

LEGAL HISTORY IN THE MAKING

INNOVATIVE EXPERIENTIAL
LEARNING PROGRAMS
IN CALIFORNIA LAW SCHOOLS

LEGAL HISTORY IN THE MAKING:

Innovative Experiential Learning Programs in California Law Schools

SELMA MOIDEL SMITH

INTRODUCTION AND CONCLUSION

From the Editor

My career as a lawyer began almost eighty years ago when I was sworn in by the California Supreme Court, meeting in Los Angeles, on January 5, 1943. Among the many future events unimagined by this young lawyer was that I might have the honor and pleasure of editing *California Legal History*, the Journal of the California Supreme Court Historical Society, these past fourteen years.

As introduction to this special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” I return to a topic that was urgent when I was new in the law — the need for clinical education in law schools. In 1948, I was invited by the International Bar Association to present a paper on legal education at their annual conference at the Hague. My paper was a plea for practical training as a necessary part of legal education.

With the enthusiasm of youth, and the quaintly gendered language of the time, I argued that law schools “have taken the money of the student under the false pretense that they are preparing him to practice law, when in fact, he will

have to learn the *practice* of the law after admission to the bar.” In contrast, I referred to the pathbreaking example of Duke University, which required clinical training of law students at that time, and to the *optional* programs at schools such as Northwestern, Harvard, Cornell, Cincinnati, and Texas.

I made the case for the public benefit to be gained from well-prepared new lawyers at a time when “the vast majority of them have not seen the inside of a courtroom, have never prepared pleadings, have never seen many of the legal documents they pretend to know how to draw, and know absolutely nothing about the orderly presentation of a case.” I urged that the law student should have “as many opportunities as possible to deal with a live flesh-and-blood client. He should learn how to get the facts, how to gain the confidence of his client, and how to recognize when his client is withholding the facts.”

No other presenter addressed the topic of practical training, yet I am gratified to report that the IBA House of Deputies adopted the resolution: “That any system of legal education should provide for an adequate measure of practical training before a student is permitted to practice the profession of the law.”¹ At later IBA conferences, I found that my paper had been reprinted both in English and other languages.

Since that time, I have observed three waves in the move toward wider adoption of practical legal education. Each wave has emphasized the pedagogical value of such training for the student. The differences have come in the intended beneficiaries of the students’ efforts. In the first wave, the most that I or the schools named above dared to hope was that clinical programs should provide pro bono services to individuals in need. This was reflected in the early legal-aid clinics at leading law schools. In the second wave, commencing in the 1970s, the mood of the times broadened the focus to aiding worthy social groups and causes.

For the past decade or so, a third wave has again redefined the beneficiaries of law students’ clinical efforts, in tandem with a broader trend of redirecting aid from charity toward self-reliance (often citing the well-known adage, “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.”). That is the theme of this special section.

¹ International Bar Association, Second International Conference of the Legal Profession, August 15–21, 1948, The Hague, “Summary of Proceedings and Resolutions Adopted by the Conference,” Symposium VI: Legal Education and Admission to the Profession (including “Curricula for Legal Education” by Selma Moidel Smith and Resolutions on Legal Education, p. 26).



AT THE FIRST UC BERKELEY SCHOOL OF LAW CONFERENCE ON THE CALIFORNIA SUPREME COURT, NOV. 14, 2008: (L.-R.) CHIEF JUSTICE RONALD M. GEORGE, JUSTICE KATHRYN MICKLE WERDEGAR, CHIEF SUPERVISING ATTORNEY JAKE DEAR, SELMA MOIDEL SMITH, IMMEDIATE PAST PRESIDENT RAY MCDEVITT, AND PRESIDENT DAVID MCFADDEN.

On the following pages, you will find a series of articles “devoted to current law school initiatives that, beyond providing *assistance*, also promote positive *change* in the law and society.” With those words, I invited an article from one experiential learning program at each of the seventeen ABA-accredited law schools in California that offer such programs. To our good fortune, twelve were ultimately able to provide such articles. As you will see, they come from diverse — and at times divergent — social, political, and teaching perspectives, yet they have a shared earnestness of purpose.

My invitation said, “The piece could include some historical background on the creation of the project (how this need came to be felt and put into action), its past accomplishments, current efforts, intellectual content given to the students, and particularly some discussion of current or recent individual students and their outcomes, both personal (growth, awareness, background, motivation) and results in the community.” I hope you will find they have each delivered more than I asked.

And, as you have no doubt surmised, this is also the introduction to my own farewell. Having reached the age of 103 this past April, I feel the time has come to declare my work as editor complete. Two years ago, I reflected on the course of *California Legal History* as both a journal and a field of study;² so I shall not repeat myself. Instead, I will say that I chose,

² Selma Moidel Smith, “Fifteen Years of *California Legal History*: The Role of a Journal in an Emerging Field,” *California Legal History* 15 (2020): 1–6.

with this return to an early interest, to dedicate my final volume to a forward-looking topic.

I am grateful to many friends and colleagues:

To founding editor Harry Scheiber, for inviting me to join the Society Board twenty-one years ago, and for his friendship over all the years.

To Kent Richland, who as Society president first welcomed me to the Board.

To the late Gordon Morris Bakken, for proposing that I succeed him as editor.

To former California Chief Justice Ronald M. George, for his early and continuing kindness.

To Justice Kathryn Mickle Werdegar, for the honor and joy of our friendship since the Society first brought us together over twenty years ago.

To Jake Dear, who has been my constant friend and frequent coworker on Society projects.

To Molly Selvin, for her warm collegiality as editor of the Society's sister publication, the *Review*.

To Society Presidents Jim Shekoyan, Ray McDevitt, David McFadden, Dan Grunfeld, Jennifer King, George Abele, Richard Rahm, and Dan Kolkey, for their continuing confidence.

To David Ettinger, who has faithfully given public exposure to these pages.

To Editorial Board members Stuart Banner, John Burns, Lawrence Friedman, Christian Fritz, Joseph Grodin, Laura Kalman, Peter Reich, and Reuel Schiller, for their individual contributions over the years.

To David McFadden and Joyce Cook, who have tirelessly promoted the contents of each volume on the Society's website.

To the Society's director of administration, Chris Stockton, for his cheerful and able administrative support.

To design and production artist Elaine M. Holland, for her caring friendship over the course of fourteen volumes, and for making each page a delight to read.

And to "Chief Tani" — California Chief Justice Tani Cantil-Sakauye — for being herself, and for giving me the privilege of sharing her friendship.

August 2022

THE COMMUNITY JUSTICE CLINIC:

Pepperdine Caruso School of Law

JEFFREY R. BAKER*

BUILDING SOMETHING NEW

The Community Justice Clinic had a client with a good idea; the idea created a tricky problem that required a creative solution. The clinic students had never handled such a matter before, so they were reluctant to volunteer. The professor often told the students that a lawyer's process is more important than the lawyer's expertise, and bringing process and judgment to a problem will yield the necessary expertise to serve the client. A brave student raised her hand and said she would try.

The client's idea was to build a hospital ward in an African nation. The client is a U.S. nonprofit who works to advance access to healthcare for women in developing countries and to train doctors to expand local capacity. When the client asked its local partners in Africa what they needed

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Jeffrey R. Baker is a Clinical Professor of Law, the Associate Dean of Clinical Education and Global Programs, and the founding director of the Community Justice Clinic at Pepperdine Caruso School of Law.

most, they replied that a full ward for the care and treatment of patients would be the next necessary foundation to expand and sustain their work. The good idea created the tricky problem of a U.S. nonprofit executing and financing the transaction to ensure that the ward would rise on the campus of the public hospital in Africa. It would require comparative legal research, cultural competence, trustworthy partners, clear expectations, and speed. The brave student raised her hand and volunteered to try.

This is the heart of clinical education, a courageous, novice student stepping into vital work that will affect the trajectory of a client's life, work, liberty, dreams, rights, and goals. The stakes are high, and the experience transforms law students into lawyers. Under supervision, clinic students move from "thinking like lawyers" to being lawyers in the service of clinic clients.

In this case, the student started researching contract laws and forms that would satisfy state and foreign jurisdictions, developing draft contracts between the nonprofit client, the local partner hospital, and the contractor. The student had never drafted a contract on her own before, and this was a critical challenge. The professor supervised the student's work as she developed the contracts in a cycle of research and preparation, drafting and editing, reviewing and reflecting on the work product. The client had many questions, and when the student completed the draft, she and the professor shared their concerns that they might have missed important details in drafting a contract for use in a distant jurisdiction.

The professor reached out to a former graduate student, then a young lawyer in the other country, to ensure that the contracts would be workable, understandable, and enforceable in the other country. The clinic class discussed how cultural competence, humility, and benevolent assumptions are necessary for excellent lawyering, and being mindful of one's own limitations and blind spots is essential to avoid mistakes and shortcomings. So the professor and the student, with the client's permission, engaged the pro bono services of the foreign lawyer who "translated" it into local form with Commonwealth English, ensuring that it conformed to local practice. The clinic student was gratified and encouraged when the local lawyer did not change any of her substantive work.

Within a few weeks of her raising her hand to volunteer, the parties had signed the contracts. Within eighteen months, the hospital ward was complete, and the parties organized a grand opening. Since then, hundreds of women have received free health care, and young doctors and nurses have expanded and improved their practice. The student grew in confidence and capacity, too. She learned important lessons about drafting contracts, but she learned more about the client, complex sets of interests, cross-cultural and foreign practice, and how to progress from problematic idea to practical solution. Her classmates learned from this process during case rounds in the weekly seminar, and the professor learned from tackling an ambitious new project in the clinic.

FOUNDING THE COMMUNITY JUSTICE CLINIC AT PEPPERDINE CARUSO SCHOOL OF LAW

In 2013, after a season of discernment and introspection about its clinical programs, the Pepperdine University School of Law, now Caruso School of Law, welcomed a new clinical professor and director of clinical education, this author, onto the law faculty with the rare opportunity to design and launch a clinic from scratch. The faculty considered the existing clinics, curricular gaps, and community needs and decided to develop the Community Justice Clinic.¹

The Community Justice Clinic expanded the scope and reach of the existing clinics in its practice, clientele, and teaching objectives. Its primary work is serving as general counsel to nonprofits, nongovernmental organizations, community and religious organizations who are serving marginalized and vulnerable neighbors in California, the United States, and around the world. Students learn corporate, transactional, and policy practice while handling matters involving incorporation, governance, tax exemption, transactions, intellectual property, compliance, policy, and human rights.

¹ Jeffrey R. Baker, *Case Rounds: Lessons from Launching a New Clinic at Pepperdine*, CLINICAL LAW PROF BLOG (Oct. 24, 2014), https://lawprofessors.typepad.com/clinic_prof/2014/10/case-rounds-lessons-from-launching-a-new-clinic-at-pepperdine.html.

In 2014, the Community Justice Clinic joined the law school's five existing clinics: Legal Aid Clinic, Ninth Circuit Appellate Advocacy Clinic, Mediation Clinic, Special Education Advocacy Clinic, and the Refugee and Asylum Clinic. Since then, the school has launched several more clinics: Restoration and Justice Clinic, Low Income Taxpayer Clinic, Startup Law Clinic, Disaster Relief Clinic, Faith and Family Mediation Clinic, and the Religious Liberty Clinic. The Appendix at the end of this article provides a brief history and description of each of these innovative legal clinics.

The faculty decided that the Community Justice Clinic ought to diversify the educational and practice experiences in the clinical program. The existing clinics were and are valuable and effective, but they all represented individuals and provided experiences that were largely variations on litigation practice. This is vital work, but it is not the only work. Recognizing demand for corporate, transactional, and policy practice for organizations, and perceiving great demand among potential clients, the Community Justice Clinic has served scores of clients on hundreds of matters since it launched in 2014. It has developed a practice among nonprofits, nongovernmental organizations, community and religious organizations who are devoted to human rights, social justice, economic development, environmental sustainability, and access to education and healthcare among marginalized and vulnerable communities. Its practice has expanded beyond Southern California to include national, foreign, and international clients around the world.

Every Pepperdine legal clinic serves two major purposes. First, the clinics teach law students how to practice and how to be lawyers in client-centered practices designed for their professional formation, critical reflection, and essential, transferable experiences. Second, they each serve clients in great need with pro bono, public interest practice to advance access to justice in our communities, to instill an ethic of pro bono service and public citizenship in students. Each clinic has a different scope and focus of practice and different styles of lawyering, so that students can explore and learn about the profession, practice, and themselves.

At Pepperdine Caruso School of Law, the clinics are part of a robust experiential learning program. To graduate, all students must complete at least fifteen units of experiential learning courses, and they may fulfill this requirement with custom paths through clinics, field placements, and simulation courses that ensure they are as ready as possible for excellent,

ethical practice when they graduate. The law school adopted this standard when the California State Bar was considering such a requirement for all law schools in the state, but, even when the state bar abandoned those proposals, the law school kept it as a commitment to the students' formation and readiness.

Specifically, the Community Justice Clinic meets these objectives with a practice focused on corporate, transactional, and policy work for organizations devoted to justice, charity, development, and empowerment within and among communities in need. It offers students experience as general counsel to corporations, advancing charitable and corporate purposes, advising on compliance, designing and executing transactions, and empowering clients with analysis and guidance for their own justice work.



EVERY SEMESTER SINCE FOUNDING THE COMMUNITY JUSTICE CLINIC, PROFESSOR BAKER HAS ASKED STUDENTS TO SIGN THIS CALIFORNIA STATE FLAG AS A SYMBOL OF THEIR COMMITMENT TO ITS CLIENTS AND COMMUNITIES AND THEIR CAREERS AS PUBLIC CITIZENS ADVANCING ACCESS TO JUSTICE. THIS FLAG HANGS IN THE CLINICAL OFFICES AT PEPPERDINE CARUSO SCHOOL OF LAW AND BEARS THE SIGNATURE OF ALMOST EVERY STUDENT IN THE CLINIC SINCE 2014.

Photo: Jeffrey R. Baker

Clinical Pedagogy and Practice

Throughout the history of clinical legal education in the United States, clinical professors and programs have balanced the twin goals of practice and pedagogy. The earliest clinics were essentially legal aid offices auxiliary to law schools in which students assisted supervising attorneys with traditional practice, learning on the job. In time, drawing from many sources, clinical professors began to develop more specific and critical methods of teaching and supervision. This began to shift the emphasis toward pedagogy. Even now, law school clinics exist across a spectrum of programs that emphasize the legal services they can offer to clients and those that prioritize teaching and student formation. This is not a controversial debate but a fundamental decision at the foundation of a school's programs that informs its approach and development.

At Pepperdine Caruso School of Law, the clinics prioritize pedagogy and design the practice to serve teaching. Good teaching and training requires good lawyering and effective, excellent practice, so the clinical faculty design their practices, select clients, and choose cases that will advance the students' formation while providing competent, ethical service to clients. This necessarily requires some limitation to the scope and complexity of the practice, because the supervising professors aim to give the students as much independence, autonomy, responsibility, and client contact as possible. By establishing clear expectations with clients about work on discrete matters, students can assume central responsibility for their work and the client relationship in the clinic. This serves the clients well and accelerates the students' learning and training.

At the heart of clinical pedagogy are the methods of non-directive supervision and reflective practice. Non-directive supervision is an approach through which a teacher does not give orders that a student must follow but leads a process of questions, analysis, and inquiry that leads a student to make their own assessments and decisions about a matter, issue, or problem. For example, if a client asks a student whether a certain transaction will risk its tax-exempt status, the professor will not tell the student what to say or what to do to find out. Rather, the professor will ask the student how the student plans to approach the question, what the student plans to do to analyze the issue, and determine the answer or advice for the client. The professor will be available for guidance, advice, direction,

and encouragement, but the student will bear principal responsibility for research, analysis, counsel and communication with the client. The professor will review and approve the final product, but the student should bear the weight of obligation, anxiety, responsibility, and duty to the client. This ensures good service to the client while moving the student through emotional, cognitive and professional development.

Alongside non-directive supervision, good clinical pedagogy relies on constant reflective practice.² This is a progressive cycle of preparation, performance, and reflection at every phase of a student's experience. The objective is to equip a student with judgment and wisdom sufficient for the critical decisions and challenges they will face in practice. With each new matter or task, the professor will guide the student's preparation, with direct training and persistent inquiry about the student's work. Then, the student will perform the task, largely without direct supervision, so that they must rely on themselves and their own preparation for the moment. When the task is complete, the student returns to the supervisor to reflect on the performance and outcome, with critical questions and observations about what went well or poorly, with clear lessons to implement in the future. With countless variations and context, the students and teacher engage in this cycle in each new context so that the student gains the benefit of the experience, with deepening wisdom, maturing judgment, and cautious confidence that will flourish beyond the clinic course.

