

MEETING THE NEEDS OF UNDERSERVED COMMUNITIES: CONTRIBUTIONS OF ACADEMIC CLINICS

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To varying degrees in different communities, academic clinics assist in the legal empowerment of the underserved. This discussion inaugurates our series on best practices in providing pro bono services, which will examine how bar associations, private and public interest law firms, solo practitioners, law schools, foundations, courts and governments are working to expand access to justice. Beginning our series with a discussion of the work of law school clinics, this article focuses on the clinical programs at the American University Washington College of Law in Washington, D.C. [www.wcl.american.edu]. As the first law school founded by women, American University from its start in 1896 had at its core the goal of advancing the causes of underprivileged and underrepresented people.²

The role of law schools in pursuing the goal of universal access to justice is broadly acknowledged. Signatories to the Pro Bono Declaration for the Americas [<http://www.nycbar.org/VanceCenter/text.pdf>] commit to emphasize in legal education the importance and practice of the profession's commitment to pro bono legal services. The American Bar Association's Standards for Approval of Law [<http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>] underscore the significance of clinical programs by requiring that a school offer substantial opportunities for live-client or other real-life practice experiences, which can be accomplished through clinics or field placements.

This discussion explores how academic clinics are seeking to fulfill these aspirations and requirements. At the outset, it must be emphasized that the primary goal of an academic clinic is to offer its students experiential learning opportunities and instruction in the lawyering process. A law school clinic will thus use pedagogical criteria to shape its program and determine how individuals will be served.³ Within this framework, academic clinics and the tribunals they work in are developing a wide variety of means by which students can assist in the delivery of legal services to underserved communities.

Areas of Practice

Academic clinics vary in the breadth of the substantive areas in which their students are trained to practice. American University's clinical program is one of the most extensive in the United States, having nine separate clinics, each devoted to a particular area of law and each having its own faculty.⁴ [insert photo of two young women inside office] They are the following:

- The Community and Economic Development Law Clinic [<https://www.wcl.american.edu/clinical/community.cfm>] provides transactional legal services for businesses, NGOs, tenants' associations, farmers' markets and others.

- The Glushko-Samuelson Intellectual Property Law Clinic [<https://www.ipclinic.org>] advises traditional communities, artists, inventors, and others on intellectual property law and represents them before agencies such as the U.S. Patent and Trademark Office.
- The International Human Rights Law Clinic [<https://www.wcl.american.edu/clinical/inter.cfm>] represents indigent immigrants, detainees at Guantánamo Bay, Cuba and others.
- The Janet R. Spragens Federal Tax Clinic [<https://www.wcl.american.edu/clinical/federal.cfm>] represents low income taxpayers in a wide array of tax controversies, including claims for the Earned Income Credit, the primary form of government financial support for the working poor in the U.S.
- The General Practice Clinic [<https://www.wcl.american.edu/clinical/general.cfm>] represents low income clients in matters such as bankruptcy, housing, and consumer protection.
- The Criminal Justice Clinic [<https://www.wcl.american.edu/clinical/criminal.cfm>] both assists prosecutors and represents defendants in misdemeanor and minor felony cases.
- The Disability Rights Law Clinic [<https://www.wcl.american.edu/clinical/disability.cfm>] works largely in the area of special education, and also handles cases under the Americans with Disabilities Act and matters involving the intersection between the criminal justice system and mental disability.
- The Domestic Violence Clinic [<https://www.wcl.american.edu/clinical/domestic.cfm>] represents victims of domestic violence seeking civil protection orders or seeking to change their immigration status under statutes providing for battered immigrants.
- The Women and the Law Clinic [<https://www.wcl.american.edu/clinical/women.cfm>] addresses clients' family-related and other legal issues.

Students in these clinics work directly with clients, determining the client's objectives and developing and executing a case strategy, with faculty supervision typically provided to the student in weekly meetings. The faculty and students of each clinic join in a weekly seminar, which focuses on the lawyering skills and substantive law particular to that clinic's work. The clinics are housed in a self-contained area [photo], with private interview rooms and limited access to work space protecting the attorney-client privilege.

