about 90% to 92% of the time.[166] Considering that the affirmance rate is somewhat higher in criminal cases, at around 95%, a slightly lower affirmance rate (of between 12% and 16%) in civil matters would make sense.

That said, one should not draw firm conclusions from this catch-all category. The subject matter in the AO's dataset varies widely, from intellectual property to class action to employment discrimination to contract disputes. Certainly, appellate clinics handled some of these types of cases. But it did not do so for all types. That makes the AO's data over-inclusive and a highly imperfect apples-to-apples comparator.

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162 *See* Radha Iyengar, *An Analysis of the Performance of Federal Indigent Defense Counsel* 28 (Nat'l Bureau of Econ. Rsch., Working Paper No. 13187, 2007), https://www.nber.org/system/files/working_papers/w13187/w13187.pdf.

163 Within the National Appellate Clinic Network, eight faculty members previously worked full time at the ACLU, Legal Aid, or other non-profit organization. At least three were public defenders.

164 *See supra* note 114.

165 Barry C. Edwards, *Why Appeals Courts Rarely Reverse Lower Courts: An Experimental Study to Explore Affirmation Bias*, 68 Emory L.J. Online 1035, 1040 (2019).

166 *Id.* at 1035 & nn.1–3.

Table 8: Favorable Outcomes in Remaining Civil Appeals, Clinics vs. Overall

	Appellate Clinic Network	**All Appeals**
Reversed	35.6%	12.4% to 15.9%
Affirmed in Part, Reversed in Part	20.3%	
Affirmed (as Appellee)	5.1%	
Dismissed	5.1%	
Total	**66.1%**	**12.4% to 15.9%**

Again, clinics are associated with a much higher rate of favorable outcomes than the overall population. In thirty-nine matters (out of sixty-one), the clinic's client achieved a favorable outcome. That is several times higher than the baseline rate. Table 9 summarizes the data from the preceding Tables.

Table 9: Summary Chart of Outcomes, Clinics v. Overall

Category	**Baseline Reversal Rate in All Appeals**	**Clinic Reversal Rate**	**All Favorable Clinic Outcomes**
Immigration	~14.0% to 15.0%	55.0%	70.0%
Prisoner Civil Rights	~5.0% to 8.0%	37.3%	71.2%
Habeas	~4.5% to 5.5%	25.0%	42.9%
Criminal	~6.0% to 7.7%	9.6%	21.1%
General Civil	~12.4% to 15.9%	35.6%	66.1%

C. Why Are Appellate Clinics Successful?

We know that appellate clinics make law—their cases are published far more often than not. And we also have data showing they are often making "good" law, benefitting their clients and similarly situated individuals, and usually far more so than if the client were proceeding without a lawyer or with a non-clinic, CJA-appointed attorney.[167] What might explain this apparent success? And why might we see it particularly from appellate clinics, as opposed to the employment law clinics that Shanahan and Greiner and Pattanayak studied, which suggested clinic representation might increase "engagement with the process," but may not "ultimately lead to improvement in outcomes"?[168] Based

[167] As used in this Article, "good" law represents binding precedent (or, in the case of unpublished opinions, persuasive authority) that rules in favor of a clinic client, while also providing reasoning that may assist other, similarly situated individuals.

[168] *Id.* at 1370; Greiner & Pattanayak, *supra* note 8, at 2149–63.

on the data, I hazard three explanations: (1) the importance of legal research resources, (2) the investment of time in an appellate matter, and (3) the nature of appellate proceedings.

1. Greater Emphasis on Legal Research

The "conventional wisdom" is that in an appeal, briefing is paramount.[169] But how to organize and shape a brief, how to craft an argument, and when to emphasize certain issues are all exercises of judgment.[170] Examining every Network brief to determine whether a clinic or its opposing counsel made the "best" argument for a "winning" case would be both incredibly time-intensive and impossibly subjective. Another metric is more ascertainable and carries some predictive power.

In a prior study of more than four hundred federal cases, Elizabeth Tippett concluded that the "strongest results"—i.e., the strongest relationship between a particular variable and a positive result— "involved the [nature of] citations" within a brief, "suggesting that legal research plays a central role in brief writing."[171] Tippett conducted several complex analyses of citation patterns and sentence structure, but the "simplest approach to citation analysis was merely to count them: How many citations appeared per brief?"[172] Citation count was "consistently among the top predictive features of summary judgment outcome."[173]

This analysis was replicated across most cases within the Network, except for immigration cases, as documents in these cases are often not publicly accessible via PACER or Bloomberg.[174] With those cases excluded, I used the Table of Authorities to count the number of authorities in the principal clinic brief and the number of authorities in the principal opposition brief. The findings are produced below.

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169 Michael Duvall, *When Is Oral Argument Important? A Judicial Clerk's View of the Debate*, 9 J. App. Prac. & Process 121, 122 (2007); *see also id.* ("Oral argument significantly impacts the outcomes of only very close cases.").

170 *Cf.* Elizabeth C. Tippett et al., *Does Lawyering Matter? Predicting Judicial Decisions from Legal Briefs, and What That Means for Access to Justice*, 100 Tex. L. Rev. 1157, 1159 (2022) (observing that lawyers and law students take many courses on legal writing and research, and "these activities train lawyers in a set of norms and practices that are assumed to be the most effective for client advocacy. Yet, the effect of such training can be difficult to quantify, and the efficacy of conventional wisdom difficult to test").

171 *Id.* at 1160.

172 *Id.* at 1174.

173 *Id.*

174 *See, e.g.*, *Sealed & Confidential Materials: Appellate Procedure Guide*, U.S. Ct. of Appeals for the Fourth Circuit, https://www.ca4.uscourts.gov/appellateprocedureguide/General_Provisions/SealedConfidMem.html (last visited Aug. 9, 2023).