TEACHING THEORIES, METHODS, AND THE THIRD APPRENTICESHIP

At the heart of the Community Justice Clinic is the work of teaching and training students how to be excellent, ethical lawyers through non-directive supervision and reflective pedagogies. In essence, this means that the supervising professor generates opportunities for students to practice with extensive client contact, reflection, and critical, creative independence to help clients solve problems and achieve their goals. The basic role of any lawyer is to meet and know a client, spot their problems and issues,

² See Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317 (2014).

identify their goals, map a path forward toward that goal, then accompany the client on that path.

In theoretical terms, this is the “third apprenticeship” of professional education. In 2007, the book, *Educating Lawyers: Preparation for the Practice of Law*, edited by William Sutton and others, commonly known as the Carnegie Report, outlined three critical components of legal education and training. Each of these components are necessary and build on one another toward the preparation of young lawyers. The first is the Cognitive Apprenticeship, composed of doctrinal classes that teach substantive law and how to analyze it. These are usually traditional law school classes that teach students to “think like a lawyer.”

The second is the Practice and Skills Apprenticeship, composed of simulations, legal research and writing, trial advocacy, moot courts and technical skills. These are technical courses that teach students how to do things that lawyers do with craft, skill, and precision.

The third is the Professional Identity and Purpose apprenticeship. These courses and experiences synthesize knowledge of the law with lawyerly technique and craft in the service of a client. This involves actual experience so that students learn how to “be a lawyer,” not merely to think like one. This is the role of law school clinics, to lead students through the process of analyzing the law and practicing their skills in the service of real clients with whom they must communicate and collaborate.

In technical terms, the Community Justice Clinic’s syllabus includes program learning outcomes and student learning outcomes that conform to the university’s curricular assessment systems. From the Spring 2022 syllabus, these are the program learning outcomes for the Community Justice Clinic. Students will demonstrate:

- Knowledge and understanding of substantive law;
- Proficiency in legal analysis and critical reasoning;
- Proficiency in legal research and in written and oral communication;
- Professional lawyering skills;
- A knowledge and understanding of a lawyer’s moral, ethical, and professional responsibilities; and
- Awareness of their responsibility to society, including providing pro bono services.

And these are the student learning outcomes setting out goals for students in the clinic:

- Use their substantive knowledge of the area of law in which they practice, including nonprofit formation, governance and compliance, and the areas of law necessary to advocate and advise clinic clients;
- Practice research, writing and professional communication skills;
- Practice critical lawyering skills, including analysis and case evaluation, interviewing, fact gathering, negotiating, advising, counseling and advocating for clients and causes;
- Demonstrate judgment, wisdom, discipline and legal decision-making practices;
- Operate within the dynamics of practice with real clients, adversaries, courts, lawmakers and related professions and continue students' preparation to join the profession;
- Prepare for their formation as ethical, effective professionals;
- Assess the role of lawyers in our social, political and legal systems;
- Identify and assess issues of justice, morality and ethics in their practice, the law and the communities in which they work;
- Relate toward their own sense of calling, vocation and practical interest in their future work;
- Appraise their role and performance as a professional and engage with discipline and deliberation in self-criticism, lifelong learning and growth; and
- Prepare for practice and progress toward professionalism by sharing lessons, insights and experiences gleaned by other students in other field placements.

In practical terms, the goal of the clinic is for students to be as ready as they can be to serve clients when they graduate with competence and confidence, to learn and adapt with wisdom and sound judgment, to communicate with clarity and compassion, to bring their knowledge and skills to bear in the service of a client who trusts them. This means that students must understand and bear the ethical and moral weight of a client's life, liberty, family, fortune, and dreams, even as they practice clear communication, strategic and tactical decision making, research and analysis, drafting and editing, advocacy and negotiation, advice and counsel.

To these ends, the clinic begins each semester with a front-loaded schedule of substantive law and technical skills, then progresses toward sessions in which students gain more experience, responsibility, and time for reflection and work during class. In the second week of class, students must learn the basics of the laws governing nonprofits in California and the United States. To accelerate their training, however, the students must teach this to each other. The professor assigns pairs of students to prepare presentations on various aspects of nonprofits, corporations, and tax law then present these to each other. The students must study and learn the substance, and they also gain practice in communication, research, and collaboration with each other early in the semester. This exercise combines the first and second apprenticeships in short order to prepare them for contacting their clients together.

In the next early class sessions, students discuss the role of lawyers and relationships with clients, with a specific focus on the steps and ethics of taking on a new client and beginning a new matter. In clinical teaching, students often benefit from observing the discrete component parts of a process and relationship, even if those components are rarely discrete or linear in real life. In these exercises and discussions, the teacher and students are able to examine and discuss the intricate beats of client communication and counsel, so that when they reach out for their first interviews, they have a better sense of the expectations and dynamics necessary for a strong start.

Across all of the early sessions and throughout the course, the professor and students consider and examine the ethics and rules of professional responsibility that govern the practice and guide their work with clients. This begins with a strident discussion of confidentiality and the policies that govern data security and practices in the legal clinics. These conversations continue in their richest depth as issues and situations arise with clients and matters, especially involving conflicts of interests, moral qualms, and truth telling. Students begin to see that ethical issues do not announce themselves but arise in any context and case, requiring vigilance and principle to maintain an ethical practice.

Strong writing is essential to any law practice. In the Community Justice Clinic, virtually all of the students' work product and service to clients is in writing: research memos, opinion letters, articles of incorporation and

bylaws, leases and contracts, and other documents. The professor commits an early class session on good style, form, and advice for effective legal writing, emphasizing accessibility and clarity for readers in multiple contexts. Much of the best teaching and learning happens in the latter phases of the semester when the students submit drafts for review and approval from the professor. Then the professor can offer constructive critiques, suggestions, edits and revisions with detailed explanations of guidance.

Case rounds are the signature pedagogy of clinical legal education in the United States.³ These are facilitated discussions in which students present their work for clients to the rest of the class, seeking constructive feedback, posing questions, identifying issues, and sharing lessons that they have learned in their work. In rounds, students will learn from each other and accelerate their own experiences by receiving insights from each other. This may be a simple round of updates and questions from students, or it may be a deeper, focused conversation on a specific theme emerging from the students' cases, or a long discussion of a single case. In the Community Justice Clinic, most class sessions include rounds in some form, and many sessions are only extensive case rounds. Once students have covered the basics of the law and skills they will need in the clinic, the greatest teaching and learning in the clinic comes during rounds. In rounds, students must communicate and critique their own work, and they will recognize the vital value of collaboration with their peers.

During the latter half of the semester, the professor assigns the students to choose one of their clients and to tell their stories to the class. This is an exercise in intentional storytelling with multiple functions. To answer certain intentional questions during their presentations, the students must research their clients' origins, missions, purposes, personalities, and contexts. They examine the charitable and justice work that the clients undertake in their communities, then locate the discrete legal matters the clinic is handling within the larger contexts of the clients' histories. This makes an implicit lesson specifically explicit for the students, that knowing the client well will make the discrete legal work more meaningful and valuable

³ See Susan Bryant & Elliott Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007); Elizabeth Cooper, *The Case for Structured Rounds*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINIC PEDAGOGY (Carolina 2014).

to the client. It emphasizes the need to know a client well. By discussing the clients' work, the stories spark rich and serious discussions about the issues of injustice, inequity, coercion, and struggle that their constituents face, and it deepens the students' understanding of lawyers' work in the world. The students recognize more clearly that their discrete legal tasks contribute to critical work for human dignity and access to justice.

Throughout the semester, the students and professor enter into focused, personal conversations about life as a lawyer, squaring careers with personal values, finding meaning in their vocations and employment, and developing wisdom and resilience. The legal profession has a long history of tendencies toward poor mental health, failing relationships, depression, substance abuse, vicarious trauma, and burnout.⁴ The hope of these discussions is to equip students with honest expectations about the realities and pressures of the profession, then to equip them with hope, perspectives, and ideas that may enable them to chart fruitful, vibrant, and healthy paths through meaningful careers.

The Community Justice Clinic uses a formative assessment tool three times during the semester. This is a rubric with a comprehensive list of lawyering skills and virtues based on the work of Shultz and Zedeck.⁵ For each skill and attribute, the teacher or students may assess their readiness as "developing," "competent," or "exemplary." This assessment is formative and has no bearing on the students' grades or credit for the course. Rather, the objective is to give students a sense of the scope and expectations for the profession and the work they need to do to be ready for practice after graduation. The professor gives the students the blank form at the beginning of the semester with instruction only to read and consider it so that students can calibrate their own objectives for improvement. At the mid-term, the professor asks the students to evaluate themselves honestly and confidentially, for their own motivation, admonition, and critique, and to

⁴ Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434766.

⁵ Marjorie Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: A New Assessment for Use in Law School Admission Decisions*, CELS 2009 4th Annual Conference on Empirical Legal Studies Paper (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118.

help the professor identify areas to cultivate for each student. At the end of the term, the professor evaluates each student based on supervising and observing them all semester. This a parting reflection from the professor, often with a personal note to encourage the student in their next steps toward practice after graduation.

PRACTICE

The Community Justice Clinic has a client-centered practice, meaning that it supports its clients' visions, goals, and missions. The clinic does not seek to advance specific causes itself, but it pulls alongside its clients who are working in their communities to advance social justice, human rights, economic development, access to resources, and empowerment for people who are often excluded. To strengthen and support its clients, the Community Justice Clinic offers three main practice areas: corporate practice, general transactional and civil practice, and policy research. The clinic does not litigate, but it does advise clients on litigation and represents clients in negotiations and related matters.

Corporate Practice

The daily work of the clinic is incorporation and governance of nonprofit corporations. Clinic students assist clients by guiding them through the steps for launching public benefit corporations in California, from drafting and filing articles of incorporation and crafting and adopting bylaws to filing required forms with the California secretary of state and the attorney general. Once incorporated, students assist clients in their applications for tax exempt status with the Internal Revenue Service and the California Franchise Tax Board. Among many others, the clinic has helped incorporate tax-exempt, public benefit corporations that provide after-school tutoring and mentorship for public school students in under-resourced neighborhoods in Los Angeles; that accelerate access to temporary housing for people vulnerable to eviction; that advance market-based approaches to soil conservation and resilient agriculture; that provide sustainable gardening projects in homeless shelters.

The clinic also advises clients on compliance and good governance. Many clients are small nonprofits whose founders and directors are related

or work closely together, and this can raise issues of loyalty and conflicts of interest. The clinic often advises clients how to structure their boards, officers, and transactions to avoid risk to tax-exempt status and to maintain sound, ethical practices. This is good lawyering for students to identify and navigate ethical and legal issues arising across complex and dynamic relationships. For example, a team of students helped a newly incorporated nonprofit draft a compliant contract between it and an affiliated for-profit real-estate company, where several of the board members overlapped, to provide some housing units specifically for women and teens who had become homeless.

In one particularly challenging case, clinic students advised a church and helped revise its bylaws after extended, vitriolic litigation among its members; several members claimed a right to depose a minister and raised hard questions about who was a member and who could lead the community. The clinic students met with the church leadership after that litigation ended to help the community draft and adopt standards and rules that would bring clarity, fairness, and peace to the community and its hard decisions in the future.

General and Transactional Practice

The second thread of practice in the clinic is advice and representation in general civil and transactional practice. This does not include litigation, but it does include contracts and leases, negotiations with potential opponents, and assisting clients with other matters that are essential to their charitable and justice work in the world.

For example, a client had an idea to develop a mobile app to provide access to medical care and information to indigenous women in Central and South America. The client had a counterpart organization in Central America and leadership from the indigenous communities it sought to serve. Because many of the women were able to communicate best with cell phones, even at great distances from urban centers and traditional hospitals and clinics, the nonprofit began work to develop an app to promote telehealth and connection with doctors and nurses. The clinic researched and advised the client on digital privacy laws in U.S., international, and local jurisdictions where they planned to launch the app. That research

informed the design and deployment of the technology that would potentially help thousands of indigenous women in outlying villages.

In another case, the clinic represented a small, nonprofit farm with missions to advance farmworker rights and opportunities; promote sustainable, organic, small-scale agriculture; and feed its community, which has few resources. The clinic helped negotiate multiple leases for farmland with owners, and a student worked up a sales agreement for a large, refrigerated container when the client relocated its principal farming operations.

As clients mature, the clinic takes on new issues and matters that arise long after incorporation. For some clients, this has meant expanding into areas of intellectual property and more sophisticated business matters. The clinic has developed a reliable, basic practice in applying for trademarks to create new value for nonprofit clients as they advance in their work.

Policy and Research Practice

The Community Justice Clinic is a client-centered practice and does not seek or adopt specific positions or projects on its own. Very often, its clients engage the clinic to research and analyze policies that will advance their work for social justice and human rights. Clinic students have researched constitutional and statutory laws on behalf of a homeless shelter looking to navigate a thicket of issues to ensure safety, public health, and access to its facilities while dignifying the rights of people inside and outside the shelter. For another client, clinic students have evaluated U.S. policies and practices related to asylum-seekers and refugees under international human rights laws and treaties.

Another client works with counterpart organizations and civil-society groups in multiple developing nations. To support its work, the Community Justice Clinic has undertaken multiple projects to research and document civil rights and entitlement laws in various countries with work product that the client then shares with partners in the field to empower people in great need. In collaboration with an international client and several partner clinics in South America, the clinic has undertaken critical research on human trafficking laws in every nation in the Americas, to support the work of law reform and remedies for people in coerced and exploitative labor across borders.

CONCLUSION

In its first eight years, about one-hundred and fifty law students in the Community Justice Clinic have served about sixty clients on hundreds of matters. Students gain experience, insight, and formation through practice with organizations with diverse needs. The clients improve and expand their capacities for service, charity, and justice among people and communities in great need. This advances the law school's missions of education and service, and it instills competence, confidence, and virtue in young lawyers with commitment to excellent, ethical, generous practice as public citizens.

★ ★ ★

APPENDIX: THE LEGAL CLINICS AT PEPPERDINE CARUSO SCHOOL OF LAW

THE LEGAL AID CLINIC

The Legal Aid Clinic was Pepperdine's first clinical program, launched through student initiatives in 2001 to serve clients on Skid Row in Downtown Los Angeles. Its director, Professor Brittany Stringfellow Otey, was a third-year law student in the inaugural clinic and returned after a couple of years of practice to lead the clinic for the next two decades of teaching and practice. The Legal Aid Clinic operates at the Union Rescue Mission to serve hundreds of clients each year with a general civil practice to help people break cycles of homelessness and extreme poverty.

THE NINTH CIRCUIT APPELLATE ADVOCACY CLINIC

The Ninth Circuit Appellate Advocacy Clinic is a collaboration with the firm of Horvitz and Levy in Los Angeles and the Ninth Circuit Court of Appeals. The clinic directors are partners at the firm, first Jeremy Rosen, now Curt Cutting. They work with the appeals court's pro bono referral panel to identify meritorious cases by pro se appellants who need able counsel. Under supervision, students receive the record, write principal and reply briefs, and handle oral argument before the Ninth Circuit. These are typically civil rights cases, often representing prisoners. The clinic has a remarkable record of success while providing rare appellate experience for law students.

THE MEDIATION CLINIC

The Mediation Clinic, now under the direction of Professor Stephanie Blondell, was the first clinic in the law school's Straus Institute for Dispute Resolution. The Mediation Clinic operates in several courthouses of the Los Angeles Superior Court to mediate small claims between pro se litigants. Students receive intensive mediator training before attending docket calls in small claims court; there they mediate cases, usually under court order or direction, before the parties try their cases. They have a very high settlement rate, assisting parties achieve positive outcomes, relieving the courts' dockets, and providing exceptional experience for future litigators and mediators.

THE SPECIAL EDUCATION ADVOCACY CLINIC AND THE REFUGEE AND ASYLUM CLINIC

The Special Education Advocacy Clinic and the Refugee and Asylum Clinic both provided important practices and student experience in the early years of the law school's clinical program. The Special Education Advocacy Clinic, under the direction of former Professor Richard Peterson, represented public school students and their families in cases seeking reasonable accommodations for disabilities in public schools. These were often negotiations or administrative proceedings to protect the students' civil rights and assure access to education under the law. The Refugee and Asylum Clinic, under the general direction of former Judge Bruce Einhorn, represented clients in cases for asylum and immigration determinations in immigration courts. For funding and structural concerns, the law school wound up both of these valuable clinics by 2016.

THE RESTORATION AND JUSTICE CLINIC

In 2015, Professor Tanya Asim Cooper joined the faculty to launch the Restoration and Justice Clinic with a practice serving victims of domestic violence, sexual assault, and human trafficking. Its practice includes civil hearings and trials on behalf of victims of intimate partner abuse and significant work with expungements and vacatur on behalf of liberated victims of human trafficking in Los Angeles.

THE LOW INCOME TAXPAYER CLINIC

In 2016, with a significant, ongoing grant from the Internal Revenue Service, the law school began the Low Income Taxpayer Clinic under the direction of Professor Isai Cortez; it also practices on Skid Row and provides critical advocacy for poor clients seeking relief from burdensome tax debts or penalties that keep them from rising from poverty and homelessness. This provides students with experience in tax practice and advocacy in administrative law.