Close to half of American University's graduating law students will have participated in one of these clinics. In most instances, they enroll directly in the desired clinic, which will have course prerequisites pertinent to the substantive area. Lotteries are used when subscriptions exceed capacity.⁵ (Elsewhere, student participation in the clinical programs can be compulsory.⁶)

Court access

While law school clinics can provide counseling and advocacy services other than in litigation, much of student clinic activity occurs in courtrooms or other tribunals or before government agencies. Student practice in these venues relies on the tribunal's permission, the criteria for which are published as student practice rules.⁷ In general, student practice rules require that the client consent to student representation, that the student be in good standing at an accredited law school which provides academic credit for clinic participation, that the student have completed specified coursework or a specified number of semesters in law school, and that the student work under the supervision of (and, when in court, in the presence of) a member of the bar of that court.

Beyond these common elements, student practice rules differ somewhat with the forum, as does the activity which admitted students can undertake. The student practice rules of the U.S. District Court for the District of Columbia [<http://www.dcd.uscourts.gov/LocalRules.pdf>] and the District of Columbia Court of Appeals [<http://www.dccourts.gov/dccourts/about/prose.jsp>], for example, require (1) that the law school's dean certify that the student is of good character and competent legal ability and has sufficient training to participate in matters before the court and (2) that the student certify that he or she is familiar with the court's rules. Under these rules, the supervisor assumes full responsibility for guiding the student's work and for supervising the quality of the student's work. Eligible students may make appearances in these tribunals on behalf of consenting persons. Specifically, in the U.S. District Court for the District of Columbia, the student may engage in activities on behalf of the client in all ways that a licensed attorney may, provided the supervisor participates as detailed in the Rules and subject to any limits imposed by the court. This court requires participating clinical programs to maintain malpractice insurance for their activities and stipulates faculty-student ratios that the clinical program must maintain.

The student practice rules of the U. S. Tax Court [http://www.ustaxcourt.gov/clinics_academic.htm] permit supervising attorneys from qualifying clinics to introduce students when a case is called for hearing or trial. With the Court's permission, the student may present all or any part of a petitioner's case. The supervising practitioner is personally responsible at all times to the Court and to the taxpayer for properly preparing a case.

Practice before Government Agencies

Government agencies are developing programs under which students working in approved clinical programs can represent parties in agency proceedings, under criteria similar to those prescribed by courts' Student Practice Rules, described elsewhere. Under its pilot Law School Clinical Certification Program [<http://www.uspto.gov/web/offices/dcom/olia/oed/lawschoolclinicalcertpilot.htm>], the U.S. Patent and Trademark Office will permit certified students from qualifying clinical programs to practice either patent or trademark prosecution (or both) before the Office, under the strict supervision of a clinic supervisor. Several clinics have been qualified under the pilot program. To qualify, the clinics were obliged, among other things, to describe their case transfer protocols, providing for the seamless representation of an applicant, regardless of academic schedules. Qualifying clinics must also certify that

they have checked for conflicts of interest for each student and clinic practitioner on each application.

The Internal Revenue Service maintains a student clinic tax program [<http://www.irs.gov/pub/foia/ig/spder/wi-22-1012-01.pdf>], permitting IRS personnel to interact with students from accredited schools whose clinics provide for sufficient supervision by practitioners. Students participating in a qualifying program who receive a taxpayer's power of attorney can represent taxpayers before the IRS, under special orders of the IRS's Office of Professional Responsibility.