Table 10: Average No. of Citations, Clinics v. Opposing Counsel

Category	Avg. Clinic Citations	Avg. Opposing Brief Citations	Difference
Complex Civil	68.1	72.3	-4.2
Habeas	55.0	54.5	+0.5
Prisoner Civil Rights	53.7	52.3	+1.4
Criminal	58.6	48.8	+9.8
Non-Prisoner Civil Rights	66.0	50.1	+15.9
Labor & Employment	70.3	52.1	+18.1

As reflected, clinics cited more (and often significantly more) authorities than opposing counsel across all categories except for complex civil cases—which, as noted, is an inherently challenging category from which to draw firm conclusions, given the wide variation in cases under this heading.[175]

2. Increased Investment of Time and Resources

Such a result—that clinics win more because they cite more legal authority—prompts a natural follow-up question: Why are clinic briefs better researched? One likely answer is that law students and legal clinics simply have more time and resources.

Consider a typical CJA case. In 2023, counsel appointed under the Act may earn up to $9,100 per appeal.[176] The prescribed hourly rate under the Act is $164,[177] meaning that an attorney will be compensated for up to 55.5 hours of work. That includes all research, client communication, meetings, writing, and argument. Any extra hour of legal work past 55.5 hours is not compensated. By comparison, most clinics average between three and six credit hours per semester, with some appellate clinics covering both academic semesters. ABA Standard 310 provides that a credit hour "is an amount of work that reasonably approximates

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175 In discussions about this gap with clinical faculty, many pointed to the idiosyncratic nature of the complex civil cases, and the relatively small number that clinics handle. Interview with clinical faculty member (notes on file with author).

176 Criminal Justice Act (CJA) Guidelines, Chapter 2, § 230: Compensation and Expenses of Appointed Counsel, U.S. Cts., https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_23 (last revised Dec. 29, 2022). In the most recent decade, the cap was between $7,800 and $9,100 per appeal. *See CJA Panel Attorney Hourly Rates and Maximum Case Compensation Rates*, U.S. Cts. (Dec. 30, 2022), https://www.are.uscourts.gov/sites/are/files/CJA%20Rate%20Schedule.pdf.

177 *Id.*

not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks."[178]

Such requirements mean that a single appellate clinic team often dedicates hundreds of hours to a particular case. A two-person case team in a fifteen-week semester for a three-credit clinic would dedicate 270 hours of time to a case.[179] A larger case team, for a four- or six-credit clinic over two semesters, could well exceed 1,000 hours of student work, exclusive of faculty or staff attorney time. Such numbers are many times higher than what would be compensable under the CJA. In addition, the resources at a law school allow clinics to frequently cast a wider net than their private practitioner counterparts. Clinic students might, for instance, consult other faculty and lean on library resources. They have unlimited (or virtually unlimited) access to research databases and legal reporters. Private practitioners, on the other hand, have fewer such opportunities.

Appointed attorneys, of course, likely do not "need" as much time to prepare a case as a law student, nor do they need extensive legal resources to prepare a good case—particularly if they have prior relevant experience. That is likely one of the key conclusions from Shanahan's study and other prior research. Moreover, many appointed attorneys provide far more than 55.5 hours of work on a CJA case.[180] Certainly, not every CJA-appointed attorney spends only about sixty hours on an appeal, and not all clinics spend over a thousand on an appeal. Nor do non-clinic CJA attorneys always consult fewer resources than a law school clinic. My claim is far more modest: given the way the CJA is structured, there is no financial incentive for a private practitioner to spend the same amount of time or resources on an appeal as a law school clinic. And it is reasonable to imagine that such incentives—a ceiling on compensation for attorney time, a floor that is much higher than that ceiling for student clinical time—could produce more research and better results in appellate cases.

3. Deliberative Nature of Appellate Proceedings

If these circumstances—more legal resources and more dedicated time—help explain appellate clinic efficacy, why wouldn't they deliver similar results in other clinical settings? Recall there was only mixed

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178 ABA Standards, *supra* note 11, at Standard 310(b)(1).

179 Students dedicate three hours per week per credit hour; three credit hours by two students is eighteen total hours per week.

180 Courts recognize this point, acknowledging that the Act's ceilings are far below market rates. In re Carlyle, 644 F.3d 694, 699 (8th Cir. 2011) ("CJA service is first a professional responsibility, and no lawyer is entitled to full compensation for services for the public good.")

support for clinical assistance in Washington, D.C. unemployment proceedings, and even less support in offers of clinical assistance by Harvard's Legal Aid Bureau.

Based on interviews with clinical faculty, part of the answer lies in the different nature of appellate proceedings.[181] A theme echoed in these interviews was that students were particularly well-equipped to undertake appellate work. Starting in their first year, law students are exposed to many of the basic tenets of appellate advocacy. Their writing courses often culminate in a model appellate-style brief. Their casebooks teem with federal appellate decisions.[182] Moot court gives students an early taste of appellate process and procedure. The law school experience, in short, gives upper-level law students *some* understanding of a federal appeal. On the other hand, most students are unlikely to be familiar with procedures in the D.C. Office of Administrative Hearings; many have probably never even heard of the office.[183]

How might these different circumstances produce different results? In the specialized administrative hearing context, "clinical law students, working as junior collaborators, . . . *act*[] like practicing lawyers."[184] Consistent with such actions, Shanahan observes, "the data suggests that clinical law students are using procedural tactics incrementally more often than attorneys."[185] But acting like a lawyer by "us[ing] procedures like practicing attorneys," is—obviously—far different from being a lawyer.[186]

I emphasize that no student, regardless of prior experience, comes into an appellate clinic as a polished appellate attorney. They simply come in with a better grounding than they would compared to, say, a clinic that focuses on processes and procedures of which students are unfamiliar. Moreover, even if some students may be unfamiliar with certain appellate procedures, the nature of appellate proceedings frequently gives them the necessary time to acclimate, because almost every federal appeal will take months,[187] with courts often liberally granting briefing and filing extensions.[188] By comparison, cases in administrative court typically "have very short timelines: often two to three weeks from when the case is scheduled (which is when a representative typically

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181 Interviews on file with author.