THE STARTUP LAW CLINIC

In 2017, the Palmer Center for Entrepreneurship and the Law founded the Startup Law Clinic under the direction of Professor Sam Wu to provide

expert legal services to new businesses in the technology sector, assisting them with incorporation, finance, and protecting intellectual property. This provides experience for students interested in entrepreneurship, incorporation, and the business matters of new enterprises.

THE DISASTER RELIEF CLINIC

Later in 2017, after Hurricane Harvey struck Texas, the law school experimented with a pro bono project to assist clients with remote FEMA appeals. After several wildfires, including the catastrophic Woolsey Fire in Malibu and on the Pepperdine campus, the law school founded the Disaster Relief Clinic under the supervision of this author and Professor Sophia Hamilton, to provide services to clients suffering losses from natural disasters.⁶ Students gain experience in client-centered, trauma-informed, triaged practice with FEMA and insurance matters, rental and housing issues, and rebuilding challenges. The clinic continued until 2022, when the law school decided to pause it but to maintain resources, finances, and forms to relaunch it quickly when the next inevitable natural disaster strikes Southern California.

THE FAITH AND FAMILY MEDIATION CLINIC

In 2018, with a gift from Chavi Hertz and in collaboration with the Jewish Divorce Assistance Center, the law school started the Faith and Family Mediation Clinic under the direction of Professor Sarah Nissel and Yona Elishis. This is an innovative practice providing mediation services to Orthodox Jewish families in divorce proceedings simultaneously in civil and religious courts, providing students with intense experience in family law, cross-cultural and interreligious practice.

THE RELIGIOUS LIBERTY CLINIC

In 2022, the law school founded the Religious Liberty Clinic in the Nootbaar Institute for Law, Religious and Ethics, in collaboration with the Becket Firm and Jones Day, and under the direction of Professors Eric Rassbach and Michael Helfand. The clinic has an amicus brief practice

⁶ Jeffrey R. Baker, Christine Cerniglia, Davida Finger, Luz Herrera & JoNel Newman, *In Times of Chaos: Creating Blueprints for Law School Responses to Natural Disasters*, 80 LA. L. REV. 423 (2020).

for organizations and communities with stakes in First Amendment free exercise and establishment cases. The students gain experience in sophisticated appellate practice and advocacy under the supervision of expert specialists.

★ ★ ★

RACIAL JUSTICE CLINIC:

University of San Francisco School of Law

LARA BAZELON*

PROVIDING ASSISTANCE AND PROMOTING CHANGE

I. HISTORY AND MISSION

The University of San Francisco School of Law, which opened its doors in 1912, is a Jesuit institution with a profound commitment to advancing the cause of social justice by helping those who are most oppressed, marginalized, and without access to resources.¹ The law school's clinical programs, which train students to become lawyers by litigating real-life cases, are designed with that mission in mind. The law school has a history

* This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

Lara Bazelon is a Professor of Law at the University of San Francisco School of Law where she directs the Racial Justice Clinic and holds the Barnett Chair in Trial Advocacy. The author would like to thank USF Assistant Professor and Supervising Attorney Charlie Nelson Keever for her invaluable research assistance.

¹ *Public Interest & Social Justice*, USF SCHOOL OF LAW, <https://www.usfca.edu/law/school-life-careers/public-service-social-justice> (last visited Aug. 8, 2022).

of robust, semester-long clinical education programs including an Immigration and Deportation Defense Clinic, an International Human Rights Clinic, and a Criminal and Juvenile Justice Clinic (CJJC).²

In 2016, the law school added the Racial Justice Clinic (RJC). The RJC, which shares staffing and a class with the CJJC, has a focus that is both broader and narrower. It is broader because the RJC exists in large part to take on larger, more complex cases and advocacy both inside and outside of the courtroom; in the latter context, that work can involve policymaking, legislation implementation, and partnerships with other criminal legal system actors, most recently the San Francisco District Attorney's Office. The RJC's focus is narrower because, while the CJJC takes any client who is charged with a misdemeanor,³ the RJC is focused on defending and advocating for those who have suffered discrimination, marginalization, and oppression based on race. In 2021, the USF RJC received the Davis Vanguard Justice Award for Advocacy in honor of its groundbreaking partnership with the San Francisco District Attorney's Office.⁴

II. FOUR DISCRETE LITIGATION PROJECTS AND CLASSROOM COMPONENT

A. INNOCENCE COMMISSION AND POST-CONVICTION SENTENCING REVIEW

Working under the direct supervision of Barnett Chair of Trial Advocacy Professor Lara Bazelon and Assistant Professors and Supervising Attorneys Charlie Nelson Keever and Yohannes Moore, students in the RJC fall into four distinct working groups — although many students will work in

² *Law Clinics*, USF SCHOOL OF LAW, <https://www.usfca.edu/law/engaged-learning/law-clinics> (last visited Aug. 8, 2022).

³ In the Criminal & Juvenile Justice Clinic (CJJC), students will represent adults and juveniles charged with misdemeanors and delinquency offenses in San Francisco Superior Court. Once students obtain their Practical Training of Law Students (PTLS) certification from the California State Bar, they will handle — under the direct supervision of a professor — all aspects of the client's case, including client and witness interviews, investigations, court appearances, client counseling, motions practice, suppression hearings, and trial.

⁴ *Davis Vanguard Justice Award Gala*, DAVIS VANGUARD AWARDS, <https://vanguardgala.com/awards/#law> (last visited Aug. 9, 2022).

more than one group, either within a single semester or over the course of two semesters if they choose to return. The first group of students litigates wrongful conviction cases both in and out of the state of California. In out-of-state cases, the RJC is the legal representative of the wrongfully convicted person seeking to overturn their conviction. In-state, the RJC has a unique partnership with the San Francisco District Attorney's Office (the SFDA) to support the SFDA Innocence Commission, which is chaired by Professor Bazelon and supported by Assistant Professor Nelson Keever, who is the Commission's staff attorney and only paid member.⁵ The other Commission members, who, with Professor Bazelon, serve pro bono, review potential wrongful conviction cases referred by the SFDA. At the end of that review, the staff attorney submits to the SFDA the Commission's findings and recommendations, which are given great weight although the DA retains the authority to make the ultimate decision regarding whether the applicant is entitled to relief and what legal course of action to take.⁶

From November 2020 to June 2022, the SFDA-USF RJC partnership also included having law students and a staff attorney work collaboratively with the SFDA Postconviction Review Unit to resentence eligible prisoners, pursuant to relevant sections of the California Penal Code.⁷ In 2018, the resentencing statute was amended to allow the county DAs to recommend that a prisoner be resentenced upon a determination that their prison sentence is excessive or no longer serves the interest of justice.⁸ Previously, only the court, the Board of Parole Hearings, or California Department of Corrections could make such a recommendation. In 2021, the Legislature enacted Section 1170.03 which stated that the court may resentence a petitioner to any lesser included offense. The court must state its reasons for a resentencing decision on the record, provide notice to the defendant, set a status conference within thirty days of the receipt of the request to recall the sentence, and appoint counsel for the defendant. Section 1170.03 also

⁵ *Press Release: District Attorney Boudin Announces Formation of Post-Conviction Unit and Innocence Commission*, SAN FRANCISCO DISTRICT ATTORNEY, <https://www.sfdistrictattorney.org/archive-press-release/formation-of-post-conviction-unit-and-innocence-commission> (last visited Aug. 10, 2022).

⁶ *Id.*

⁷ Cal. Penal Code §§ 1170(d) and 1170.03; renumbered as § 1172.1, June 30, 2022.

⁸ Then § 1170(d); public safety omnibus, California Assembly Bill (AB) No. 1812, 2017–2018 Regular Session.

authorized the court to grant a resentencing without a hearing, if the parties are in accord. This amendment also created a presumption favoring a defendant's petition for recall and resentencing — although there is no presumption in favor of any particular recommended sentence.⁹

The SFDA–USF RJC Postconviction Review Unit partnership, which ended with the June, 2022 recall of SFDA Chesa Boudin, resulted in the resentencing of more than forty men and women.¹⁰ A USF RJC staff attorney would screen and evaluate Section 1170.03 cases referred by the SFDA to determine whether the applicant met Section 1170.03's criteria. The work involved reviewing and analyzing all documents relevant to a resentencing determination. A donor-funded RJC staff attorney reviewed the original files, reviewed the prison file, assessed reentry plans, contacted victims, and sometimes obtained and prepared experts to testify in support of the DA's motion seeking resentencing.¹¹ The RJC staff attorney also drafted petitions, appeared in court, and assisted in any briefing sought by the court to conduct a meaningful review of the case.

The service that the RJC staff attorney and students provided the DA's Office in assisting with the review and evaluation of incarcerated people seeking to be resentenced was vital to fulfilling the state legislature's intent in enacting Section 1170.03. In San Francisco alone, an estimated 600 people are potentially eligible for resentencing under the revised statute because their sentences were excessive, no longer served the interests of justice, and/or because the applicant no longer posed any risk to public safety or substantial risk of recidivating. Although the USF RJC no longer maintains this partnership with the San Francisco District Attorney's Office, the clinic is investigating opportunities to recreate that partnership with a different DA's Office assuming that funding can be obtained to hire a third assistant professor/supervising attorney.

⁹ Criminal procedure: resentencing, California Assembly Bill (AB) No. 1540, 2021–2022 Regular Session, amending § 1170(d)(1) and creating new § 1170.03 (subsequently renumbered as § 1172.1, June 30, 2022).

¹⁰ In total, the SFDA under Chesa Boudin resentenced nearly seventy people, far more than any other county in California during that period of time.

¹¹ The donor-funded staff attorney, Nicole Fuller, worked for the USF RJC from November 2020–June 2022.

B. IMPLEMENTING THE CALIFORNIA RACIAL JUSTICE ACT

The second group of students, working under the supervision of Professor Bazelon and Assistant Professor Moore with funding from the Justice Catalyst Foundation,¹² are leading on-the-ground efforts to implement California's Racial Justice Act (RJA). As discussed in section IV below, the RJA is a landmark law enacted in 2021 that prohibits bias based on race, ethnicity, or national origin in charges, convictions, and sentences.¹³

The RJC students working with Professors Bazelon and Moore provide case consultation to attorneys to evaluate potential RJA claims, assist with drafting motions, track appeals and share updates, connect attorneys in need of support with experts, and lead RJA trainings across the state.

C. TITLE IX CASES

Title IX is the federal statute that prohibits discrimination in education on the basis of sex. The U.S. Supreme Court has held that Title IX applies to claims of sexual harassment and sexual discrimination that occur on college and university campuses because gender-based violence deprives students of their equal right to obtain an education.

Unlike criminal defendants, students accused of misconduct under Title IX are not entitled to legal counsel, and the adjudicative system under Title IX lacks many of the hallmarks of due process for the accused that are protected in the criminal legal system. Students of color are more likely to lack the means to afford to hire a lawyer. The lack of representation and resources combined with an adjudication process that until recently was often devoid of basic due process protections led to unfair outcomes.

Beginning in early 2018, the USF RJC began representing college and university students of color who had been accused of violating Title IX by committing acts of sexual harassment or sexual assault. USF took on this

¹² *Justice Catalyst Fellows*, JUSTICECATALYST.ORG, <https://justicecatalyst.org/fellows> (last visited Aug. 10, 2022).

¹³ California Racial Justice Act (RJA), California Assembly Bill (AB) 2542, 2019–2020 Regular Session; *Governor Signs Landmark Legislation Advancing Racial Justice in California*, AMERICAN FRIENDS SERVICE COMMITTEE (Oct. 2, 2020), <https://www.afsc.org/document/governor-signs-landmark-legislation-advancing-racial-justice-california>.

work because of the growing evidence that racial bias can play a significant role in Title IX allegations and adjudications,¹⁴ and because no other clinic in the country was providing legal representation to these students.¹⁵

D. PRETRIAL RELEASE AND BAIL REFORM WORK WITH THE SAN FRANCISCO PUBLIC DEFENDER

The fourth group of students works with veteran public defender Jacque Wilson and other trial attorneys at the San Francisco Public Defender's Office on discrete projects that are designed to confront and address the racialization of the criminal justice system. San Francisco Public Defender-based RJC projects include, but are not limited to, working in the Pretrial Release Unit.

The Pretrial Release Unit was created by the San Francisco Public Defender in October 2017 to facilitate the release of their clients.¹⁶ Pretrial detention can have life-altering outcomes. Although presumed innocent, those held in jail pending trial stand the risk of losing their jobs, their housing, custody of their children and access to benefits, and they often plead guilty simply to get out rather than because they are in fact guilty.¹⁷ In most cases, pretrial detention is not necessary because those detained pose no risk to public safety and will return to court as ordered.¹⁸ The racially disproportionate effect of pretrial detention is well documented. According to a 2015 study conducted by the W. Haywood Burns Institute, while Black adults were more likely to meet the criteria for pretrial release, they were less likely than white adults to be granted pretrial release by

¹⁴ Emily Yoffe, *The Question of Race in Campus Sexual-Assault Cases*, THE ATLANTIC MAGAZINE (Sept. 11, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-question-of-race-in-campus-sexual-assault-cases/539361>.

¹⁵ Jeremiah Poff, *This Professor Started a Legal Clinic for Black Students Accused of Rape. She's Getting Threats*, THE COLLEGE FIX (Dec. 17, 2018), <https://www.thecollegefix.com/this-professor-started-a-legal-clinic-for-black-students-accused-of-rape-shes-getting-threats>.

¹⁶ California Association of Pretrial Services (CAPS), PRETRIALSERVICESCA.ORG, <http://pretrialservicesca.org/2018/07/02/public-defender> (last visited Aug. 10, 2022).

¹⁷ ALENA YARMOSKY, THE IMPACT OF EARLY REPRESENTATION: AN ANALYSIS OF THE SAN FRANCISCO PUBLIC DEFENDER'S PRE-TRIAL RELEASE UNIT (UC Berkeley Goldman School of Public Policy, 2018), <http://public.sfpdr.com/wp-content/uploads/sites/2/2018/05/The-Impact-of-Early-Representation-PRU-Evaluation-Final-Report-5.11.18.pdf>.

¹⁸ Tiana Herring, *Releasing people pretrial doesn't harm public safety*, PRISON POLICY INITIATIVE (Nov. 17, 2020), <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases>.

San Francisco judges.¹⁹ These racial disparities at the earliest stages of the criminal legal process also drive overall racial disparities in criminal case outcomes in San Francisco.²⁰ Similar findings were recently published in a 2022 *San Francisco Chronicle* article that reviewed data collected under California state law tracking the stopping and frisking of California residents by race.²¹ Black people across the state were between 3.7 and 6 times more likely to be stopped than white people, the data showed, and consequently, far more likely to be arrested.

To reduce the number of people who are arrested, denied bail and subjected to direct and collateral consequences as a result, the San Francisco Public Defender has developed a fast-track approach focused on interviewing clients immediately upon arrest and gathering the biographical, financial, and case information necessary to put together a bail application that can be presented at the client's first court appearance.²² USF RJC students provide vital assistance with that effort by going into the jails, conducting the initial intake interviews, and drafting the memoranda that later serve as the basis for the bail motions made by the San Francisco Public Defender's Office.

E. INSTRUCTIONAL CONTENT

1. *Class Component*

The USF RJC holds a weekly two-hour class together with the CJJC. The class includes a robust trial advocacy component in which a single real-life clinic case is used throughout the semester. Students are assigned prosecutor and defender roles and must give opening statements, conduct direct and cross examinations, and give closing arguments. Two classes are

¹⁹ Tamara Aparton, *Study: Shocking Racial Disparities in SF Courts*, SAN FRANCISCO PUBLIC DEFENDER (June 23, 2015), <https://sfpublicdefender.org/news/2015/06/study-shocking-racial-disparities-in-sf-courts>; W. HAYWOOD BURNS INSTITUTE, SAN FRANCISCO JUSTICE REINVESTMENT INITIATIVE: RACIAL AND ETHNIC DISPARITIES ANALYSIS FOR THE REENTRY COUNCIL (2015), https://burnsinstitute.org/wp-content/uploads/2020/09/SF-JRI-_compressed.pdf.

²⁰ YARMOSKY, *supra* note 17.

²¹ Dustin Gardiner & Susie Neilson, *'Are the police capable of changing?': Data on racial profiling in California shows the problem is only getting worse*, SAN FRANCISCO CHRONICLE (July 14, 2022, 4:00 AM), <https://www.sfchronicle.com/projects/2022/california-racial-profiling-police-stops>.

²² YARMOSKY, *supra* note 17, at 16.

focused on case theory and fact development, which allows the students to dive deeply into the facts of the case and determine what themes, theories, and arguments best support their position. Other classes include trainings on postconviction litigation, RJA implementation, and guest presentations. Outside speakers include public defenders, private defense counsel, prosecutors, judges, and community advocates, who share their expertise.

