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Paper accompanying presentation at the Pro Bono & Access to Justice Committee's Session on the Pro Bono Declaration for the Americas

Short abstract:

To varying degrees in different communities, law schools and their academic clinics assist in the legal empowerment of the underserved. Law schools acquaint students with lawyers' professional obligations to underserved communities in many ways. This article focuses on how the curricular, extracurricular and clinical programs at the American University Washington College of Law in Washington, D.C. work toward this objective.

Ten keywords: clinic, student, extracurricular, underserved, empowerment, access, justice, pro bono, school, practice

MEETING THE CHALLENGE OF THE PRO BONO DECLARATION: CONTRIBUTIONS OF LAW SCHOOLS AND THEIR CLINICS

Presentation at the Pro Bono & Access to Justice Committee's Session
on the Pro Bono Declaration for the Americas, October 15, 2008, Buenos Aires

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To varying degrees in different communities, law schools and their academic clinics assist in the legal empowerment of the underserved. Many actors seek to expand access to justice, including bar associations, private and public interest law firms, solo practitioners, law schools, foundations, courts and governments.¹ Law schools, in support of this effort, acquaint students with lawyers' professional obligations to underserved communities in many ways. This article focuses on how the curricular, extracurricular and clinical programs at the American University Washington College of Law in Washington, D.C.² work toward this objective.

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.³ Indeed, the founding of the law school itself was a bold effort



¹ The IBA's Pro Bono and Access to Justice Committee's webpage, www.internationalprobono.com, is a forum in which all of these actors can share their perspectives on this effort.

² www.wcl.american.edu

³ See <http://www.wcl.american.edu/publicinterest/>, last visited on July 16, 2008.

to expand access to justice: as its Articles of Incorporation stated, “the college aims to provide such a legal education for women as will enable them to practice the legal profession,” an opportunity largely denied elsewhere.⁴

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 Americas⁵ 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 Schools underscore the significance of law school 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, and for student participation in pro bono activities.⁶ At least 34 law schools require students to engage in pro bono or public service as a condition of graduation.⁷

This discussion explores how law schools are seeking to fulfill these aspirations and requirements, through academic clinics, curricular offerings, extracurricular activities and other programs.

Academic Clinics

Academic clinics are grounded in the classroom. The primary goal of an academic clinic is to offer its students experiential learning opportunities and instruction in the lawyering process, shaped by the reflection that the classroom perspective allows. Typically, students and professors join in a weekly seminar, which focuses on the lawyering skills and substantive law particular to that clinic’s work. The discussion can also address issues of professional responsibility inherent in the clinic’s practice.

A law school clinic will thus use pedagogical criteria to shape its program and determine how individuals will be served.⁸ 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

⁴ See <http://www.wcl.american.edu/history/founders.cfm>.

⁵ <http://www.nycbar.org/VanceCenter/text.pdf>

⁶ <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>

⁷ Both the University of the District of Columbia David A. Clarke School of Law (see <http://www.law.udc.edu/programs/clinics.html>), and the Eugene Dupuch Law School clinic in Nassau, Bahamas (<http://www.edls.edu.bs/clinical.php>), for example, require student participation in their clinical programs.

⁸ See, e.g., the program description of the Eugene Dupuch Law School clinic in Nassau, Bahamas (“[t]he 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.

most extensive in the United States, having nine separate clinics, each devoted to a particular area of law and each having its own faculty.⁹ They are

- Its Community and Economic Development Law Clinic¹⁰, which provides transactional legal services for businesses, NGOs, tenants' associations, farmers' markets and others,
- Its Glushko-Samuels Intellectual Property Law Clinic¹¹, which 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,
- Its International Human Rights Law Clinic¹², representing indigent immigrants, detainees at Guantánamo Bay, Cuba and others,
- Its Janet R. Spragens Federal Tax Clinic¹³, which 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.,
- Its General Practice Clinic¹⁴, representing low income clients in matters such as bankruptcy, housing, and consumer protection,
- Its Criminal Justice Clinic¹⁵, which both assists prosecutors and represents defendants in misdemeanor and minor felony cases,
- Its Disability Rights Law Clinic¹⁶, working largely in the area of special education,
- Its Domestic Violence Clinic¹⁷, which represents victims of domestic violence seeking civil protection orders or seeking to change their immigration status under statutes providing for battered immigrants, and
- Its Women and the Law Clinic¹⁸, which 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 clinics are housed in a self-contained area, with private interview rooms and limited access to work space protecting

⁹ 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.