182 *See, e.g.*, Arthur D. Austin, *Is the Casebook Method Obsolete?*, 6 Wm. & Mary L. Rev. 157, 157 (1965).

183 Shanahan et al., *supra* note 4, at 559.

184 *Id.* at 573.

185 *Id.* at 574.

186 *Id.*

187 *See, e.g.*, Fed. R. App. P. 4(a) (requiring a notice of appeal within 30 days of judgment in some cases, and 60 days when the United States, its agency, or officer is a party).

188 *See, e.g.*, 11th Cir. R. 31-2(a) (providing that a party's first extension of up to 30 days may be made by telephone and may be granted by the Clerk, rather than a judge).

takes a client) to the hearing."[189] A truncated timeline means that clinic students in those cases must quickly learn what processes could be relevant. But that might mean a tradeoff in grasping the substantive law to present "well-organized and . . . good arguments."[190]

III. Addressing Methodology Concerns

When sharing earlier drafts of my research, I encountered a recurring critique: my findings drew on observational, rather than experimental, data. To many researchers, random assignment provides the sole useful barometer of efficacy: "[T]he only way to produce credible quantitative results on the effect of legal representation is with randomized trials."[191] "[A]lmost all [other] literature," as Greiner and Pattanayak put it, "is unworthy of credence."[192]

In my view, such a perspective unnecessarily elevates the perfect at the expense of the useful. That is particularly true because random assignment is not feasible at the appellate level and certainly not at the appellate clinic level.

For one thing, many clients are represented in district court and continue to retain that same counsel on appeal. It would be neither ethical nor prudent to force these individuals to terminate an existing attorney-client relationship in favor of casting their lot in some randomized controlled experiment.

Even if one were only to study pro se parties, that would itself come with many challenges. After all, the AO's data does not note how much more frequently represented appellants prevail than pro se parties, or how often appointed counsel prevail rather than retained counsel. Nor is it possible to collect such data through commercial databases.[193] It would, in other words, be very difficult to find a perfect baseline or, to borrow the parlance of experimental scholars, an appropriate control group.

These practical issues dovetail with effects that would be counter-productive to student learning were any such endeavor tried in a clinical setting. A clinic could, for instance, offer legal assistance at random to pro se parties—e.g., extending clinical services for every thousandth appeal filed. Yet doing so would undercut many pedagogical goals. Faculty routinely evaluate cases before offering clinical

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189 *Id.* at 568.

190 *Id.*

191 Greiner & Pattanayak, *supra* note 8, at 2182.

192 *Id.*

193 Merritt E. McAlister, *Missing Decisions*, 169 U. Pa. L. Rev. 1101, 1103 (2021) (noting the absence of a significant share of appellate decisions, particularly for pro se parties, in commercial databases).

assistance, to examine whether the case's legal complexity and factual record lend themselves to student instruction. They gauge whether a case is a suitable candidate for oral argument, which might serve as a capstone to the clinical experience. Some faculty also consider where a client is located to see whether the clinic will allow students to develop client communication and interaction skills. They also may consider whether a case poses an especially thorny legal or factual issue where a law school's resources might be particularly valuable. Some clinics even involve students in case selection to teach why certain matters are particularly good candidates for appellate review, while others might have waiver or vehicle problems. There are thus many reasons why deliberative case selection can promote valuable educational goals. Few faculty would sacrifice such goals for a random experiment.

All that said, I acknowledge my findings in this study may be susceptible to court-driven and clinic-driven selection effects. That is, it's possible that courts might only appoint clinics in meritorious cases (a court-driven selection effect), and clinics might agree to represent clients only in "winnable" matters, thereby inflating their rates (a clinic-driven selection effect). This Part tackles those concerns.

A. Court-Driven Selection Effects

Court appointments are a source of many appellate clinic cases. For criminal cases, the CJA provides the necessary funding to guarantee counsel to defendants through their direct appeal,[194] and occasionally on postconviction review as well.[195] Because of this guarantee, there are few court-driven selection effects in criminal matters—the courts of appeals do not get to choose which defendants get counsel and which do not since the law mandates that all have counsel.

Civil appointment, on the other hand, is significantly more ad hoc. There is very little research examining when courts appoint counsel in civil cases, what factors they consider when they do, and whether appointment affects outcomes. But the available data suggests a

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194 *See, e.g.*, Evitts v. Lucey, 469 U.S. 387, 393–94 (1985).

195 *See, e.g.*, 18 U.S.C. § 3006A(a)(2). How systematically courts appoint in habeas matters varies widely; observers have criticized this "decentralized system" for "creat[ing] a disorganized framework that leads to inconsistent appointment for similarly situated petitioners, not only in whether or not a petitioner will receive counsel, but in the experience and quality of counsel as well." Diana Cummiskey, Comment, *The Appointment of Counsel in Collateral Review*, 24 Penn. J. Const. L. 939, 941 (2022). Nevertheless, the available data suggests appointment overall is infrequent, in less than 10% of non-capital cases. *Id.* at 940 n.1; *see also* Nancy J. King, *Non-Capital Habeas Cases After Appellate Review: An Empirical Analysis*, 24 Fed. Sent'g Rep. 308, 315–16 (2012).

dizzying kaleidoscope of approaches. In the Ninth Circuit, for instance, the court seeks appointment in about 160 cases per year.[196] To facilitate those appointments, the court has a special program for law school clinics, generally focused on prisoner civil rights or immigration matters which the circuit has decided would benefit from appointed counsel.[197] These cases are set on an expedited briefing and argument schedule which ensures that briefing is complete, typically within a single semester, and oral argument is held during the academic calendar year. A pro bono coordinator works with parties and the court to navigate calendars to accommodate a law school's schedule. As of 2023, 18 law schools participate in the program.[198] Few other courts, however, appoint as frequently or as systematically. The Fifth Circuit's pro bono program appoints in ten to fifteen cases each year.[199] The Eighth Circuit does so even more rarely.[200] And the Tenth Circuit appoints so rarely that it cautions prospective attorneys that they "may have to wait a significant amount of time to receive an appointment."[201]