2. *Zealous Partnership*

Additionally, beginning in the fall of 2022, the RJC will engage in a new partnership with Zealous, a national nonprofit organization founded by former public defender Scott Hechinger. Zealous works with public defenders, community organizers, advocates, and those directly impacted by the criminal legal system to collaborate, educate, and train law students and young lawyers as well as put together media campaigns to combat misinformation.²³

The mission of Zealous is to correct the imbalance of power, and gain voice, influence and control over criminal justice media and policy, which has historically been weighted toward police, prosecutors, and a media that is receptive to their traditionally tough-on-crime narrative slant.²⁴

This work is extremely important and extremely timely in the RJC's home of San Francisco where the San Francisco Police Department spends vast sums of money to manipulate public perceptions about crime, policing, and public safety.²⁵ San Francisco is not unique in this, however.²⁶ According to journalist and former public defender Alec Karakatsanis, this so-called "copaganda" — a portmanteau of "cop" and "propaganda" describing the phenomenon in which news media and other social institutions like film and television promote sympathetic or celebratory portrayals of the police — primarily functions to impact public perceptions about crime and public safety and obstruct meaningful criminal justice reform that would lead to

²³ ZEALOUS, <https://zealo.us/action/zealous/about> (last visited Aug. 10, 2022).

²⁴ *Id.*

²⁵ Tim Redmond, *Exposing 'copaganda' as SFPD spends \$1.6 million on 'strategic communications'*, 48HILLS.ORG (May 5, 2022), <https://48hills.org/2022/05/exposing-copaganda-as-sfpd-spends-1-6-million-on-strategic-communications>; Alec Karakatsanis, *Police Department Spend Vast Sums of Money Creating "Copaganda,"* JACOBIN (July 20, 2022), <https://jacobin.com/2022/07/copaganda-police-propaganda-public-relations-pr-communications>.

²⁶ Karakatsanis, *supra* note 25.

divesting from police and prisons.²⁷ Copaganda and traditional crime journalism accomplish this by narrowing the public's understanding of "public safety," focusing attention on the minor crimes committed by the most marginalized people in our society (petty theft, low-level drug offenses, and so-called "quality-of-life" crimes) rather than the crimes that cause the most harm on the largest scale like wage theft by employers (which costs Americans \$50 billion every year) and violations of environmental regulations (which cause hundreds of thousands of deaths every year).²⁸

Copaganda and biased journalism also foment public fear by manufacturing "crime surges" that are, to put it bluntly, not based in reality. Though major "index crimes" tracked by the FBI are at nearly forty-year lows and though there has been no significant increase in retail theft, the media coverage tells a different story, and the American public consistently believes that crime rates are higher than they are.²⁹ A striking illustration of this phenomenon published by Bloomberg in July 2022 demonstrates that media coverage about shootings in New York this year massively outstrips the actual number of shooting incidents, and that the number of times shootings were mentioned in the media over the last two years has had almost no correlation to the number of shooting incidents at any given time.³⁰ The purpose of these efforts is to convince the public to continue investing in police and prisons, even though the evidence shows that police and prisons do not make us safer.³¹

²⁷ Laurena Bernabo, *Copaganda and post-Floyd TVPD: Broadcast television's response to policing in 2020*, 72 J. COMM. 488 (August 2022), <https://doi.org/10.1093/joc/jqac019>; Karakatsanis, *supra* note 25.

²⁸ Karakatsanis, *supra* note 25; Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About "Criminal Justice Reform,"* 128 YALE L.J. (Mar. 2019), https://www.yalelawjournal.org/forum/the-punishment-bureaucracy#_ftnref222.

²⁹ Maggie Koerth & Amelia Thomson-DeVeaux, *Many Americans Are Convinced Crime Is Rising in The U.S. They're Wrong*, FIVETHIRTYEIGHT.COM (Aug. 3, 2020), <https://fivethirtyeight.com/features/many-americans-are-convinced-crime-is-rising-in-the-u-s-theyre-wrong>.

³⁰ Fola Akinnibi & Raedah Wahid, *Fear of Rampant Crime is Derailing New York City's Recovery*, BLOOMBERG.COM (Jul. 29, 2022), <https://www.bloomberg.com/graphics/2022-is-nyc-safe-crime-stat-reality>.

³¹ Philip Bump, *Over the past 60 years, more spending on police hasn't necessarily meant less crime*, THE WASHINGTON POST (Jun. 7, 2020), <https://www.washingtonpost.com/politics/2020/06/07/over-past-60-years-more-spending-police-hasnt-necessarily-meant-less-crime>; Alec Karakatsanis, *Why "Crime" Isn't the Question and Police Aren't*

Zealous's Hechinger agrees that this kind of "justice" reporting has serious consequences. In his view, journalism — in particular, crime reporting — is "one of the most pressing racial and social justice issues today."³² "After serving for nearly a decade as a public defender," he wrote in *The Nation* last fall, "I know well that every cruel and irrational policy of the mass incarceration era — policies that I saw devastate predominately Black and brown people in Brooklyn criminal court every day — was propped up by harmful journalistic biases and practices just like the ones on display . . . from some of the most prominent media outlets in our nation."³³ With this in mind, the work of Zealous is deeply aligned with the RJC's mission to address systemic racism within the criminal legal system.

Working with Hechinger and other Zealous attorneys, the USF RJC will host six, two-hour Friday workshops through the fall and spring semesters.

III. INNOCENCE WORK

Wrongful convictions are a significant problem in the United States. To date, more than 3,200 people have been exonerated according to data gathered by the National Registry of Exonerations, which has tracked every known exoneration that occurred in the United States since 1989.³⁴ Although there is a national Innocence Project in New York and dozens of innocence project affiliates throughout the country, there are still too many wrongfully convicted people who have no one to represent them because these projects are often small, underfunded, and overwhelmed by requests for help.³⁵ For that reason, the USF RJC litigates select wrongful conviction cases outside of California, as described below.

the Answer, CURRENT AFFAIRS (Aug. 10, 2020), <https://www.currentaffairs.org/2020/08/why-crime-isnt-the-question-and-police-arent-the-answer>.

³² Scott Hechinger, *A Massive Fail on Crime Reporting by The New York Times*, NPR, THE NATION (Oct. 6, 2021), <https://www.thenation.com/article/society/crime-reporting-failure>.

³³ *Id.*

³⁴ THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (last visited Aug. 10, 2022).

³⁵ *Op-Ed: Former Innocence Project Attorney Says that System is Overwhelmed with Wrongful Convictions*, INNOCENCE PROJECT (Feb. 3, 2015), <https://innocenceproject.org/op-ed-former-innocence-project-attorney-says-that-system-is-overwhelmed-with-wrongful-convictions>.

The USF RJC is also focused on helping the wrongfully convicted within the state of California, where the law school is located. Since the National Registry of Exonerations began tracking wrongful convictions in 1989, there have been more than 279 known wrongful convictions in California — causing innocent Californians to lose a total of 2,173 years of their lives,³⁶ and costing California taxpayers over \$221 million (according to a 2016 study).³⁷ These wrongful convictions occurred as the real perpetrators of crime avoided consequences for their actions and victims were denied justice. Wrongful convictions undermine our criminal legal system and violate fundamental principles of justice and due process.³⁸

A. THE INNOCENCE COMMISSION: SFDA-USF RJC PARTNERSHIP

1. *Groundbreaking Model*

The SFDA Innocence Commission model is a first-in-the-nation approach to efficiently and fairly investigating potential wrongful conviction cases and is a cost-effective way to effectuate the DA's duty to prevent and rectify the conviction of innocent persons. Created by SFDA Chesa Boudin in 2020, the Commission is tasked with evaluating cases where an incarcerated person alleges that they have been wrongfully convicted — either because they can establish that they are factually innocent, or because a due process violation renders their incarceration unconstitutional. If the Commission, after evaluating all of the available evidence and conducting any necessary reinvestigation, votes by a majority to vacate the conviction, the Commission prepares a Findings of Fact and Conclusions of Law memorandum that serves as the basis to seek to vacate the conviction or provide

³⁶ *Exonerations by State*, NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Aug. 10, 2022).

³⁷ The \$221 million dollar figure comes from a 2016 study: Rebecca Silbert et al., *Criminal Injustice* (The Chief Justice Earl Warren Institute on Law and Social Policy), http://static1.squarespace.com/static/55f70367e4b0974cf2b82009/t/56a95c112399a3a5c87c1a7b/1453939730318/WI_Criminal_InJustice_booklet_FINAL2.pdf. The actual number is millions of dollars higher. For example, in 2019, after the study was published, the San Francisco Board of Supervisors paid out a \$13.1 million judgment to Jamal Trulove, who was wrongfully convicted of murder and spent six years in prison.

³⁸ *Berger v. United States*, 295 U.S. 78 (1935).

other relief. Although the DA retains the final decision-making power on each case, great weight is afforded to the Commission's determination.

The members of the Innocence Commission — a senior prosecutor within the SFDA,³⁹ Judge LaDoris Cordell (Ret.), Deputy Public Defender Jacque Wilson, Dr. Michael Meade, and Professor Lara Bazelon (chair) — represent key perspectives in the criminal legal system, and bring to their work a diversity of professional experience as well as diversity across race, ethnicity, and gender.⁴⁰ The makeup of the Commission and the collective experience of its current members has been a key part of its success. The Commission is assisted by Assistant Professor/Supervising Attorney Charlie Nelson Keever, who is an employee of USF and whose salary is donor-funded.

2. SFDA–USF RJC Partnership

The SFDA Innocence Commission is supported by a unique partnership with USF School of Law Racial Justice Clinic, directed by Professor Bazelon, which provides the staff attorney and funding for that position. The work of undoing wrongful convictions is deeply aligned with the Racial Justice Clinic's mission to serve clients who have been affected by racial discrimination. Wrongful convictions harm communities of color and the Black community in particular. According to the National Registry of Exonerations, Black people constitute approximately 13 percent of the American population, but represent 49 percent of the exonerations in the United States.⁴¹ The NRE's 2017 report revealed that Black people are seven times more likely to be wrongfully convicted of murder, and twelve times more likely to be wrongfully convicted of drug possession than white people.⁴²

³⁹ Following the recall, the interim DA fired the SFDA liaison Arcelia Hurtado, who had been the chief of the SFDA Conviction Review Unit. The Commission is waiting for the interim DA to appoint a replacement.

⁴⁰ *The Innocence Commission*, SAN FRANCISCO DISTRICT ATTORNEY, <https://www.sfdistrictattorney.org/policy/innocence-commission/> (last visited Aug. 10, 2022).

⁴¹ *Race & Wrongful Convictions*, THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Race-and-Wrongful-Convictions.aspx> (last visited Aug. 10, 2022).

⁴² *Id.*

3. *The CRINO Problem*

Although a growing number of prosecutors' offices across the country and in California have formed Conviction Integrity Units ("CIUs") with the intention of reexamining questionable convictions, many of these units have failed to fulfill their stated purpose because they lack resources, flexibility, transparency, and independence in the review process. While some internal units are highly effective, many (if not most) are ineffective, or what the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania calls CRINOS — Conviction Review Units in Name Only.⁴³ Indeed, the San Francisco District Attorney's Office had such a unit before the formation of the Innocence Commission by DA Boudin in September 2020. That unit — which had been formed under the previous district attorney — had exonerated no one.⁴⁴

The Commission's structure is designed to address the main challenges that prevent so many Conviction Integrity Units from fairly and efficiently reviewing alleged wrongful conviction cases. For instance, the assistant district attorneys assigned to typical CIUs must often undertake the unenviable task of evaluating and passing judgment on the work of colleagues and predecessors in their own offices as well as the police, with whom they must work every day. The Commission's independence from the DA's office and the composition of its membership are key features that alleviate this common problem. This feature, like the Innocence Commission's other practices and policies, is based on best practices gleaned from the innocence community, including Innocence Project cofounder Barry Scheck, and the Quattrone Center for the Fair Administration of Justice. As a result, the Commission has been able to conduct collaborative investigations that are both efficient and thorough.

4. *The Exoneration of Joaquin Ciria*

In April 2022, the Innocence Commission's first case resulted in an exoneration — the first collaborative exoneration in San Francisco history.

⁴³ JOHN HOLLWAY, CONVICTION REVIEW UNITS: A NATIONAL PERSPECTIVE (The Quattrone Center for the Fair Administration of Justice at University of Pennsylvania Law School, April 2016), <https://www.law.upenn.edu/live/files/5522-cru-final>.

⁴⁴ Lara Bazelon, *My team set an innocent man free under Chesa Boudin's guidance. Let us keep working*, SAN FRANCISCO CHRONICLE (June 4, 2022), <https://www.sfchronicle.com/opinion/openforum/article/chesa-boudin-recall-17216520.php>.

The petitioner, Joaquin Ciria, had been convicted in 1991 of the first-degree murder of his friend Felix Bastarrica. Despite his protestations of innocence, Ciria remained incarcerated for more than three decades.⁴⁵

Although no physical or forensic evidence linked Ciria to the crime, San Francisco police inspectors zeroed in on Ciria as the shooter based on rumors on the streets and the statements of the apparent getaway driver. At trial, the jury heard three eyewitnesses identify Ciria as the shooter; two were cross-racial identifications by strangers. Most crucial was the identification by George Varela, the getaway driver, who knew Ciria and testified that he drove Ciria to and from the scene. What the jury did *not* hear was evidence of the extreme pressure put on Varela by police to identify Ciria as the shooter. The jury heard no evidence of an alternate suspect, and no evidence that Ciria had an alibi, though two alibi witnesses were available and willing to testify.⁴⁶

The RJC reviewed and vetted all the evidence presented by Ciria and his counsel and presented that evidence to the Innocence Commission. The investigation revealed that, if Ciria's case were tried today, a jury would hear from an additional eyewitness, Roberto Socorro, who was the victim's best friend and an eyewitness to the murder. Socorro has also named another person, Candido Diaz, as the real shooter. Importantly, Socorro knew both Diaz and Ciria. Other witnesses confirm details that corroborate Socorro's account, including that Diaz's hairstyle and manner of dress at the time of the shooting more closely matched the descriptions of the shooter provided by the other eyewitnesses at trial. Today, the jury would also hear from two alibi witnesses who could account for Ciria's whereabouts at the time of the crime and have maintained his innocence for thirty years. Finally, two witnesses close to George Varela (a sister and family friend with no apparent motive to help Ciria) would testify that Varela has since admitted to them that Ciria is not the shooter, and that he testified falsely at trial due to pressure from police. As part of the investigation, the Commission also retained an

⁴⁵ *Id.*

⁴⁶ Joshua Sharpe, 'We made it': S.F. man walks free three decades after wrongful murder conviction, *SAN FRANCISCO CHRONICLE* (April 20, 2022, 5:52 PM), <https://www.sfchronicle.com/sf/article/We-made-it-S-F-man-walks-free-three-17110780.php>; Joaquin Ciria, *THE NATIONAL REGISTRY OF EXONERATIONS*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6225> (last visited Aug. 9, 2022).

eyewitness identification expert to evaluate the identification procedures used in this case and to opine as to the reliability of the cross-racial, stranger identifications of Ciria.⁴⁷

Apart from the conviction in this case, Ciria had no history of violent crimes as a juvenile or adult and was a model inmate during his lengthy prison term. Though he was eligible for parole beginning in May 2010, he was repeatedly denied, in part, because he continued to maintain his innocence.

Following the four-month investigation of the RJC and the Innocence Commission, the Commission provided its first recommendation to San Francisco District Attorney Chesa Boudin. Based on the Commission's recommendation and the DA's independent review of the case, the District Attorney's Office filed a concession in Ciria's case, agreeing that the cumulative weight of his newly discovered evidence undermined the entire prosecution case and pointed unerringly to his innocence. In April 2022, Ciria's conviction was overturned and he was released from custody.⁴⁸

With the assistance of the RJC, the Innocence Commission completed a review and investigation of its second case and provided a recommendation to the DA in December 2021. Following the Commission's recommendation, the DA moved to resentence the applicant in that case under Penal Code Section 1172.2 (formerly 1170.03). A third case is currently under review at the time of this publication.

B. WRONGFUL CONVICTION ADVOCACY OUTSIDE OF CALIFORNIA

1. *Yutico Briley*

In 2019, the USF RJC took on the case of Yutico Briley, a Louisiana prisoner. In 2013, Briley was convicted of armed robbery and sentenced to serve sixty years with no possibility of parole. He was nineteen. The robbery occurred just after 2 a.m. in 2012 on a poorly lit street in New Orleans and lasted less than ninety seconds. The victim was white; Briley is Black. The victim made a cross-racial stranger identification of Briley in a show-up

⁴⁷ *Joaquin Ciria*, *supra* note 46.