¹⁰ <https://www.wcl.american.edu/clinical/community.cfm>

¹¹ <https://www.wcl.american.edu/clinical/ipclinic.cfm>

¹² <https://www.wcl.american.edu/clinical/inter.cfm>

¹³ <https://www.wcl.american.edu/clinical/federal.cfm>

¹⁴ <https://www.wcl.american.edu/clinical/general.cfm>

¹⁵ <https://www.wcl.american.edu/clinical/criminal.cfm>

¹⁶ <https://www.wcl.american.edu/clinical/disability.cfm>

¹⁷ <https://www.wcl.american.edu/clinical/domestic.cfm>

¹⁸ <https://www.wcl.american.edu/clinical/women.cfm>

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. (Elsewhere, student participation in the clinical programs can be compulsory.¹⁹)

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.²⁰ 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

¹⁹ See n. 7 *supra* and accompanying text.

²⁰ 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.

rules of the U.S. District Court for the District of Columbia and the District of Columbia Court of Appeals,²¹ 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 Court²² 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 above. Under its pilot Law School Clinical Certification Program²³, 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. Seven petitioning 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,²⁴ 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

²¹ Ibid.

²² See fn. 19, *supra*.

²³ <http://www.uspto.gov/web/offices/dcom/olia/oed/lawschoolclinicalcertpilot.htm>

²⁴ <http://www.irs.gov/pub/foia/ig/spder/wi-22-1012-01.pdf>.

services of academic clinics. The U.S. Tax Court, many of whose petitioners appear *pro se*, informs viewers on its home page²⁵ of recognized student clinics and, when the 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 contact information as described above, 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.²⁶ It can work with local bar associations to publicize the activities of student clinics. The IRS also publicizes the independent Low Income Taxpayer Clinics,²⁷ which are partially funded by IRS and include, by federal mandate²⁸ many student clinics.

The Domestic Violence Unit of the Superior Court of the District of Columbia maintains intake centers²⁹ 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.),³⁰ 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 a website³¹ 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 Clinic³² 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

²⁵ <http://www.ustaxcourt.gov/index.htm>

²⁶ <http://www.irs.gov/pub/foia/ig/spder/wi-22-1012-01.pdf>

²⁷ <http://www.irs.gov/advocate/article/0,,id=106991,00.html>

²⁸ See I.R.C. section 7526, available at

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007526----000-.html.

²⁹ <http://www.dccourts.gov/dccourts/superior/dv/intake.jsp>

³⁰ <http://www.piipa.org/index.asp>

³¹ <http://www.lawhelp.org/DC/>

³² See fn. 12, *supra*.

otherwise. Clinic students screen cases and identify those cases appropriate for referral. By training practitioners in low-income tax controversy work and by establishing the referral process, the clinic facilitates pro bono work by interested practitioners.

A group of law schools having strong clinical programs founded the Law School Consortium Project,³³ which designs and promotes programs that extend the educational and professionalism missions of law schools beyond graduation to provide training, mentoring, and other support to solo and small-firm lawyers. By helping this segment of the legal profession develop economically viable and professionally satisfying practices, the Project seeks to increase the availability of quality legal services for low and moderate-income individuals and communities, while at the same time providing students with employment options that enable them to develop public interest practices that serve underrepresented individuals.

Curricular Offerings

In addition to the clinical programs in which student attorneys represent clients, academic coursework can directly involve students in public interest work. For example,

- American University Washington College of Law's United Nations Committee against Torture (or UN CAT) Project³⁴ engages six upper-level students in the Committee's work. Dean Claudio Grossman, Chair of the Committee, teaches a seminar on the prohibition of torture. Students draft papers identifying potential compliance issues involving the operative treaty (the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). The group then travels to Geneva for the UN CAT meetings.
- Another curricular offering at American University Washington College of Law, its Human Rights Litigation Clinical Seminar, involves students in analysis and research on pro bono human rights cases.
- Through American University Washington College of Law's supervised externship program,³⁵ students receive academic credit for substantive legal work in not-for-profit organizations and agencies.