Such variation could distort outcomes if some courts are appointing more selectively than others. Under that theory, the circuits that appoint only in meritorious or likely meritorious cases would see a higher win rate compared to the AO baseline, regardless of whether the appointment went to a clinic or not. Conversely, courts (like the Ninth Circuit) that appoint more frequently might see a lower win rate.[202]

Yet the data does not necessarily support this theory. Table 11 compares appellate clinic win rates for civil appointment by circuit. For simplicity's sake, the Table includes all favorable outcomes, including dismissals and partial reversals. To prevent a single decision from overstating its impact, the Table is limited to those circuits with three or more decisions.[203]

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196 *See Pro Bono Program*, U.S. Cts. for the Ninth Circuit, https://www.ca9.uscourts.gov/probono/ (last visited July 26, 2023).

197 E-mail from Ninth Circuit Pro Bono Coordinator to author, May 10, 2021 (on file with author).

198 E-mail from Ninth Circuit Pro Bono Coordinator to author, May 31, 2023 (on file with author).

199 *See* E-mail from Fifth Circuit Mediation and Judicial Support Officer to author, Dec. 7, 2022 (on file with author).

200 Phone interview with Eighth Circuit Clerk of Court, Dec. 6, 2021.

201 Am. Bar Ass'n, App. Prac., Guide to Volunteer Pro Bono Appeals in the Federal Courts 11 (2016).

202 Greiner & Pattanayak, *supra* note 8, at 2190 ("[S]tudies . . . strongly suggest that the court is culling the docket for serious cases likely to receive severe dispositions and then requiring counsel in those cases but not others." (alterations and internal quotation marks omitted)).

203 Applying this filter excluded the First, Second, and Fifth Circuits.

Table 11: Clinic Win Rate by Circuit

Circuit	No. of Civil Case Appointments	Favorable Clinic Outcomes	Win Rate
Fourth	40	21	52.5%
Ninth	26	20	76.9%
Seventh	20	13	65.0%
D.C.	17	10	58.8%
Third	16	11	68.8%
Sixth	11	4	36.4%
Eleventh	7	4	57.1%
Tenth	6	5	83.3%
Eighth	4	2	50.0%

There is not an inverse relationship between win rate and frequency of appointment. In fact, one of the circuits that appoints most often, the Ninth, had the second-highest win rate. Several cases help illustrate why courts do not (or, possibly, cannot) appoint only in meritorious matters.

Begin with a recent Supreme Court case, *Taylor v. Riojas*, which involved a challenge to qualified immunity. The Court there held that, given the "egregious facts of the case"—an inmate held for days without access to food and water, in a cell covered in his own feces—"any reasonable officer should have realized that [such] conditions of confinement offended the Constitution."[204] *Taylor* has since been described by scholars as a "critically important decision[] defining the contours of qualified immunity's protections and shaping public debate about the doctrine."[205] Yet in actually litigating his case, Taylor "spent years searching, in vain, for lawyers willing to represent" him.[206] He "repeatedly asked the judges hearing" his case to "appoint counsel; those requests were repeatedly denied."[207] He represented himself in district court and through appeal.[208] In other words, even though Taylor was ultimately successful before the Supreme Court—obtaining a result that, according to the Court, "any reasonable officer should have realized"—neither the Fifth Circuit nor the district court saw his claims as even worthy of appointment of counsel.

Nor is *Taylor* an exception to the rule. Consider two similar cases from different courts of appeals. In 2023, a Northwestern Federal Appellate Clinic case involved the forcible medication of a California

204 Taylor v. Riojas, 592 U.S. 7, 9 (2020) (per curiam).
205 Schwartz, *Civil Rights Without Representation*, *supra* note 102, at 648.
206 *Id.* at 649.
207 *Id.*
208 *Id.*

prisoner, Everett Spillard.[209] There was no dispute that Spillard had been administered medication without his consent.[210] Yet in granting summary judgment to the prison defendants, the district court did not address whether that non-consensual administration violated Spillard's constitutional rights. Instead, it resolved the case on qualified immunity grounds.[211]

But there was a major problem with that ruling: "Because [defendants were] privately employed medical providers, the defense of qualified immunity [was] categorically unavailable."[212] Neither party pointed to this mistake in the district court's order: Spillard because he was pro se, and defendants because they had no incentive to object.[213] It was not until the Ninth Circuit appointed a clinic to represent Spillard that defendants' private party status became an issue.[214] In response, defendants conceded—for the first time, on appeal—that they were not "entitled to summary judgment on qualified immunity grounds."[215] They argued instead that the court should dismiss on alternative grounds.[216] The Ninth Circuit rejected this argument: the "alternative bases argued by [defendants]" did not "support affirmance."[217] The panel reversed and remanded the matter to the district court; the parties reached a favorable financial settlement on remand.

Contrast *Spillard* with *Pinkston v. Kuiper*. Just like in *Spillard*, the prisoner there was given medication without his consent, when officials forcibly administered him antipsychotic drugs.[218] Pinkston moved several times in district court for the appointment of counsel. Each time, his motions were denied.[219] So he represented himself at a four-day evidentiary hearing. At the end of this hearing, the district court found that defendants had violated Pinkston's due process rights.[220] Jail officials, represented by a national corporate law firm, appealed to the Fifth Circuit. Pinkston again moved for appointment of counsel. The

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209 Spillard v. Ivers, No. 21-16772, 2023 WL 4992827, at *1 (9th Cir. Aug. 4, 2023).