⁴⁸ Annie Rosenthal, *Even the District Attorney Believed Joaquin Ciria Was Innocent. Why Did It Take So Long to Set Him Free?*, POLITICO (Aug. 8, 2022), <https://www.politico.com/news/magazine/2022/08/07/california-innocence-commission-joaquin-ciria-00037546>.

identification process that is widely condemned for its suggestiveness — there was no one else to choose from — and in this case was wholly unnecessary because there was no exigency justifying it.⁴⁹

For eighteen months, the USF RJC battled the Orleans Parish DA (OPDA) for discovery, filing motions and engaging in extensive protracted communication to enforce Briley's rights. In November 2020, a reform-minded prosecutor, Jason Williams, was elected OPDA.⁵⁰ Williams immediately created a Civil Rights Division headed up by Emily Maw, the former director of Innocence Project New Orleans (IPNO).⁵¹

In February 2021, the OPDA conceded that Briley had been wrongfully convicted after the USF RJC filed a lengthy petition documenting the flaws in the prosecution's case and the abysmal representation by Briley's counsel. The prosecution's case was flawed because it relied almost entirely on a cross-racial stranger show-up identification. No physical or forensic evidence tied Briley to the crime and the gun found on Briley's person could not be conclusively matched to the gun used in the robbery — both were generic pistols. Moreover, from listening to Briley's jailhouse calls, including calls with his attorneys, the prosecution was aware that Briley was insisting he had an alibi. The prosecutors did nothing to investigate that alibi.⁵²

The ineffective assistance of counsel Briley received was extreme. Briley told his lawyers that he was eight miles away when the robbery occurred at a hotel in Metairie with a woman named Erin. He told him that surveillance footage would prove it and so would his cell phone records. His attorneys ordered the surveillance footage for the wrong time and by the time they realized the mistake the footage from the correct time had been taped over. They never got his cell phone records. At trial, they presented no alibi defense or any defense at all. The cross examination of the victim did not probe the inherently suggestive nature of the show-up

⁴⁹ Yutico Briley, NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5942> (last visited Aug. 10, 2022).

⁵⁰ Matt Sledge, *A man serving 60 years for armed robbery is free after Jason Williams clears the way for release*, NOLA.COM (Mar. 19, 2021), https://www.nola.com/news/courts/article_7b6b0fbe-8902-11eb-abf1-c3da328e2fce.html.

⁵¹ *Id.*

⁵² Emily Bazelon, *I Write About the Law. But Could I Really Help Free a Prisoner?*, THE NEW YORK TIMES MAGAZINE (June 30, 2021), <https://www.nytimes.com/2021/06/30/magazine/yutico-briley.html>.

identification or point out the empirical evidence documenting the inherent unreliability of cross-racial stranger identifications.⁵³

In March 2021, Orleans Parish Judge Angel Harris vacated Briley's armed robbery conviction and his underlying convictions for being a felon in possession of a firearm and resisting arrest. He was released from prison several days later after more than eight years of incarceration. The chronicling of Yutico Briley's exoneration was the front-page story in the *New York Times Magazine* in July 2021.⁵⁴

2. *Leon Benson*

In September of 2021, the USF RJC took on the representation of Leon Benson, an Indiana prisoner convicted in Indianapolis in 1999 of first-degree murder. Benson, who has always maintained his innocence, has been in prison for nearly a quarter of a century. Beginning in fall 2021, the USF RJC entered into a collaboration with the newly created Conviction Integrity Unit in the Marion County Prosecutor's Office, overseen by Assistant District Attorney Kelly Bauder. For the next year, the USF RJC and the MCPO worked together to investigate Benson's claim that he had been wrongfully convicted.

The crime occurred on August 8, 1998 at approximately 3:30 a.m. The victim, Kasey Schoen, was shot five times with a .380 handgun while sitting in his truck which was parked on the 1300 block of Pennsylvania Avenue in Indianapolis, Indiana.

The crime was highly unusual, according to lead investigating detective Alan Jones. Schoen was white and lived in Plainfield — a middle-class, low-crime suburb of Indianapolis. He worked as a manager for National Car Rental at the Indianapolis Airport. Schoen was gay but closeted. The shooter was Black and the crime occurred in a neighborhood that was mostly Black, low-income, and known for high rates of crime. It was also known at the time for having a number of gay bars, including The Varsity, which Schoen visited. Schoen had no criminal record and no history of using drugs. Significantly, nearly every other murder Detective Jones investigated was an intra-racial crime in which one Black person killed another. Detective Jones, who investigated more than fifty murders, could count on one hand the number involving a white victim.

⁵³ *Id.*

⁵⁴ Bazelon, *supra* note 52.

Substantial evidence pointed to another man — a seventeen-year-old drug dealer nicknamed “Looney” for his erratic and impulsive behavior — as the shooter. That evidence included an eyewitness identification by another witness, Dakarai Fulton, who recognized Looney from the neighborhood. Both Fulton and Looney were Black (that is, the same race), knew each other, and Fulton was standing directly across the street when the shooting occurred. Another witness, Donald Brooks, also placed Looney by Schoen’s truck immediately after hearing shots fired. There was also word on the street that Looney was the shooter and had bragged about it afterward and also induced people with that information not to tell the police. But after initial efforts to investigate Looney, Indianapolis Metropolitan Police Department (“IMPD”) detectives switched course when a white woman named Christy Schmitt identified Leon Benson as the shooter. Schmitt, who did not know Benson, saw the crime occur at a distance of 150 feet as she stood petrified on a poorly lit street on a misty evening.

Schmitt’s identification changed everything. IMPD investigators, led by Detective Alan Jones, zeroed in on Leon Benson as a suspect. They never let up or looked back even when Fulton came forward voluntarily and other evidence surfaced that did not corroborate Schmitt and instead implicated Looney. Instead, the IMPD buried that evidence deep in their files, never turning it over to the prosecution or to Benson. It remained buried for decades.

Unlike Looney, who was advised by counsel not to speak to police,⁵⁵ Benson (who was not yet represented by counsel and did not know that he was a suspect in a homicide investigation) agreed to speak to IMPD detectives. Benson told police that he had been in the nearby Priscilla Apartments (known as “Little Vietnam”) at the time of the shooting. But Schmitt had already identified Leon Benson from a six-pack photo array and Jones was determined to charge him.

The case against Benson was weak. No physical or forensic evidence tied Benson to the murder. The murder weapon was never recovered. Benson’s conviction turned on: (1) the cross-racial stranger identification of Christy Schmitt; (2) another alleged eyewitness, Donald Brooks, who approached police and stated that he saw “Detroit” (Benson) standing near Kasey Schoen’s truck just before and just after the shooting from the second floor of an

⁵⁵ When Looney was brought in to speak to the police he was in court on another criminal charge and represented by counsel.

apartment building across the street;⁵⁶ and (3) Benson's statement to police putting himself in the Priscilla Apartments near the time of the shooting.

Benson's first trial (which took place over two days from May 24 to 25, 1999) ended in a hung jury and a mistrial.⁵⁷ A second trial took place from July 6 to 8, 1999. At the retrial, prosecution witness Donald Brooks attempted to recant his statement to police, and claimed that he could not remember the statement he made to Detective Jones implicating Benson. Without any objection by the defense, the prosecution was allowed to read Brooks's entire out-of-court statement into the record. Defense counsel asked if he could "take a nap" while the statement was read.

In addition, IMPD lead detective Jones and other law enforcement officials failed to investigate and follow up on powerful leads pointing to Looney's guilt and buried that information in their files in violation of their constitutional obligation under *Brady v. Maryland* to disclose it to the defense.

Exacerbating matters was trial counsel's deficient representation, which prejudiced Benson. Among other failings, Benson's trial counsel failed to present key evidence available at the time of trial that tended to exculpate Leon Benson and tended to implicate Looney as the shooter, including: (1) that Fulton identified Looney as the shooter and picked him out of a photo lineup; and (2) that IMPD received two Crime Stoppers reports stating that Kasey Schoen was killed by Looney with a .380 handgun.

After nearly a year of cooperative investigation that unearthed evidence proving *Brady* violations by the state, the USF RJC and MCPO also uncovered new evidence undermining Benson's conviction and pointing to his innocence. Three witnesses signed sworn affidavits stating that they had additional information implicating Looney as the shooter, but they had not come forward with that information because Looney bribed, threatened, or intimidated them.

The exculpatory *Brady* material along with the new evidence uncovered through this investigation completely undermines the State's case against Leon Benson — a case devoid of physical evidence and so thin it resulted in a hung jury the first time it was tried. There can be no question that, had Benson had the opportunity to present this evidence at trial, he would not

⁵⁶ Donald Brooks attempted to recant his statement at both trials. On appeal, the court characterized his testimony as "relatively unimportant" in comparison to Schmitt's testimony. *Benson v. State* (2002) 762 N.E.2d 748, 753.

⁵⁷ Jury vote: 6 NG, 5 G, 1 undecided (Jury Note, dated May 25, 1999).

have been convicted. The USF RJC and MCPO are in the final stages of their investigation. The USF RJC is hoping to file a pleading in state court seeking to overturn Benson's conviction when the investigation is finished.

IV. CALIFORNIA RACIAL JUSTICE ACT

The California Racial Justice Act (RJA) is a landmark law enacted in 2021 that prohibits bias based on race, ethnicity, or national origin in charges, convictions, and sentences.⁵⁸ Under the RJA, a criminal defendant can challenge their charge, conviction, or sentence by demonstrating:

- An attorney, judge, law enforcement officer, expert witness, or juror involved in their case exhibited racial bias or animus towards them; or
- During trial, whether or not purposeful or directed at a defendant, there was use of racially discriminatory language; or
- There is statistical evidence that people of one race are disproportionately charged or convicted of a specific crime or enhancement; or
- There is statistical evidence that people of one race receive longer or more severe sentences, including the death penalty or life without the possibility of parole.⁵⁹

Critically, the RJA circumvents the precedent set by the U.S. Supreme Court, which held that statistical data showing evidence of systemic racial discrimination was not a sufficient basis to overturn a death sentence, effectively insulating racial disparities in charging and sentencing from judicial review.⁶⁰ In *McCleskey v. Kemp*, the Court held that only specific evidence of racist *motivation* or *intent* on the part of the prosecution in a defendant's individual case could be used as a basis to challenge a conviction or sentence based on racial discrimination. As Governor Newsom observed when signing the RJA into law, the *McCleskey* standard was “almost

⁵⁸ California Racial Justice Act (RJA), *supra* note 13; *Governor Signs Landmark Legislation*, *supra* note 13.

⁵⁹ California Racial Justice Act (RJA), *supra* note 13.

⁶⁰ *McCleskey v. Kemp*, 481 U.S. 279 (1987); *California Legislature Confronts Racial Discrimination in New Criminal Justice Reform Package*, AMERICAN BAR ASSOCIATION (Oct. 28, 2020), https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/fall-2020/california-criminal-justice-reform-package.

impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted.”⁶¹

Importantly, the intent of the RJA is also to allow criminal defendants to access via discovery information in the prosecutor’s control that may prove that racial bias has impacted their case. To access such discovery, they need only show “good cause,” which is considered a very low evidentiary standard. That standard as applied to the RJA, however, has already been tested. In *Young v. Superior Court of Solano County*, defendant Clemon Young Jr. argued that the practice of racial profiling in traffic stops led to his arrest for possession of Ecstasy with intent to sell.⁶² Young pointed to publicly available statistics showing that, statewide, Black people are more likely to be searched during the course of traffic stops than other people.⁶³ Using the RJA, he filed a motion seeking discovery to help him support his claim that the State had violated the RJA. In particular, Young requested the “names and case numbers of others who were charged with or could have been charged with possession of Ecstasy for sale; the same information for a broad range of related drug offenses; the police reports relating to the suspects involved and their criminal histories; and the disposition in all of these cases.”⁶⁴ The trial court denied Young’s motion; its “only articulated reason for the denial” was that Young’s good cause showing “appeared to rest on nothing more than his race.” In other words, Young failed to establish good cause for the discovery request.

The Court of Appeal sided with Young. The Court emphasized the Legislature’s intent in enacting the discovery provision in the Racial Justice Act was to “ensure that defendants claiming a violation [under the act] have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions.”⁶⁵ As the Court observed, “Preventing a defendant from obtaining information about charging decisions without first presenting that same evidence in a discovery motion is the type of Catch-22 the [Racial Justice] Act was designed to eliminate.” Instead, the Court went on, “[t]he Legislature was focused . . . on

⁶¹ *Governor Signs Landmark Legislation*, *supra* note 13.

⁶² *Young v. Superior Court of Solano County*, 79 Cal. App. 5th 138, 143 (2022).

⁶³ *Young*, 79 Cal. App. 5th at 143–44.

⁶⁴ *Id.*

⁶⁵ *Id.* (internal quotations omitted); California Racial Justice Act (RJA), *supra* note 13.

creating a discovery-triggering standard that is low enough to facilitate potentially substantial claims even if it came at some cost to prosecutorial time and resources.” This first appellate decision interpreting the discovery provision of the RJA signals a promising start for criminal and defendants seeking discovery to support RJA claims.

To date, only a small number of RJA claims have been filed, but each case demonstrates the importance of the RJA and the need to eradicate racial bias from the criminal legal system in California. For example, this year, a Contra Costa County judge held the first evidentiary hearings considering a claim under the RJA — specifically, to determine “whether prosecutors exhibited racial bias or prejudice towards [defendant] Gary Bryant Jr., a Black man and prolific musician, by using Bryant’s rap lyrics and rap videos as evidence during his trial for the murder of 23-year-old Kenneth Cooper.”⁶⁶

Though Bryant testified at trial that he had no gang affiliation, and though no evidence was put forward proving the victim was a member of a rival gang, the prosecution proffered a so-called “gang expert” who opined that Bryant’s rap lyrics demonstrated that he was involved in “gang activity.” That “expert’s” opinions included testimony concluding, among other things, that the phrase “lay a demo”—commonly understood to refer to recording a demo of one’s music — meant “make a shooting.” Based in part on this evidence, Bryant was found guilty of murder with enhancements for gang activity, and was sentenced to life in prison.⁶⁷

Bryant challenged his conviction under the RJA, arguing that the use and interpretation of his rap lyrics tainted his trial with racial bias. In a series of hearings beginning in fall 2021 and continuing through the spring of 2022, Bryant’s attorney, Public Defender Evan Kuluk, presented distinguished academics to assist the court in evaluating Bryant’s RJA claim. Bryant’s expert witnesses proffered testimony explaining the inherent racial bias that arises from the use of rap lyrics as evidence, the history of the use of rap lyrics as evidence, as well as the concept of implicit bias itself. At the conclusion of the hearings on Mr. Bryant’s RJA motion, an independent court expert was appointed to review the case and to advise the Court. A hearing is set for late September.

⁶⁶ Chessie Thacher, *Prosecutors Used Rap Lyrics as Evidence in a Murder Trial; that’s Racial Bias*, ACLU NORCAL (Sept. 28, 2021), <https://www.aclunc.org/blog/prosecutors-used-rap-lyrics-evidence-murder-trial-s-racial-bias>.

⁶⁷ *Id.*

Thus far, implementation of the law has been led by an ad hoc group of attorneys and advocates: no one is funded specifically to work on RJA implementation and there are no attorneys or advocates in the state who are able to devote 100 percent of their time to implementation of the law. A pending state assembly bill seeks to make the RJA retroactive so that incarcerated people with judgments rendered before January 1, 2021 can also seek reconsideration of their conviction or sentence if they can establish that racial bias played a role in obtaining the judgment against them or in imposing an excessive sentence.⁶⁸ If retroactivity is secured for the RJA, the need for outreach and advocacy to support incarcerated people and their families will increase dramatically.

Beginning in 2021, the USF RJC became part of that ad hoc group, which meets twice a month to strategize, share information, and support attorneys with promising RJA claims. In late 2021, the USF RJC was awarded a Justice Catalyst Fellowship to help implement the law and in June 2022, the USF RJC hired Assistant Professor and Supervising Attorney Yohannes Moore to be the Justice Catalyst Fellow and work full time on RJA matters. The USF RJC plans to play a key role in “The Pipeline to Freedom Strategy” conceived by leaders of the ad hoc group to work closely with partner organizations to make sure that the RJA is as widely and robustly implemented, and expertly litigated, as possible.

Part of this partnership involves working with the organization Access to Justice to identify incarcerated people who may be eligible for relief through the RJA and connect them with law students and new attorneys (including students and staff within the USF RJC) who can help them file their first petition making a formal RJA claim. The RJA provides for appointment of counsel *if* the first petition establishes a “*prima facie* showing.” Thus, by supporting individuals in filing their first petition, we can increase the number of people appointed an attorney.

The USF RJC’s work to implement the RJA will also include:

- Case consultation with trial and appellate attorneys evaluating potential RJA claims.
- Assistance in drafting novel motions and claims.

⁶⁸ *Racial Justice Act for All (AB 256)*, ACLU CALIFORNIA ACTION, <https://aclucalaction.org/bill/ab-256> (last visited Aug. 10, 2022).

- Tracking appeals and legal developments and sharing updates with attorneys.
- Connecting attorneys in need of support with experts and pro bono assistance.
- Organizing trainings on the RJA for students, advocates, and experts.