Extracurricular offerings

Beyond their classroom offerings, law schools might have designated pro bono programs, staffed by professionals who help match students with outside organizations that do pro bono work, or they might provide administrative support for student groups engaged in pro bono work, or they might rely on student groups to form and run projects.³⁶ Schools may reward or require a specific number of hours of pro bono legal service as a condition of graduation (e.g. 20-75 hours) or they may require a combination

³³ See <http://www.lawschoolconsortium.net/about/projectdesc.html>.

³⁴ See <http://www.wcl.american.edu/ilp/uncat.cfm>.

³⁵ See <http://www.wcl.american.edu/externship/>.

³⁶ <http://www.abanet.org/legaled/probono/probono.html>.

of pro bono legal service, clinical work and community-based volunteer work.³⁷ Participation in these programs might be a prerequisite of graduation, or it might be encouraged by recognition at graduation or otherwise.³⁸ Efforts to acquaint students with pro bono opportunities range from webpages³⁹ to speed networking events which connect students with government and public interest lawyers.⁴⁰

The following illustrate the variety of extracurricular pro bono service opportunities available to students at a school such as American University Washington College of Law:

- The Mid-Atlantic Innocence Project⁴¹ works to correct and prevent wrongful convictions in the District of Columbia, Maryland, and Virginia. It has been housed at American University Washington College of Law since it was established in 2001. In addition to taking classes on wrongful convictions and participating in field investigations, students receive training and assist in screening the hundreds of cases from prisoners who contact the project each year for legal assistance.
- The Marshall-Brennan Constitutional Literacy Project⁴², founded at American University Washington College of Law in 1999, employs second- and third-year law students to teach courses on constitutional law and juvenile justice in public high schools in the District of Columbia and Maryland. In recent years the program has expanded to law schools across the country.
- Students participate in VITA, the volunteer income tax assistance program sponsored by the Internal Revenue Service to help taxpayers complete their tax returns.⁴³

Guidance and Financial Support for Careers in Public Interest Law

Recognizing that a career in public interest might not be economically viable without education debt repayment assistance, certain schools have programs which provide loan repayment assistance for law graduates who work in full-time non-profit, government or other employment in which the graduate serves under-represented or traditionally marginalized populations. Typically, these reimbursement programs stipulate the sort of employment which entitles the graduate to assistance and offer reimbursement based on a sliding scale which accounts for variation in income and family size.⁴⁴ Schools also offer tuition remission to selected students in exchange for

³⁷ ABA Standing Committee on Pro Bono and Public Service, "Pro Bono Publico," available at <http://www.abanet.org/legaled/probono/probono.html>.

³⁸ See, e.g., the Pro Bono Honors Pledge Program at American University's Washington College of Law, described at <http://www.wcl.american.edu/publicinterest/probono.cfm>, requiring participants to complete 75 hours of pro bono and community service work at organizations working on behalf of underprivileged and underrepresented populations.

³⁹ See, e.g., <http://www.wcl.american.edu/publicinterest/>.

⁴⁰ See, e.g., <http://www.wcl.american.edu/publicinterest/programs.cfm>

⁴¹ See <http://www.exonerate.org/>.

⁴² See <http://www.wcl.american.edu/marshallbrennan/>.

⁴³ See <http://www.irs.gov/individuals/article/0,,id=107626,00.html>.

⁴⁴ See, e.g., the Public Interest Loan Repayment Assistance Program (PILRAP) at American University's Washington College of Law, described at www.wcl.american.edu/finaid/pilrap.cfm. Similarly, Yale Law School provides students with assistance under its Career Options Assistance Program, described at

commitments to pursue full-time public interest work for a specified number of years after graduation.⁴⁵ Schools can staff their career development offices with specialists in public service work⁴⁶ and identify career fairs and conferences to inform students of job opportunities.

<http://www.law.yale.edu/admissions/COAP.htm>, The program provides alumni more than \$2 million per year in debt relief.

⁴⁵ The Public Interest/Public Service Scholarship Program at American University is described at <http://www.wcl.american.edu/finaid/pipsscholarship.cfm>

⁴⁶ <http://www.wcl.american.edu/career/publicinterest.cfm>