210 *Id.*

211 *Id.*

212 *Id.* (citing Jensen v. Lane Cnty., 222 F.3d 570, 577–79 (9th Cir. 2000)).

213 Appellant's Informal Brief, Spillard v. Ivers, No. 21-16772 (9th Cir. Dec. 23, 2021), Dkt. No. 9.

214 *See* Plaintiff-Appellant's Opening Brief (Replacement), Spillard v. Ivers, No. 21-16772 (9th Cir. Nov. 14, 2022), Dkt. No. 36.

215 *See* Defendant-Appellees' Answering Brief (Replacement) at 15, Spillard v. Ivers, No. 21-16772 (9th Cir. Mar. 6, 2023), Dkt. No. 49.

216 *Id.* at 33.

217 *Id.*

218 Pinkston v. Miss. Dep't of Corr., No. 4:17-cv-39-DMB-DAS, 2021 WL 1206412, at *1–2 (N.D. Miss. Mar. 30, 2021).

219 *See, e.g.*, Pinkston v. Miss. Dep't of Corr., No. 4:17-cv-39-DMB-DAS (N.D. Miss.), Dkt. Nos. 43 & 138.

220 *Pinkston*, 2021 WL 1206412, at *1.

Fifth Circuit did not act on this motion; instead, several weeks later, Rights Behind Bars, a nonprofit organization, reached out and offered its assistance pro bono. Attorneys from WilmerHale later entered an appearance.

It is unclear, absent Rights Behind Bars and WilmerHale's involvement, whether the Fifth Circuit would have appointed Pinkston counsel. There are strong indications it would not have. At oral argument, for instance, Judge Edith Jones castigated WilmerHale for representing Pinkston.[221] She described Pinkston as "quite a manipulator" and asked to review the "law firm's [pro bono] policy."[222] Judge Jones questioned why "the law firm [thought] it was worthwhile to use a case on behalf of a liar and faker" to "make a very, very significant rule of constitutional law."[223] The Fifth Circuit's opinion ultimately reversed the district court's ruling.[224]

What matters is not just the different substantive results reached in this pair of cases. These courts of appeals also took radically different approaches to the appointment of counsel, despite similar fact patterns. If anything, Pinkston may have had a far stronger case for counsel than Spillard. Pinkston prevailed at trial but, by his own admission, had neither the resources nor legal expertise to properly brief an appeal.[225] Spillard, on the other hand, had his case dismissed at summary judgment, well before trial. Yet the Ninth Circuit granted Spillard's motion for appointment. The Fifth Circuit likely would have denied Pinkston's.

The upshot from this discussion is that, even if courts wanted to appoint only in meritorious matters, in many cases they would not be able to tell, before briefing, whether a case has merit. That uncertainty undermines any strong court-driven selection effect for civil appointments.

B. Clinic-Driven Selection Effects

A second selection effect could be the population of appellate clinics examined. According to the most recently available data, fifty-six law schools reported having an appellate clinic.[226] There are fifteen clinics in the National Appellate Clinic Network. These participants were

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221 Oral Argument at 33:31, Pinkston v. Kuiper, 67 F.4th 239 (5th Cir. 2023) (No. 21-60320).

222 *Id.*

223 *Id.*

224 *Pinkston*, 67 F.4th at 239.

225 Some courts will, indeed, appoint as a matter of internal procedure if a pro se plaintiff prevails below. *Cf.* 6th Cir. I.O.P. 22(c) ("When a pro se applicant is the appellee in a 28 U.S.C. §§ 2241, 2254, or 2255 case, the clerk will appoint counsel if the applicant is indigent.").

226 Robert R. Kuehn, David A. Santacroce, Margaret Reuter, June T. Tai & G.S. Hans, Ctr. for the Study of Applied Legal Educ., 2022–23 Survey of Applied Legal Education 9, https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/64fb7bd82fdee48e57e8ef04_Report%20on%202022-23%20CSALE%20Survey.rev.9.8.23.pdf.

not selected at random; they affirmatively chose to participate. That non-randomness begs several related questions: Do clinics within the Network look meaningfully different from clinics outside the Network? And do participating clinics take only sure winners, with non-participating clinics electing for different cases and realizing different outcomes?

1. Participating vs. Non-Participating Clinics

To start, there is no reason to think participating clinics looks significantly different from their non-participating clinic counterparts. All appellate clinics are subject to the same basic operating constraints. Most, for instance, rely on court appointments as a source of cases. Furthermore, many jurisdictions bar or severely restrict all clinics from receiving compensation for their work, thus precluding appellate clinics from seeking fee-generating clients.[227] Finally, many clinicians (whether in the Network or not) come from public interest backgrounds, thereby influencing the type of case work that they are able and willing to undertake.[228] Given these circumstances, most appellate clinics gravitate toward criminal defense and civil plaintiff work—the same work that, of course, comprises the majority of cases within the Network's dataset.

Moreover, though sampling was not random, it did follow methods—respondent-driven and targeted sampling—which have been shown to remove bias. Respondent-driven sampling, known also as snowball sampling, starts with a single sample, or "seed."[229] That seed recruits others, who in turn recruit additional waves, picking up momentum like a snowball.[230] As a sample "expand[s] wave by wave, it approach[es] an equilibrium" that "could potentially become reliable if the number of waves is sufficiently large."[231] To further overcome non-randomness, some researchers employ additional "targeted" sampling.[232] Such sampling aims to recruit participants based on what we know of the overall population. To do so, researchers identify "a target population," representative of the population of the whole.[233] They then

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227 *See, e.g.*, ILL. SUP. CT. R. 711(d) ("A student or graduate rendering services authorized by this rule shall not request or accept any compensation from the person for whom the student or graduate renders the services."); 6th CIR. R. 46(d)(2)(A) ("An eligible law student may appear in this court . . . [o]n behalf of an indigent, with the written consent of the indigent and the attorney of record.").