V. TITLE IX

As noted above, Title IX is the federal statute that prohibits discrimination in education on the basis of sex. A long line of United States Supreme Court precedents makes clear that sexual harassment and sexual assault interfere with a student's right of equal access to education and because these harms are "on the basis of sex" schools have an affirmative obligation to ferret out and discipline these violations under Title IX.

In 2011, the Department of Civil Rights, which is a division within the federal Department of Education (DOE), issued a Dear Colleague Letter (DCL) setting out guidelines for schools to follow when adjudicating Title IX cases. While the letter, issued under the Obama Administration, had no binding legal authority, it nonetheless had the force of law because the DOE prosecuted violations of the DCL guidelines by initiating federal investigations and threatening to withhold federal funds.

Among other rules, the DCL required schools to use a preponderance of the evidence standard — meaning that if the factfinder was 50.01 percent convinced that a violation occurred, the student must be found responsible. The DCL also allowed for schools to use single-investigator systems. Under this model, a single person — often hired on a contract basis by the school with no particular training — was assigned the role of factfinder and decisionmaker. This investigator, therefore, is expected to serve multiple roles that in the criminal legal system are played by different people to ensure fairness. Schools that used the single-investigator model, including the California State University system which serves nearly half-a-million students, provide no hearing, no neutral decisionmaker, and no means of cross examination. The DCL also barred mediation to resolve Title IX cases and most schools interpreted this prohibition to apply to the use of restorative justice as well.

The DCL remained in place until January, 2020, when the Trump Administration rescinded it and replaced it with federal regulations. These

regulations abolished the single-investigator system, which had also been found to be unconstitutional by some state and federal courts. It allowed schools to choose a clear and convincing evidence standard and required a live hearing, cross examination, and a decision by a neutral third party.

In June 2022, the Biden Administration announced plans to rescind the Trump regulations and replace them with regulations similar to those enumerated in the DCL. Under the newly proposed standards, accused students would not have the right to a hearing where a representative can cross-examine their accuser on their behalf to probe the allegations against them. Accused students are also not guaranteed access to the evidence against them, substantially undermining their ability to prove their side of the story.⁶⁹ The change would also mean a return to the single-investigator system.⁷⁰ Together, these changes deprive the accused of due process under Title IX — a deeply troubling outcome, considering that allegations of misconduct can have many of the same serious, life-altering consequences as criminal charges.

While the Title IX legal landscape is constantly shifting in significant ways that cause confusion and disruption, one thing has remained consistent: evidence that Title IX accusations, findings of responsibility, and significant punishments including suspension and expulsion fall disproportionately upon Black students. While the Office of Civil Rights does not collect data on race in Title IX adjudications at the college and university level, a growing body of evidence — ranging from data collected from specific schools, trends that have emerged from deeply reported journalism, and anecdotes from experienced Title IX advocates — suggests that implicit and explicit bias play a role in who is accused and how they are investigated and punished.

An analysis of assault accusations at Colgate University, for example, found that while only 4.2 percent of the college's students were Black in the 2012–13 school year, 50 percent of the sexual-violation accusations reported

⁶⁹ Robby Soave, *5 Ways Biden's New Title IX Rules Will Eviscerate Due Process on Campus*, REASON.COM (June 23, 2022), <https://reason.com/2022/06/23/title-ix-rules-cardona-biden-sexual-misconduct-campus>.

⁷⁰ The “single-investigator” model was briefly retired after Education Secretary Betsy DeVos put forward new regulations in 2018 that reformed Title IX and expanded due process protections for the accused. Lara Bazelon, *I'm a Democrat and a Feminist. And I Support Betsy DeVos's Title IX Reforms*, THE NEW YORK TIMES (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/opinion/-title-ix-devos-democrat-feminist.html>.

to the school were against Black students, and Blacks made up 40 percent of the students who went through the formal disciplinary process.⁷¹ Anecdotally, advocates involved with Title IX investigative and adjudicative processes notice the disparity and see how accusations of sexual misconduct often play out along racial lines. As Harvard law professor Janet Halley observed, “Case after . . . case that has come to my attention, including several in which I have played some advocacy or adjudication role, has involved black male respondents.”

Halley also suggested that interracial assault allegations are a category warranting particular scrutiny. In her 2015 *Harvard Law Review* article, “Trading the Megaphone for the Gavel in Title IX Enforcement,” she noted: “American racial history is laced with vendetta-like scandals in which black men are accused of sexually assaulting white women,” followed eventually by the revelation “that the accused men were not wrongdoers at all.” She writes that “morning-after remorse can make sex that seemed like a good idea at the time look really alarming in retrospect; and the general social disadvantage that black men continue to carry in our culture can make it easier for everyone in the adjudicative process to put the blame on them.”⁷²

This has also been reflected in the experience of the USF RJC since the clinic began defending students accused of Title IX violations in 2018.

Consider this situation: A young Black student — “John” — attending university on a full athletic scholarship, had been found responsible for violating Title IX by raping another student at his off-campus apartment. The underlying facts were these: John’s teammate’s white ex-girlfriend — “Jane” — matched with John on Tinder. She came over to his apartment, had sex with him and, they both agree, returned three days later to have consensual sex. Weeks later, Jane, who had by then reconciled with her boyfriend, claimed that John raped her during the first sexual encounter. John adamantly denied her account. Jane’s boyfriend said she was lying. In a string of text messages between the two, Jane went back and forth about what had actually happened with John. When her boyfriend asked pointblank if John raped her, she texted back: “I wouldn’t say rape.” There was no hearing, no chance for John — the accused — to ask Jane questions or probe her allegations (which he vehemently denied).

The investigator believed Jane, concluding that John committed sexual assault by finding her more credible than John under the

⁷¹ Yoffe, *supra* note 14.

⁷² *Id.*

preponderance-of-the-evidence standard, under which the accuser must prove there is a greater than 50 percent chance her claim is true. John was found responsible for rape. He was facing almost certain expulsion with just days to appeal. John — who was the first in his family to go to college, and had spent some of his childhood homeless and sleeping in cars — had no money and no lawyer.

When Jane's accusation became public, a group of students made posters with John's name and face and the word "RAPIST" printed underneath in block letters. They plastered them all over campus — a campus that was less than 3 percent Black in a town that was less than 2 percent Black. John hid in his apartment for three weeks. In an email to the Title IX investigator, he pleaded with her to investigate, writing, "people die be[cause of] things like this." She responded that investigating what happened to him was "not [her] job." John was afraid to set foot on campus — he was failing his classes. Then another student had come forward with a rape accusation against him, and the school, without investigating this new allegation, suspended him indefinitely.

In early 2018, the RJC agreed to represent John — our first Title IX client. We were able to get the first finding reversed and remanded for reinvestigation. Ultimately the case was resolved with no finding of responsibility against John. The single investigator found that the second accusation was not supported by the evidence. He left school as a student in good standing.

Our representation is the difference between a fair and an unfair process. Students like John are not entitled to a lawyer or to legal advice. Having a lawyer is the difference between being found not responsible and being found responsible and expelled. John's case is just one example among many. Like John, students of color accused of Title IX violations have also faced race-based retaliation on their campuses, particularly in cases involving a non-Black female accusing a Black male. In these cases, having access to trained lawyers and law students to prepare a defense has spared these students some of the unfairness that has been visited upon others.

Since John's case, the RJC students have taken on a number of other Title IX cases. Under the supervision of Professor Bazelon and outside counsel, RJC students have represented high school and university students accused of violating Title IX. In every single one of them the clinic's client was Black or Latino and facing a cross-racial accusation.

The USF RJC has also taken on a public role in the Title IX legislation process. The Clinic has twice submitted detailed letters — the second time in collaboration with professors at Harvard Law School — during the notice and comment period for the federal regulations. Assuming that the regulations are rescinded or overhauled, the USF RJC plans once again to weigh in on how the new regulations are worded.

VI. CONCLUSION

The USF RJC is unique among law school clinics in the nation in the scope and breadth of the work it does to attack racial discrimination within the criminal legal system. It operates a small internal innocence project, plays a vital role in the SFDA's Innocence Commission, is one of the key players implementing the California Racial Justice Act, is the only clinic that defends students accused of Title IX violations, and partners with the San Francisco Public Defender's Office to ensure the pretrial release of as many eligible people as possible. From fall 2020 to spring 2022, the clinic also partnered with the SFDA to successfully resentence more than forty people.

The clinic is proud to welcome a vibrant and varied group of students to undertake this work every semester. In particular, the RJC celebrates the diversity of its students in terms of their perspectives on and experience with the criminal legal system. Though many students join the clinic because they wish to become criminal defense-oriented attorneys, others dream of being criminal prosecutors or working at large civil firms but wish to have the opportunity to learn about and work within the criminal legal system. Because of the unique and varied projects that students work on in the clinic, our students leave their clinic experience not only with the practical skills and experience to excel in their chosen field (whatever that may be), but also with a richer perspective on the criminal legal system as a whole and a deeper understanding of the role that race and implicit bias play within that system.

Since 2016, the RJC has grown from a staff of one — Professor Bazelon — to a staff of three due to fundraising efforts by Professor Bazelon. Moving forward, the USF RJC is committed to continuing its fundraising efforts to ensure that these vital projects continue.

ELDER LAW CLINIC:

*Chapman University Fowler School of Law
Alona Cortese Elder Law Center*

KURT EGGERT*

THE REWARDS AND ETHICAL CHALLENGES OF REPRESENTING ELDERS

Introduction

An elderly woman had to flee her home during the pandemic because her son had physically mistreated her and threatened to kill her and then himself. She moved into a shelter designed to protect people from domestic violence. When social workers at the shelter connected her with Chapman's Alona Cortese Elder Law Center, we had greater challenges than usual in obtaining an Elder Abuse Restraining Order to help her stop this horrific abuse. In years past, we could meet with our clients either in our office or, if need be, in their homes. We could interview them at length in person, look at their photos or documents, go through their history, and prepare them for the hearing on the restraining order. We could easily

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Kurt Eggert is Professor of Law and Director of the Alona Cortese Elder Law Center, Chapman University Fowler School of Law.

call them with follow-up questions and talk with them almost daily, if we needed to. Because of the pandemic, we could not meet with our client in person and, because she was in a shelter, it was sometimes a challenge even to schedule Zoom meetings or phone calls. We even had difficulty meeting with her on Zoom, video technology that many of our senior clients are unfamiliar with and have difficulty using. Then, once we prepared her for her hearing, we had to work with shelter staff to make sure that she could make her court appearances on the court's video system despite the technological challenges. In the end, she was able to make her court appearances and we were able to obtain a permanent restraining order.

Another elder wanted us to draft a will and advance health care directive, deciding to whom she would bequeath her possessions and who she wanted to make her health care decisions for her when she was no longer able to. Normally, to discover and understand her true wishes and ensure that she was not subject to undue influence, we would meet with such a client separately, with no family member present. During the pandemic, however, we could not meet with her in person but instead would do so on Zoom. She needed her daughter to help her join the Zoom meeting and be nearby and instantly accessible in case of Zoom problems. Just looking at the Zoom screen, we could not be absolutely certain that her daughter was not just off-screen, listening in. We had to determine that we did not think that the daughter was unduly influencing the mother and coaching her from off-screen.

A daughter brought in her ninety-plus-year-old mother to our office before the pandemic and said that another daughter was taking advantage of her. This immediately raised the question of which one of the two of them, mother or daughter, would be our client. If the mother were not competent to make decisions, we could represent the daughter to gain a conservatorship over her mother to protect the mother's interests. If the mother were competent, we could represent the mother in obtaining a restraining order against the other daughter. However, it would be a potential conflict of interest to represent both, since we could not simultaneously represent the mother while representing the daughter in obtaining a conservatorship over the mother. And so, we had to decide which person was our client, and we had to do so almost immediately, before the other could develop the reasonable expectation that we were representing her as

well. We determined that the elderly mother was competent to retain us and therefore we represented her and not her daughter, and were clear with both of them which one we were representing.

Another client wanted us to draft a will and health care directive. She could not come to our office, but she did not want us to meet with her in her own apartment, because of her COVID concerns, among other reasons. And so, we met with her in the lobby of her apartment building. This forced us to halt conversation every time someone else entered the room, in order to preserve client confidentiality. We had to stop completely when a third party came into the room and sat down to read, and she did not want to ask that person to leave.

These brief vignettes illustrate recurring ethical issues we face in the Elder Law Clinic. Although the universe of such issues is potentially vast, four ethical challenges recur in a huge percent of our cases. These are (1) determining who is the client and the role of other family members; (2) determining whether the client is competent enough to hire us and, if so, working through any cognitive or memory issues the client might have; (3) being on the alert for any undue influence by others; and (4) keeping the client's confidences as best we can while obtaining the client's consent to work with and through family members or others who are not clients, when appropriate.

The practice of elder law has more difficult, complicated, and immediately urgent ethical issues than most other areas of the law. These ethical quandaries often arise in the first minutes of the initial client meeting. Many elderly clients are dependent on their family to help them meet with attorneys and often to explain their experiences and legal problems to the attorneys. Sometimes, the client needs a family member to translate for them. However, elder law attorneys also have to preserve client confidentiality and ensure that the family member who is "helping" the client is not also taking advantage of or unduly influencing them. Elder law attorneys regularly have several members of a family come in for a consultation, and the attorney must almost immediately establish who is the client, in order to determine to whom the attorney's duty of loyalty and other duties are owed, then immediately communicate that to the family or friends who accompanied the client to the meeting. We have to tell family members that we do not represent them, that our duties run to our client and not to them, and that we may need to tell our client anything the family members

tell us, even if they do not want us to. We cannot keep important secrets from our client, however painful that might be for those family members.

THE ALONA CORTESE ELDER LAW CENTER AND ITS HISTORY

Chapman Law School hired me in 1999 to create an elder law clinic during its first years of existence. I had worked for almost a decade at Bet Tzedek Legal Services in Los Angeles, representing elders and indigent clients in a variety of issues, including home equity fraud and mortgage foreclosure cases and eviction defense. For two years, I was also simultaneously an adjunct professor at Loyola Law School, teaching Elder Law.

When I joined Chapman, I was told I would have a secretary/paralegal and they would find space for the clinic in the new law school building, which was then under construction. My first day of work was also the first day the building was open. The clinic opened in 2000. Initially, our clinic office was in two small rooms not much larger than broom closets tucked away on the third floor of the law school. Clients sometimes had trouble finding the office, especially when they came at the wrong time or unannounced, and our goal was to find better and more accessible offices for the clinic. That goal was met when Heidi Cortese, an Orange County philanthropist and Alona Cortese's daughter, met with me and then a day or two later informed me that the Alona Cortese Trust was going to donate a building for the elder law clinic, to be named after her mother.

Alona Cortese is an appropriate namesake for an elder law clinic, because she and her husband, Ross Cortese, were co-founders of the company that developed the Leisure World communities across the country. Leisure World was designed around the concept of "active retirement," fostering "better lifestyles at every age," and giving seniors a place where they could live and enjoy recreational and social activities in a safe environment. In her young adulthood and before the creation of Leisure World, Alona Cortese had been a Hollywood starlet. Under the name Alona Marlowe, she had appeared in movies with actors such as Zasu Pitts, Douglas Fairbanks Jr., and Joan Crawford. She also worked with the Gilmore Oil Company, making appearances with their mascot, the Gilmore Lion.

I worked with Heidi Cortese to select the appropriate building for an elder law center, and she decided on the perfect building, a two-bedroom house a half-block from the law school. Built in 1917, the house had been used for shops for years. The bedrooms became attorneys' offices. The kitchen became a meeting room for clients. The living room turned into a student workspace that could double as a large conference room, and we have space for a secretary/paralegal. The building has a comfortable, homey feel, is easily accessible by public transportation, has parking in the back for clients with a ramp to the back door, and is a short stroll from the law school for law students to attend client meetings. In the clinic, we have photos of Alona Cortese at various stages of her life, one from her Hollywood days, another of her driving a convertible with a Gilmore Lion in the back seat, and a third taken when she was in her nineties, about the time I met her. I tell students that these photos are a wonderful photographic example of healthy aging.

The Elder Law Clinic grew in size for a time. First, I was able to hire an adjunct professor to work with me both in teaching and in supervising students with cases. Then, Chapman hired a Chapman law graduate as a professor and full-time attorney in the clinic. I think it was inspirational to students to have a Chapman Law grad as a professor. Recently, the clinic has reverted to a smaller size, and again I am working with just an adjunct professor.

THE DESIGN OF THE ELDER LAW CENTER

I designed the Elder Law Center to accomplish several goals. Among them:

- To provide free high-quality legal services to the needy elderly of Orange County;
- To teach students how to be great practical lawyers, able successfully to take on challenging cases for clients often in great stress and be empathetic counselors for their elderly clients;
- To give students doctrinal instruction about elder law and such topics as Medicare, Medicaid, Social Security, elder abuse, and end-of-life planning; and
- To teach students the joys and benefits of pro bono legal representation. I encourage my students to provide pro bono representation after

they graduate by showing them how representing needy clients is not only fulfilling, but also allows young attorneys to learn new skills and areas of law and to jump-start their legal careers.