Informing Potential Clients of Student Clinic Services

In various ways, courts, bar associations, NGOs and government agencies work actively to inform parties who are not otherwise represented by counsel about the services of academic clinics. The U.S. Tax Court, many of whose petitioners appear *pro se*, informs viewers on its home page [<http://www.ustaxcourt.gov/index.htm>] of recognized student clinics and, both when the petition is filed and again when trial calendar is announced, sends contact information for nearby academic clinics to petitioners who are not otherwise represented. The Court, while permanently located in Washington, D.C., travels nationally for trial sessions and utilizes local resources to assist petitioning taxpayers. In many cities, in addition to providing petitioners with contact information in advance, it invites students from nearby academic clinics to attend the first session of a given trial calendar. The presiding judge will offer unrepresented petitioners the opportunity to consult the student attorneys on-site before cases are called and trials are scheduled. In some cities, bar members appear pro bono for consultation at calendar calls and are likewise identified by the presiding judge.

While a tax matter is still under consideration at the Internal Revenue Service, and before the Tax Court has jurisdiction, the IRS can advise taxpayers of nearby academic clinics which have asked to be identified. It can include notices with appointment letters sent to taxpayers and can issue press releases when student clinics become qualified under its program [<http://www.irs.gov/pub/foia/ig/spder/wi-22-1012-01.pdf>]. It can work with local bar associations to publicize the activities of student clinics. The IRS also publicizes the independent Low Income Taxpayer Clinics [<http://www.irs.gov/advocate/article/0,,id=106991,00.html>], which are partially funded by IRS and include, by federal mandate [http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007526----000-.html], many student clinics.

The Domestic Violence Unit of the Superior Court of the District of Columbia maintains intake centers [<http://www.dccourts.gov/dccourts/superior/dv/intake.jsp>] where student attorneys and others can meet with persons seeking protection orders.

NGOs maintain websites specific to particular legal needs and help viewers find pro bono legal services, from academic clinics and others. PIIPA (Public Interest Intellectual Property Advisors, Inc.) [<http://www.piipa.org/index.asp>], for example, introduces intellectual property professionals, including students in academic clinics, to developing countries and public interest organizations seeking pro bono assistance in matters such as health, agriculture, biodiversity, and traditional knowledge. The District of Columbia Bar Pro Bono Program, in collaboration with the D.C. Consortium of Legal

Services Providers, maintains <http://www.lawhelp.org/DC/>, which facilitates referrals to academic clinics and others based on the viewer's location and needs.

Networking with Practitioners

Some academic clinics have created vehicles for outreach to local bar associations. The Janet R. Spragens Federal Tax Clinic [<https://www.wcl.american.edu/clinical/federal.cfm>] at American University has established and trained a network of local practitioners to whom the clinic refers taxpayers whose needs the clinic cannot meet, due to its income eligibility rules or otherwise.

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² From <http://www.wcl.american.edu/publicinterest/>, last visited on July 16, 2008.

³ See, e.g., the program description of the Eugene Dupuch Law School clinic [hyperlink to <http://www.edls.edu.bs/clinical.php>] in Nassau, Bahamas ("The Clinic is operated for the benefit of members of the public, who in the opinion of the Director are entitled to legal aid, with due regard being paid to matters of educational interest and value to the students.") <http://www.edls.edu.bs/clinical.php>, last visited on July 5, 2008.

⁴ American's legal clinical program is ranked second in the U.S. News and World Report Law Specialty Rankings: Clinical Training, available at <http://grad-schools.usnews.rankingsandreviews.com/grad/law/clinical>, last visited on July 21, 2008.

⁵ Karin Brulliard, "Law Students Rush to Meet Needs In Booming Field of Immigration," Washington Post, July 7, 2008, p. B 01.

⁶ This is the case at the University of the District of Columbia David A. Clarke School of Law [hyperlink to <http://www.law.udc.edu/programs/clinics.html>] and the Eugene Dupuch Law School clinic in Nassau, Bahamas [hyperlink to <http://www.edls.edu.bs/clinical.php>].

⁷ See, e.g., LCvR 83.4, Rules of the United States District Court for the District of Columbia, Rule 48, District of Columbia Court of Appeals, "Legal assistance by law students," Section 3, U.S. Tax Court Requirements for Academic Clinical Programs, at http://www.ustaxcourt.gov/clinics_academic.htm, and the Petition Packet for the pilot Law School Clinical Certification Program of the U.S. Patent and Trademark Office.