228 *See, e.g.*, *supra* note 163.

229 Charlotte S. Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 IND. L.J. 1069, 1078 (2014).

230 *Id.*

231 *Id.*

232 *See* Alexander & Prasad, *supra* note 229, at 1078–79; Douglas D. Heckathorn, *Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations*, *in* SOCIAL PROBLEMS 175 (1997).

233 *Id.*

"recruit" to "ensur[e] that subjects from different areas and sub-groups will appear in the final sample," so that the sample reflects the overall population.[234]

As relevant here, the Network began with a core group of clinicians. These colleagues subsequently referred others, who did the same, creating several waves of referrals, just as respondent-driven sampling would instruct. And consistent with targeted sampling, the Network's participants reflect a diverse set of geographies and law school rankings, such that no region or type of law school is overrepresented. Participants pursued appeals in virtually every federal circuit court, across a diverse array of subject matters. The sample, in short, aims to reflect the heterogeneity of appellate clinics more generally.

2. Meritoriousness and Case Selection

Similarly, the evidence does not suggest that participating clinics used case meritoriousness as a *sine qua non* for case selection. Indeed, when asked whether they screened for merit, clinic faculty universally said no.[235] Many stated that they did not systematically track how often they prevailed. Some had at best a general sense on these points, but most expressed some surprise when presented with the dataset here (specifically, at how appellate clinics appeared to be as successful as they were). Participation in the Network was motivated by a desire to share briefing materials and research, rather than elevating or inflating the win percentage of clinics. Clinic faculty also offered several additional responses.

First, several faculty emphasized the inherent unpredictability of appellate case outcomes.[236] Echoing the disparate results in *Taylor*, *Spillard*, and *Pinkston*, respondents observed that it was very difficult, if not impossible, to screen for meritorious cases.

Second, even if a clinical faculty member could discern a case's meritoriousness, taking only meritorious cases generally would not promote foundational pedagogical goals.[237] Many Network faculty emphasized that no clinic should be measured based on outcomes alone. Echoing the literature on clinical pedagogy, most underscored that "[c]linics serving low-income clients offer especially valuable opportunities for students to learn how the law functions, or fails to function, for

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234 *Id.*

235 That finding coheres with prior clinical research. *See, e.g.*, Ramji-Nogales et al., *supra* note 6, at 340 n.75 ("[C]ases are not selected solely based on the likelihood of success—that is, the clinic does not select only those cases most likely to win."); Shanahan et al., *supra* note 4, at 581 ("A fourth explanation is based in our interviews with clinic directors, who suggested that clinics do not screen for cases based on merit and often prefer to take 'harder' cases.").

236 Interviews with clinical faculty members (notes on file with author).

237 Interview with clinical faculty member (notes on file with author).

the have-nots."[238] They allow students a chance to get "out of the classroom into the real world of law, from which they would return to the classroom with a deeper understanding of how legal doctrine and legal theory actually work."[239] Moreover, as participating faculty observed, client service is never limited only to wins and losses; the lawyer is counselor and listener, both an individual advocate and a representative of the broader judicial system. Consistent and dedicated legal representation can still lead clients to develop a sense of procedural justice and legitimacy of the legal system, notwithstanding an ultimately adverse result.[240] Inculcating these skills in law students can be foundational for future practice regardless of the outcome in a specific case.

Third, and along this same line, several faculty emphasized that taking "harder" cases in fact was necessary so that students could remain engaged on a case through briefing and argument.[241] Cases "involv[ing] challenging facts, challenging clients, or expansion of the law" were "seen as valuable educational opportunities."[242]

Recall here the difference between a non-clinical, CJA attorney and a clinic that must comply with ABA requirements. The former category has a financial incentive to cap time spent on any given CJA matter. These attorneys could plausibly gravitate to more straightforward (and meritorious) cases. On the other hand, clinical students can spend hundreds of hours on a particular case. A simple case that offers little opportunity for research and analysis does not maximize potential clinic resources and potentially shutters a valuable learning opportunity.[243]

Finally, clinic faculty offered several other factors—whether a case would be set for oral argument and whether students could travel to meet the client and attend hearings—that played a role when making intake decisions. For all these reasons, it is unlikely that clinical case selection is tethered to meritoriousness.

That said, one avenue for future research is to examine differences among different types of appellate clinics and how these differences impact effectiveness. For instance, the median enrollment of all clinics

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238 Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession 199 (2000); *see also* Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. Legal Educ. 375, 375 (2001) ("Modern clinical education . . . responded to students' desire to learn how to use law as an instrument of social change and to be involved in the legal representation of poor people.").

239 Wizner, *supra* note 63, at 1934.

240 *Cf.* Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 Crime & Just. 283, 286 (2003) ("Procedural justice judgments consistently emerge as the central judgment shaping people's reactions to their experiences with legal authorities.").

241 Interview with clinical faculty member (notes on file with author).

242 Shanahan et al., *supra* note 4, at 581.

243 Ramji-Nogales et al., *supra* note 6, at 340 n.75 ("[T]he clinic often chooses particularly complex and difficult cases so that students will have challenging educational experiences.").

is eight students per faculty or staff member.[244] And clinical offerings awarded a median of four credits per semester.[245] Some programs, such as Northwestern's Appellate Advocacy Center, enroll between sixteen and twenty students under one faculty member's supervision, and take a generalist approach to case selection. Others, like Georgetown's Appellate Courts Immersion Clinic, enroll eight to ten students across three faculty members (a professor and two fellows), with students enrolled full-time (i.e., fourteen credits) during their semester.[246] More analysis is necessary to test whether these differences lead to different results—i.e., whether greater resources lead to a higher volume of work, greater complexity in the type of work undertaken, meaningfully different success rates, or some combination of the above. Future research, with that additional data, could contrast and compare the efficacy of these different clinical models.