To accomplish these goals, my clinic has typically handled more than one hundred cases each semester, so that each student works on about five cases at a time, gaining new cases as they resolve existing ones. Students are given a mix of cases centered on the typical legal problems of the elderly. A student may be drafting a will and health care directive for one client, working on an elder abuse restraining order for another, and handling a debt collection case for a third, while completing a conservatorship case for a fourth. My students often work in teams on bigger cases, such as elder abuse restraining orders, meeting together with the clients, dividing up the work, and talking with each other about the cases. I tell my students that more and more legal work is being done by teams of attorneys and non-attorneys, so that learning to work well and cooperate with others will likely be crucial to their careers.

The clinic is offered for up to four credit hours per semester, and the students can take the clinic twice, once in Spring Semester and once in Fall Semester, in any order, as we cover different doctrinal subjects in the two semesters. While some of our clients call the clinics directly, we receive referrals from courts and a variety of different agencies in Orange County, including senior centers, legal aid organizations, and domestic violence organizations. I start giving the students cases in the second week of class, so that they can begin going through the files and preparing to work on them. We do not have a rigid income screening for our clients unless we receive a grant that requires one, but generally only represent clients who could not afford to hire private attorneys.

STUDENT TRAINING

At the beginning of the semester, I train students how to do initial interviews of clients, where many of the ethical issues in the representation of elders pop up. I do this by teaching the practical skills of interviewing elderly clients, how to talk with clients of questionable memory or capacity, and how to handle an initial interview where the client is accompanied by one or more family members or friends. And then the class spends two

weeks on mock interviews, with students switching off portraying either an attorney or a client. They start with simpler situations with a single client with a straightforward legal issue, and then face more and more difficult and complex situations. They interview a mock client with memory loss, for example, or an elder brought in by a non-family member who does not seem to have the client's best interests at heart. A student may be directed to portray a mock client who is highly suspicious and distrusting of attorneys, and so the student playing the attorney must work to gain the mock client's trust. A final interview scenario is of an elderly parent coming in with two adult children who argue with each other vociferously, each son or daughter accusing the other of wrongdoing. Plus, the elderly client secretly wants to leave her estate to a third child who is currently in jail, but does not want to disclose this plan to the children with her at the interview. Students must learn how to control the interview despite the loud and incessant wrangling, and how to figure out the facts when the two adult children make contradictory accusations. And they learn to insist that the adult children leave the room, so that they can talk with the elderly client without the children's interference or knowledge of what is being said.

During the mock interviews, I pass notes to the students playing the clients on what to say to the student-attorneys to make the interview more challenging. For example, I may tell them to stop talking and just stare at the student-attorney for a minute, or to accuse the student-attorney of working with the client's children, just to see how the student-attorney reacts. Students need to learn how to deal with curveballs that clients throw at them. Then after the mock interview, we talk about what worked, what did not, and how the students could better have addressed the challenges of the interview. Students learn a lot from these mock interviews, not only about how to conduct such interviews, but also about how it feels to be interviewed. I think students gain empathy for their clients by playing clients and having a student playing an attorney ask them extremely personal and sometimes even painful questions. Students have often told me that when they were doing the mock interviews, they thought I had designed impossibly difficult interviews that could not happen in real life, and then later found themselves in an interview with a real client that was surprisingly similar.

One of my goals in the mock interviews is getting students used to talking with clients about some of the deepest and most troubling aspects of the clients' lives. Clinic students and elder law attorneys need to be able to talk with clients about planning for the clients' own deaths or possible incompetence. They need to be able to ask clients calmly and sympathetically about what the client would want to happen when they die or if they were in a coma and unlikely to regain consciousness. Students are often nervous or even frightened to discuss such issues with clients, and I let them know that clients often have little reservation about talking about them. The clients have often thought through what they want done and have talked with their friends and families about what to do. Students are often amazed when clients calmly discuss or even joke about their end-of-life decisions.

Students also need to be able to ask clients probing questions about conflicts or abuse in their family, about the son who has become increasingly controlling and even violent, or about the daughter who is threatening never to let the client see her grandchildren again. Our students have to be able to go deep into some of the most distressing and important aspects of our clients' lives, often talking with clients in crisis and in times of greatest need. Sometimes, our clients cry and need to be comforted, and I teach students how to treat a frightened, sad, or grieving client with dignity and empathy. I devote one whole class to the importance of empathy for attorneys and how students can practice and develop empathy while still maintaining a professional relationship with their clients.

I also give the students a crash course in legal ethics as focused on elder law, especially elders subject to duress or with questionable competence, and then follow up with additional discussions on ethics in an elder law practice throughout the semester. The rules of professional ethics often provide too little guidance regarding the professional responsibilities of elder law attorneys, and especially attorneys representing persons with diminished capacities, whether due to age, disability, or other condition. We talk about the various ethical responsibilities attorneys have, such as the duties of confidentiality, loyalty, competence, and avoiding conflicts of interest, and how all of these duties require the attorney quickly to determine the central question often facing elder law attorneys: who is the client? Normally it is the elder, but if the elder is of questionable competence

or lacks competence, the client may have to be a family member. If several members of a family come in for an initial interview, it may be a challenge to determine whom to represent and do so quickly enough that the other family members do not develop a reasonable expectation that the attorney will be representing them. If an attorney makes the wrong choices about who the client is, they may find themselves conflicted out of the case when they discover they picked the wrong person to represent.

In addition to teaching students how to handle cases, the class covers the significant substantive issues in elder law, including government benefit programs such as Social Security, Supplemental Security Income (SSI), Medicare, and Medicaid, as well as housing programs and methods to aid aging in place for the elderly. Students learn about end-of-life decision-making for the elderly, both the elders' own decisions and also rules and best practices for substituted decision-making by conservators or health care directive agents for elders who are no longer able to make decisions for themselves. We discuss laws protecting or restricting the right to die. We also discuss laws governing physical and financial elder abuse and fraud against the elderly.

TYPES OF CASES

The Elder Law Center represents clients in a wide-ranging set of cases. Many of our cases are typical of the legal issues of the elderly, such as drafting wills and health care directives. We draft wills only for those with limited assets and we do not draft trusts. We refer out clients with significant assets or who should have trusts, so that they can find attorneys with expertise in more complicated estate planning. We handle government benefits cases, such as SSI overpayment cases, senior housing issues, and others, and regularly appear before Administrative Law Judges (ALJs) on these cases. In one case, we represented a senior on Medicare after Medicare decided that it would not pay the tens of thousands of dollars in costs when she was airlifted to a hospital with a health crisis, claiming that she did not need to be airlifted. We successfully convinced the ALJ that the airlift was necessary and was essentially decided upon by her treating doctors for her, and so she should not have to pay the massive bill that she was being charged. These appearances in front of ALJs are great experiences for our students,

as each hearing is a mini trial, with the drafting of a brief, the examination of witnesses and cross-examination of the government's experts, and oral argument. ALJs seem typically relieved to have a student representing the petitioners rather than facing unrepresented petitioners, so that the ALJ has a well-organized case presented to them. ALJs, like judges in general, also appreciate that the students are accomplishing an important part of their legal education, and ALJs and judges have often complimented my students from the bench for their work and professionalism.

We also handle conservatorships, sometimes representing a family member of the proposed ward/conservatee. People who try to obtain a conservatorship without an attorney often find themselves facing a bewildering set of forms to fill out and legal hoops to jump through, and legal representation may be crucial to their being able to protect their family members. We also at times have represented proposed conservatees, either to oppose a conservatorship, seek a different conservator, terminate a no-longer-necessary conservatorship, or simply to protect their interests in the conservatorship process.

We also represent grandparents or other elders who want to become guardians for their grandchildren or adopt them. In our clinic, we have seen the effects of the opioid crisis and other drug issues, where parents of children are no longer able to raise them, and grandparents have to step in and take over the role of parents. The grandparents need the legal authority to make school and medical decisions for the children. Sometimes more than one generation is unable to care for the children. We represented a great-great aunt who was caring for a five-year-old boy, doing an admirable job even though she was in her eighties. We have handled adoptions of grandchildren who have lost their parents. One of happiest days I have had in court was representing grandparents in such an adoption. They told the judge they were having a party afterward to celebrate with the child and her friends and family, and it was clear how attached to and loved by the grandparents the child was. Even the judge was beaming.

We also handle a wide variety of cases that are not peculiar to the elderly but involve our elderly clients. We have helped force the transfer of stock to our client's name after a spouse's death when the company inexplicably refused to do so. We work on debt collection cases, where collectors hound our clients to repay debts that either they should not — or are

completely unable to — repay. We have represented homeless clients to obtain government benefits. In one case, a city refused to give a housing subsidy to a homeless elder, stating that she could not prove she lived in the city since she did not have a fixed address. We collected evidence that she lived in the city from her church, her library usage, and from neighbors.

We handle a significant number of elder abuse cases. A typical case may involve an elderly client living with her adult son who has drug or alcohol problems and has grown more controlling or abusive since his father passed away. Our clients have had their adult child push or hit them, take their walker from them to make them immobile, or take away their phone to cut off communication with the outside world. We have had several clients faced with adult children who have moved into their garages and refused to leave, haranguing and abusing their parents and making their lives miserable. The elders often feel unable to have friends over, never certain when their adult child will barge into the house and create problems. After we obtained an elder abuse restraining order evicting an adult child and her boyfriend from our client's garage, our client told me that she felt like we had given her life back to her.

STUDENT SELECTION, SUPERVISION, AND FEEDBACK

Our clinic is open to all Chapman law students, so long as they are eligible to become a certified law student under the rules of the State Bar of California. Becoming certified allows students to conduct trials under the direct supervision of a professor-attorney and otherwise practice law under my watchful eyes. I do not select the law students, in part because I want even students who are not planning a career in elder law to be able to take the clinic and perhaps discover that they are more interested in elder law than they had anticipated. Also, students can benefit from an understanding of elder law and elder issues in a wide variety of legal careers. Prosecutors often need to understand elder abuse, for example. Personal injury attorneys should recognize that an injury award may affect their clients' government benefits. Even non-elder law attorneys may often find themselves with some elderly clients and should understand what potential issues and challenges that might bring.

Our compact and cozy Elder Law Center building makes supervision of students easier than it might otherwise be. Although I also have an office in the law school building, my primary office is in the clinic. Students can come into my office individually or in teams for a brief or long talk about cases they are working on, and it is easy to have an informal meeting with a student or team of students about cases or other aspects of elder law. I tell the students that the clinic should be their home away from home and a place to escape to from the sometimes pressure-packed confines of the law school. When the pandemic does not prevent it, students regularly sit and have lunch in the clinic and socialize with each other.

One of the goals of the clinic is to teach students how to learn the law. When I assign cases to students, I do not spoon-feed to them how to do a conservatorship or how to draft a will. Instead, I teach them the fundamental principles, purposes, and pitfalls of conservatorships and wills and how to use the practice guides for each area of law. The student takes the first shot at drafting the appropriate documents, and then we go through the documents and talk about them. I want to make sure that the final product is as good as possible, but I also want the students to take responsibility for their cases and try to get the work right on their own before they bring it to me.

The feedback I get from students is uniformly positive. Students enjoy working with the elderly clients, even those who want to talk at great length about their legal issues or other aspects of their lives. I tell my students that for some of their clients, the student may be the only person they have a long conversation with that day. Especially during the pandemic, many seniors feel isolated in their homes with too little social contact. I have had students have two-hour conversations with clients, and I teach students how to end conversations with clients when appropriate. Students often comment that we throw them into the deep end of the pool, but teach them how to swim. Especially during the first weeks of the semester, many students are hesitant to call clients, unsure how to talk with them. That is the reason that we have so many mock interview sessions at the beginning of the semester, as it gives students confidence in their ability to talk with clients.

Some students are nervous about making court appearances and only want to take cases where they are just working with clients, but not appearing in court. However, I assure them that before each court appearance, I

will make certain that they are thoroughly prepared, likely more prepared than a typical attorney they might face. For hearings on elder abuse restraining orders or in front of an ALJ, we do an entire mock hearing with our client present, where I play the judge and the student conducts the questioning of the client. I had one student who said she was terrified of being in court and was not comfortable doing public speaking. I worked with her extensively to prepare for a court appearance, and she so enjoyed it and was energized by it that she took another case with a court hearing and said that she was considering becoming a litigator, since she loved appearing in court.

I tell my students that, for many areas of law, learning how to talk with clients, gain their trust, and really listen to them can be crucial for their careers and building their practices. I tell them that in my first job as an attorney, I was nervous about talking with clients, as I had not worked in a clinic in law school, and I remember my hands almost shaking when I called my first client, wondering what to say. Our students talk with numerous clients, often at length, during the course of the semester, and so gain confidence and skill in talking and working with clients.

PARTNERING WITH OTHER ORGANIZATIONS

The Alona Cortese Elder Law Center has succeeded in part by partnering with other organizations that provide aid to seniors in Orange County. From the beginning, we have worked with the Public Law Center (PLC), a nonprofit that provides free legal services in part by matching pro bono attorneys with indigent clients who need services. PLC not only matches attorneys with clients, it also trains attorneys how to handle certain types of cases. We regularly take cases from PLC, especially wills and conservatorship cases, and it is helpful to have a steady source of clients and be able to take specific cases that would be especially useful or interesting for our students. Sometimes, we take cases from PLC in areas of law that are new to us, and PLC is very helpful in providing advice and sample briefs as needed.

We have also worked with the Legal Aid Society of Orange County (now called Community Legal Aid SoCal). In the early years of our clinic, Bill Wise, an elder law attorney with Legal Aid, was an adjunct professor

with Chapman and co-taught our clinic. This allowed an easy collaboration between the two organizations, and the clinic could take referrals of Legal Aid cases, or we could work together with them on Legal Aid cases. Since then, Bill has co-founded the Elder Law and Disability Rights Center (ELDRC), a nonprofit that provides free and low-cost legal services to seniors, people with disabilities and also people experiencing homelessness. Starting last spring, Bill rejoined Chapman and our clinic as an adjunct professor, and our clinic and the ELDRC will be partnering with the Elder Law Center to provide legal services to the needy.

Another important collaborator has been Human Options, an organization that counsels, protects, and shelters those threatened by domestic or family abuse in Orange County. Human Options has regularly referred to us clients who are seeking Elder Abuse Restraining Orders, often after they have counseled the potential clients. As attorneys, we recognize that while we can provide legal counseling, our clients facing elder abuse also often need emotional counseling. It may take years for someone in an abusive situation to work up the resolve to end it, especially when the abuser is their own son or daughter. Parents often feel protective of their children even when the children are a physical or financial threat to the parent. Seeking a protective order and evicting a son or daughter from the family home can often be an agonizing decision, and the clients need emotional as well as legal support.

TEACHING IN THE CLINIC

I came to Chapman after nearly a decade as a legal aid lawyer, and some time ago came to realize that this is likely the last and certainly the perfect job for me. I love having the regular interaction with my elderly clients, helping them in their times of greatest need, and developing close relationships with them. We work with some of our clients for years. I have one client in her nineties with whom I meet in her house. She enjoys making home-made guacamole for my visit and I have come to know her extended family. At the same time, I appreciate the opportunity to teach a new generation of lawyers. I also teach podium classes, typically Remedies and Client Interviewing and Counseling, and while I find teaching those classes fulfilling, there is nothing like working with a student on an

actual case with an actual client to feel like I am really teaching them how to practice law.

I also appreciate the close relationships with students in the clinic that are more difficult to obtain otherwise. I recently served as a reference for a former student applying for a legal aid job doing eviction defense. I remember telling him when he was a student that he would make a great legal aid lawyer, that he had the passion and the skills to be an effective advocate for the needy. That student had done an excellent job in my clinic representing a client in front of an ALJ, and in my recommendation I could talk in great detail about how the student had grabbed the bull by the horns in a difficult case, figured out the complex regulations that governed, wrote a convincing brief, and did so well in the hearing that the ALJ complimented his witness examination and professionalism. Better yet, he got the job.

I am glad that part of my job is being a legal scholar. My scholarship includes but is not limited to elder law issues. I have given talks and presented papers on a variety of issues, including elder abuse, foreclosure and mortgage securitization, and even gambling law. I recently published an article on Originalism and the Nondelegation Doctrine,¹ enjoying working on an entirely new area of law. My work at Chapman led to my being appointed to a committee advising the Federal Reserve Board on consumer issues in the financial industry, and I have testified to congressional committees on numerous occasions on mortgage issues and on consumer protection in the gambling industry. I feel that doing legal scholarship has made me a better clinical professor, in that it has forced me to step back and view the larger picture. Speaking at conferences on elder law lets me talk with other experts in the field and gain new understanding. I feel fortunate that my scholarship and actual practice reinforce each other and allow me to continue to enjoy and model actual client representation, the heart of an attorney's work.