VI. Using Appellate Clinics to Improve Access to Justice

This Article speaks to three audiences: law schools interested in developing clinical programming, groups interested in evaluating clinical effectiveness, and legal institutions invested in improving access to justice. On the first two groups, Parts II and III suggest that appellate clinics perform quintessentially clinical work, offering legal assistance to individuals who would otherwise be self-represented or underrepresented. They are also additive in nature, as they do not crowd out direct services clinics or legal aid organizations but instead complement them by representing clients who would otherwise not have legal assistance. And clinic representation often produces favorable outcomes for their clients. This Part addresses the final audience by discussing potential institutional reforms through three actors: federal appellate courts, administrative agencies, and state courts.

A. Increase Appointments in the Federal Courts of Appeals

As discussed above, civil appointment practices differ widely. But one takeaway from this study is that virtually every federal appellate court could appoint more frequently—demand for such appointments often outstrips supply. Indeed, as the Tenth Circuit acknowledges, pro bono panel attorneys often wait months or even years before they

244 Kuehn et al., *supra* note 226, at 26–27.

245 *Id.* at 25.

246 *Appellate Courts Immersion Clinic*, Georgetown L., https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/appellate-courts-immersion-clinic/ (last visited Sept. 25, 2023).

receive a potential appointment.[247] If that is so, what downside would there be to appointing more frequently, to clear out this waiting list?

Or take, as another data point, prisoner civil rights cases. These appeals comprise a significant source of appointments in many circuits.[248] But the number of prisoner petitions filed does not appear to correlate with appointment volume. In the Ninth Circuit, for instance, 1,807 prisoner petitions were filed between March 2021 and 2022.[249] In the Fifth Circuit, 1,525 such petitions were filed in this period.[250] But the Fifth Circuit only appoints counsel in ten to fifteen cases per year, while the Ninth Circuit does so at ten times that rate. These disparities could reflect, as Judge Richard Posner has put it, a "downright indifference of most judges to the needs of pro se" litigants, particularly in one circuit or jurisdiction.[251]

Such practices carry consequences that reach beyond an individual client. They signal an abandonment of a core judicial mission to ensure and improve access to justice. The Fifth Circuit, recall, did not appoint counsel in *Pinkston*, when the Ninth Circuit did so in *Spillard*. And the Fifth Circuit did not appoint counsel in *Taylor*. More frequent appointment might, in the case of *Taylor*, have shielded the Fifth Circuit from reversal by the Supreme Court. And more frequent appointment could "narrow the claims [at issue] and limit evidence to relevant issues," thereby "benefitting [the] client, opposing parties, and the court," as well as the law more generally within a circuit.[252]

B. Expand Clinic Participation in Federal Administrative Agency Appeals

Most federal administrative agencies provide internal review processes, with plaintiffs required to exhaust those processes before taking their cases to federal court.[253] Appellate clinics, however, rarely appear

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247 Guide to Volunteer Pro Bono Appeals, *supra* note 201, at 11.

248 *See* E-mail from Ninth Circuit Pro Bono Coordinator; *supra* note 197; Guide to Volunteer Pro Bono Appeals; Lessons Learned From the Fifth Circuit Pro Bono Program, Bar Ass'n of the Fifth Circuit (Oct. 2019), https://www.baffc.org/wp-content/uploads/2019/10/BAFFC-Pro-Bono-Panel-Presentation-4845-8321-0408-1.pdf (profiling cases, all of which involved habeas or prisoner civil rights).

249 *Table B-1: U.S. Courts of Appeals—Cases Filed, Terminated, and Pending, by Nature of Proceeding, During the 12-Month Period Ending March 31, 2022*, U.S. Cts., https://www.uscourts.gov/statistics/table/b-1/federal-judicial-caseload-statistics/2022/03/31 (last visited July 26, 2023).

250 *Id.*

251 Richard A. Posner, Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments 10 (2017).

252 Schwartz, *Civil Rights Without Representation*, *supra* note 102, at 704.

253 *See, e.g.*, 8 U.S.C. § 1252 (stating that immigration cases must go through Immigration Judge and Board of Immigration Appeals); Porter v. Nussle, 534 U.S. 516, 532 (2002) ("[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life.").

before these administrative agencies; the database included a single such disposition, from a Board of Immigration Appeals matter. The lack of participation in federal administrative appeals may be a critical missed opportunity, for two interrelated reasons.

First, there is strong evidence that counsel in agency proceedings can make a credible difference. Since 2001, for instance, the Executive Office for Immigration Review and the Catholic Legal Immigration Network have partnered to organize the BIA Pro Bono Project.[254] The program has helped identify and coordinate legal representation for over 1,000 individuals. Respondents selected for the Pro Bono Project obtained relief at significantly higher rates than individuals proceeding pro se.[255]

Second, because of demanding standards of review, the converse is also true: absent counsel, plaintiffs have a harder time winning before the agency and subsequently before a federal court of appeals. In immigration cases, for example, federal courts review whether "substantial evidence [supports] the BIA's factual findings."[256] That means "[t]he agency's 'findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.'"[257] On some factual and legal determinations, indeed, federal courts lack any jurisdiction over the agency's determination.[258] That concept is borne out in this dataset: some clinics failed to obtain favorable client outcomes in certain administrative law cases because plausible claims were not presented and exhausted before the agency.[259]

Several barriers, though, encumber clinic participation in agency proceedings. Consider the BIA Pro Bono Project referenced above. The BIA seldom hears argument and rarely publishes any of its resulting decisions (many of its decisions are short, per curiam opinions). Moreover, the BIA is often unwilling to grant requests for modified briefing schedules. Instead, briefs are due within thirty days after a notice of appeal is filed, with the possibility of a single, three-week extension. None of these circumstances is conducive to a semester- or

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254 *See* A Ten Year Review of the BIA Pro Bono Project: 2002–2011, at 2, U.S. Dep't of Just., https://www.justice.gov/sites/default/files/pages/attachments/2015/11/17/bia_pbp_eval_2012-1-13-14.pdf.

255 *Id.* at 12–13.

256 Medina-Rodriguez v. Barr, 979 F.3d 738, 744 (9th Cir. 2020) (quoting Conde Quevedo v. Barr, 947 F.3d 1238, 1241 (9th Cir. 2020)).

257 Nasrallah v. Barr, 140 S. Ct. 1683, 1692 (2020).

258 *See* Anaya-Ortiz v. Holder, 594 F.3d 673, 676 (9th Cir. 2010) (holding that the court lacks jurisdiction over agency determination regarding whether a plaintiff has committed a particularly serious crime).

259 Thomas-Joseph v. Comm'r of Soc. Sec., No. 21-11020, 2022 WL 1769134, at *3 (11th Cir. June 1, 2022) ("Ms. Thomas-Joseph did not raise her right-to-counsel argument before the appeals council or the district court. She thus has forfeited it.").

year-long clinical learning experience. Were that not enough, outreach for the BIA Pro Bono Project is sporadic. At present, the Project's website is no longer publicly accessible, and no case updates have been provided in nearly three years.

Given the results from Parts II and III, administrative agencies should consider introducing clinic assistance programs or revamping existing programs. Doing so can assist in the disposition of cases, thus potentially preventing unnecessary litigation and ensuring timely and accurate resolution of matters.

C. Facilitate Clinic Participation in State Appellate Courts

Finally, institutional reform need not be limited to federal actors. State courts present a promising, yet largely unrealized, path for appellate clinic work.

Case Western's Appellate Litigation Clinic, for instance, represented Terry Barnes before the Supreme Court of Ohio. The case asked whether Barnes could "withdraw his guilty plea when, before sentencing, he discover[ed] evidence that (1) his attorney withheld from him and (2) would have negated his decision to plead guilty had he known about it."[260] Barnes had pleaded guilty to involuntary manslaughter, but later learned that there was security footage corroborating a self-defense claim for him. Though Barnes had lost at the trial and intermediate appellate level, the state supreme court ruled in his favor.[261] That result is a victory for the clinic and the client. But it also underscores the importance of undertaking state work. Had Barnes not received clinical assistance until his case reached federal court through a habeas petition, he might never have obtained any relief. And given the difficult headwinds facing federal habeas petitioners, state criminal appellate work may represent a singular opportunity for clients like Barnes to obtain a favorable outcome in their cases.

Still, as with administrative agencies, clinic participation in state courts has been sporadic. The Network database had fewer than ten state court matters, compared to the nearly three hundred federal court cases. That deficit might be remedied, at least in part, by simply encouraging clinics to consider taking more of a mix of state and federal cases. Federal circuit appointments have long been regarded as the foundational source of appellate clinic work. But that should not dissuade clinics from embracing similar work in state courts. A willingness by clinics to pursue state court work must, however, be met by a concomitant

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260 State v. Barnes, 222 N.E.3d 537, 538 (Ohio 2022).

261 *Id.* at 544.

effort by state courts to offer clinical opportunities. As a promising sign, about twenty states have begun offering structured pro bono appellate opportunities.[262]

Yet these programs are often structured in a manner that thwarts clinical participation. Virginia's program, for example, is extremely limited: "Only three or four pairs of attorneys per year are invited by the court to represent indigent clients on appeal" to the Supreme Court of Virginia.[263] All state appeals first "go to the Court of Appeals of Virginia for an appeal [as] of right," which suggests that a viable appointment effort before the Court of Appeals could foster clinical participation. Yet as of this writing, the Court of Appeals "has yet to create a pro bono program."[264] Likewise, the Supreme Court of Illinois provides a volunteer pro bono program for criminal appeals.[265] But the program explicitly excludes law students from participation (even if the student is being supervised by a clinical faculty member).[266] That exclusion is ripe for reexamination. At the least, as this Article has shown, appellate clinic assistance appears on par with that of another appointed attorney—and there are compelling signs that clinic assistance is in fact better for a prospective client. No evidence supports Illinois's rules restricting clinical participation in the pro bono program.

Conclusion

Do clinics effectively serve their clients and advance the law? This Article endeavors to answer this question by gathering relevant data from various appellate clinics. It finds that these clinics obtain favorable outcomes for their clients, likely at rates comparable to or better than those of other counsel. Their success paves the way for expansion of appellate pro bono and clinical offerings, both among law schools that offer clinics and among institutional actors seeking to close the access to justice gap.

More broadly, this Article represents a necessary step in research and study into clinical efficacy. But it is only a first step. After

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262 Am. Bar Ass'n, Council of App. Laws., Manual on Pro Bono Appeals Programs for State Court Appeals, at i (Oct. 2022), https://www.americanbar.org/content/dam/aba/publications/judicial_division/cal-probonomanual-third-edition.pdf.

263 *Id.* at 54.

264 *Id.*

265 *See Supreme Court Volunteer Pro Bono Program for Criminal Appeals*, Ill. Cts., https://www.illinoiscourts.gov/eservices/pro-bono-program/ (last visited Sept. 23, 2023).

266 *See Eligibility Criteria for Volunteer Pro Bono Program Attorneys*, Ill. Cts., https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/458a9f42-dc65-4181-b545-d795df4a1361/Criteria.pdf (last visited Sept. 23, 2023) ("This program is not currently open to law students with a Rule 711 license or who are participating in a law school clinic.").

all, every year, law schools make significant investments in clinical programming; clinics litigate cases that establish precedent within a circuit or across several circuits; and courts determine whether to seek or appoint counsel, including clinic counsel. Under these conditions, it is critical we understand whether clinics are effective in serving their clients, how they are effective, and how their efficacy might shape the relationship between clients, clinics, and legal institutions in the future.