★ ★ ★

¹ Kurt Eggert, *Originalism Isn't What It Used to Be: The Nondelegation Doctrine, Originalism, and Government by Judiciary*, 24 CHAP. L. REV. 707 (2021).

FOSTER EDUCATION PROGRAM:

UC Berkeley School of Law

HALEY FAGAN* & TORI PORELL**

FOSTERING EDUCATIONAL SUCCESS AND PUBLIC INTEREST CAREERS

What's the problem?

BB is a nine-year-old African American girl. She and her younger siblings were recently removed from their parents' care after years of physical abuse and witnessing significant intimate partner violence in the home. BB is now living in a foster home and has been enrolled

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Haley Fagan is Director of the Education Advocacy Program at East Bay Children's Law Offices, a non-profit law firm providing court appointed, holistic legal representation to children in Alameda County's juvenile dependency system. More information is available at <https://www.ebclo.org>.

** Tori Porell is a Youth Justice Attorney at Bay Area Legal Aid, where the Youth Justice Team engages in civil legal representation, social work, community collaborations, and systematic advocacy, in partnership with the young people they serve. They provide civil legal services to young people from the ages 13 to 26 to prevent entry or re-entry to the criminal legal system. More information is available at <https://baylegal.org/what-we-do/our-clients/youth-justice>.

*in school for the first time in her life. School has not been going well. BB is not accustomed to being separated from her younger siblings, for whom she feels a sense of responsibility. She is routinely leaving her classroom in search of her siblings to make sure they are safe. In addition, the years of complex trauma BB has endured are translating into aggressive behaviors with adults and her school peers as well as extreme difficulty in regulating her emotions on campus. Concerned about BB's propensity to leave school grounds and the aggression with which she responds to staff attempts at intervention, school administrators have now resorted to calling in armed, uniformed police officers to chase BB through her elementary school campus in an attempt to contain her.*¹

Unfortunately, BB is not alone. For myriad reasons, youth in foster care have exceedingly poor educational outcomes. A 2013 report sponsored by the Stuart Foundation confirmed what foster youth advocates have witnessed for years — that California's foster youth are a uniquely at-risk student subgroup in California schools.² Foster youth change schools far more often than their peers; are twice as likely as their peers to test below grade level in English and math; are twice as likely to be identified as having a disability and five times more likely to be classified as having an "emotional disturbance"; and are consistently suspended at several times the statewide suspension rate.³ It should come as no surprise, then, that although the statewide high school graduation rate has hovered at around 84 percent for the last several years, California's foster youth have been graduating at the far lower rate of around 56 percent each year.⁴

¹ While the stories are true, all initials and identifying information of foster youth referenced in this article have been changed or omitted to maintain confidentiality.

² V. X. Barrat & B. Berliner, *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools* (San Francisco: WestEd, 2013), available at <https://www.wested.org/resources/the-invisible-achievement-gap-education-outcomes-of-students-in-foster-care-in-californias-public-schools-part-1>.

³ For example, during the 2020–21 pandemic school year, the statewide suspension rate was 0.2 percent, while the foster youth suspension rate for that year was 1.2 percent. The statewide suspension rate in 2019–20 was 2.5 percent, while the foster youth suspension rate for that year was 11.9 percent. Data available at <https://dq.cde.ca.gov/dataquest>.

⁴ Data available at <https://dq.cde.ca.gov/dataquest>.

Growing awareness of this problem has resulted in targeted legislation at both the state and federal levels. In 2003, California passed AB 490, declaring an intent that foster youth receive access to a meaningful education and laying a foundation for that success with a key set of student rights and school responsibilities. For example, AB 490 gave California foster youth the right to remain in their school of origin when facing a change in foster home placement, as well as a right to receive partial credits for courses begun but unable to be completed due to placement changes. It also created timelines for transfer of school records and reduced the burden of school enrollment requirements for youth in foster care. Similarly, in 2009, AB 167 introduced an option for qualifying foster youth to earn their high school diplomas by fulfilling California's basic state graduation requirements rather than the increased high school credit requirements of most local educational agencies.⁵

Despite these legislative efforts, real change in the life of any foster youth requires an adult who is paying attention and empowered to enforce the youth's educational rights. Many foster youth simply do not have an adult willing or able to take on that role. This is particularly true of youth with higher mental or behavioral health needs living in congregate care settings or facing placement instability. For these foster youth, the lack of a consistent educational rights holder can result in repeating coursework at each new school placement, spending months in the wrong grade level before anyone notices, or effectively losing a year of school due to repeated school placement changes.

THE "FOSTER ED" FIX

The Foster Education program, or "Foster Ed," began in 2004 as an Equal Justice Works fellowship project of an alumna of UC Berkeley School of Law (Berkeley Law). Working alongside Protection & Advocacy, Inc. (since renamed Disability Rights California), and with support from The Morrison & Foerster Foundation, this Equal Justice Works Fellow and a group of Berkeley Law students developed a model for training up and pairing Berkeley Law students with foster youth in need of educational rights

⁵ For more information on the educational rights of California's foster youth, visit the California Foster Youth Education Task Force at <http://www.cfyetf.org>.

holders. In the years since the initial fellowship project, the Foster Ed program has been sustained through the efforts of law student leaders with supervision and training support from advocates at East Bay Children's Law Offices, National Center for Youth Law, Disability Rights Education & Defense Fund, Bay Area Legal Aid, and The Morrison & Foerster Foundation.

Every fall, a group of Foster Ed student leaders screens and selects a new class of prospective educational rights holders from the entering first year Berkeley Law class as a part of the Student-Initiated Legal Services Projects program.⁶ Participants are chosen based on their level of interest and prior experience working with youth. Past participants have included former teachers, Court Appointed Special Advocates (CASAs), coaches and camp counselors in addition to students with lived experience in the foster care system.

Once the new group has formed, attorneys and advocates from partnering organizations provide initial training. While the format of the training has varied over the years, it has always included an introduction to the juvenile dependency system and the rights and responsibilities of educational rights holders, as well as a primer on special education and school discipline law. Education laws specific to the foster youth population are covered in the initial training phase, including the school stability and high school graduation rights conferred by AB 490 and AB 167. Additional training offerings have covered topics like childhood trauma and mental health, maintaining professional boundaries, and working with transition aged youth. Participants have also heard directly from advocates with lived experience in the foster care system. Each Foster Ed participant signs a confidentiality agreement and is given a collection of written materials to assist in their advocacy during the course of the year. These materials include relevant legal reference documents, research and practical tools like checklists and sample school advocacy letters.

Following initial training, a supervising attorney from East Bay Children's Law Offices matches each of the Berkeley Law students with a foster youth in need of an educational rights holder. These are foster youth for whom there are no other adults previously known to the youth who are willing or able to take on the responsibility of holding educational rights.

⁶ <https://www.law.berkeley.edu/experiential/pro-bono-program/slps>.

Often, these are youth living in congregate care settings called Short Term Residential Treatment Programs (STRTPs) or with a history of unstable foster home placements for whom the foster care system has added trauma to pre-existing mental health concerns. A pairing may be made to address unmet special education needs on behalf of the youth, to provide trauma-informed advocacy around exclusionary school discipline practices, or to support a youth in efforts toward high school graduation, for example. Each participating Berkeley Law student is then formally appointed by the dependency court to serve as the educational rights holder for the foster youth with whom they are paired. Foster Ed participants are required to hold these educational rights for a minimum of one year, though many continue in this role throughout their law school careers.

As educational rights holders, Foster Ed students are charged with investigating the foster youth's educational needs, ensuring that their educational rights are being met, and that the foster youth's voice is heard in all education-related matters. Educational rights holders can meet with the youth and their teachers, observe in the classroom, and review student records. They are entitled to notification of school disciplinary matters and are vested with decision-making authority regarding all special education services and evaluations. In addition, educational rights holders can play a key role in the dependency court proceedings by providing critical updates on the status of the foster youth's educational needs. Educational rights holders are statutorily recognized as members of the youth's dependency "Child and Family Team" and therefore invited to all team meetings regarding possible changes in foster home placement.

The Foster Ed participants and supervisors convene on a monthly basis throughout the school year for additional training and case round discussions. East Bay Children's Law Offices attorneys regularly advocate alongside participants at key school meetings and strategize with participants in how best to promote a foster youth's educational success during their time in foster care. Participants also get the experience of collaborating with non-legal advocates, including social workers, education professionals, therapists and caregivers in working toward the foster youth's best interest. Most importantly, Foster Ed participants have the opportunity to give some measure of power back to the youth in foster care by amplifying their voices in school meetings and offering them support in reaching their goals.

A COMMUNITY OF MENTORS

Mentorship is a core feature of the structure, the goal, and the impact of the Foster Ed program. From its genesis, Foster Ed has been a student-led program receiving professional mentorship and supervision from legal practitioners for the purpose of providing educational mentorship and advocacy to youth in foster care. The lawyers mentor the law students on how to be effective public interest advocates in an imperfect system; the law student leaders mentor the first-year participants on how to be law students and educational rights holders; and the law student participants mentor foster youth on how to be successful students and self-advocates.

The student-led structure of the Foster Ed program as well as the role that participants play as educational rights holders promotes a unique form of mentoring partnership between participant and supervising attorney. In their role as an educational rights holder, it is the Foster Ed participant who holds decision-making authority while the supervising attorney's role is primarily advisory. Once the initial training phase is concluded, the participant and supervising attorney function as a team advocating together on behalf of the foster youth in educational matters.

As educational rights holders, Foster Ed participants get a front row seat to the structural barriers and system flaws facing the foster youth with whom they are paired. They have the opportunity to see how the basic building blocks of the legal system, which they spend much of their first-year law courses discussing, often fall short of the needs they were designed to meet. They also experience how impactful the role of the advocate can be in making the legal system work. Much of the professional mentoring focuses on how to navigate as an advocate in a broken system. Case round discussions among the group are frequently about how to find or create some good for the client under circumstances in which the system offers no good options.

Amelia was appointed to hold educational rights for foster youth JJ. JJ was an elementary school student receiving special education and mental health services at school. JJ's trauma history and resultant mental health needs had caused frequent disruptions to his home placement, in turn leading to a pattern of school changes. When yet another foster home placement fell through in the middle of the school year, JJ was moved to a home thirty-five miles away in a different

county and school district. While AB 490 clearly allowed for JJ to remain enrolled in his school of origin, it did not provide easy solutions for how JJ could be transported to and from that school every day. As a result, JJ's county child welfare worker advised his new caregiver to enroll him in yet another new school for the remainder of the school year. It was only through the efforts of Amelia, who had spent much of the school year building positive relationships with JJ's existing special education team, that JJ's school of origin agreed to transport him across county lines every day to maintain his school placement. Because of Amelia's advocacy, JJ was able to finish an entire school year in the same school for the first time in his elementary school career.

Foster Ed participants paired with older foster youth often play a critical mentorship role in the road toward that foster youth's high school graduation and persistence to higher education. Foster Ed participants have worked toward getting students into the high school classes they'll need to graduate or into the trauma-informed school environments in which they'll have the necessary support to meet their goals. They have advocated for appropriate special education assessment and services for foster youth in juvenile hall and ensured that foster youth had the necessary technology to participate in distance learning during the COVID-19 pandemic. Foster Ed participants have given college tours and even arranged for an interested foster youth to sit in on a Berkeley Law class.

Leila was appointed to hold educational rights for CC. CC had experienced significant trauma growing up and was homeless and without consistent adult support when she entered foster care. Despite these challenges, CC was on track to graduate and excelling in her coursework when COVID-19 hit. Amid all the changes brought about by distance learning, CC stopped receiving some of her special education accommodations in one of her classes. CC was fearful of causing trouble with her teacher, but the lack of accommodations was causing her increased anxiety as her grade was slipping. This was particularly troubling to CC as she had a goal of attending college. Because CC had already spent so much time talking with Leila about her goals and learning about Leila's own college experience, CC felt comfortable asking Leila to advocate on her behalf with the teacher to resolve the issue.

Not only was Leila able to successfully advocate for change at a contentious IEP meeting, but she utilized her prior experience working in her undergraduate school's admissions office to help CC through the college application process. CC successfully graduated from high school and received scholarships to her chosen four-year university.

The mentorship Foster Ed participants are able to offer often expands beyond assistance in gaining success in the classroom. In the spring of 2022, Foster Ed participants worked to create a “Know Your Rights” training specifically designed for youth in congregate care STRTPs. The presentation was meant to empower this population of foster youth who often have higher levels of mental and behavioral health needs but fewer permanent adult supports. The training covered a variety of rights including school discipline, cyber safety, interacting with police on the school campus, and options after high school. These Foster Ed participants then accompanied East Bay Children’s Law Offices staff to several STRTPs where they engaged the foster youth residents in discussion of these topics over donuts, pizza, and lots of laughter. This type of engagement can, and often does, lead to meaningful mentorship relationships that outlast the Foster Ed participant’s tenure as educational rights holder.

Nazeerah was appointed to hold educational rights for DD. DD entered the foster care system in her teenage years, after an early childhood full of caregiver disruptions and parental substance abuse. The complex trauma she had experienced in her home left her vulnerable to violent exploitation and self-medication through substance use. DD was also very smart, determined to get her high school diploma, and willing to reach out to Nazeerah when she needed help. Nazeerah became an ongoing support for DD, not just in ensuring her access to appropriate school supports, but also as DD worked to make positive changes in her life. DD continued to include Nazeerah as an important part of her support network even after DD turned 18 and became her own educational rights holder.

The impact of the work done in the Foster Ed program expands beyond the lives of the foster youth it was designed to serve. In the past, the entire Berkeley Law community has become involved as Foster Education leaders have held holiday gift drives collecting books and toys from the larger

Berkeley Law community for foster youth. One Foster Ed participant's recounting of his own experience in foster care as well as the work he was able to do as an educational rights holder inspired a Berkeley Law professor to volunteer as an educational rights holder. She now holds educational rights for an elementary school student with extreme mental health needs. In addition, many Foster Ed participants have continued their work on behalf of youth or in the public interest. Foster Ed participants have worked in Berkeley's Education Law Clinic with East Bay Community Law Center during their second and third years and pursued careers in education policy, youth law, disability rights advocacy and civil rights.

CREATING A CAREER FROM FOSTER ED

Tori was appointed to hold educational rights for GG. GG was only preschool aged, but his early childhood trauma had already made emotional regulation very difficult for him. Tori successfully advocated for GG to receive appropriate special education supports in his earliest school years. During this time, Tori was the most consistent adult figure in GG's life as his family struggled in the juvenile dependency system. She and her husband even prepared a Ninja Turtle themed bedroom in their home for GG in case he needed them to become his caregivers. During Tori's third year of law school, she and several of her Foster Education peers assisted East Bay Children's Law Offices in completing an informal audit of early intervention and developmental service provision to Alameda County foster youth ages zero to five. Assisted by the data collected in the audit, Tori designed an Equal Justice Works project to provide specialized legal representation to Alameda County's youngest foster youth as a Fellow at East Bay Children's Law Offices. She is now an attorney with Bay Area Legal Aid's Youth Justice Team and has rejoined the Foster Education group, this time as a supervising attorney.

Another aim of the Foster Ed project is to inspire and train the next generation of education and youth justice attorneys. Many students do not come into law school with an awareness of Youth Law, Education, or Dependency as avenues for their legal careers, making exposure to these fields a vital way to recruit new attorneys. Outside of formal internships and

summer employment, pro bono programs like Foster Ed allow students to dive deeply into an area of the law and build connections with attorneys and organizations in these fields.

Many law schools do not offer significant academic coursework in the substantive areas most relevant to students who will be pursuing careers in direct legal services, especially Youth Law and Dependency. Outside of clinical programs and externships, programs like Foster Ed provide a vital learning opportunity for students to gain the practical legal skills that they will use in their jobs representing low-income clients. Through not only their own work on a single case, but also the exposure to many similar cases through training and case rounds, students gain a strong conceptual and practical foundation in their desired field of law.

Students who have access to training and practice opportunities like Foster Ed, not only receive robust preparation for careers in public interest law and applicable practical skills, but through exposure to the realities of the profession, are better prepared to persist once they enter the workforce. Throughout the year in Foster Ed, students are not only practicing their written and oral advocacy skills and receiving training in substantive updates to the rights of foster youth, but they have the opportunity to engage in meaningful discussions about complex topics like vicarious trauma, compassion fatigue, and the racial disparities permeating the education and child welfare systems. Supervising attorneys, as well as student project leaders, are available to students to help navigate tricky questions related to boundaries, professional ethics, and the limitations of legal advocacy. It is much more difficult to learn these lessons in a classroom, yet these are some of the most vital things new attorneys must learn in order to do their jobs effectively and sustainably.

TORI'S EXPERIENCE

For me, the attraction to Foster Ed came from a previous career as an early childhood educator. I had no idea that working with youth as an attorney was an option and came to law school with my sights set on other fields. After trying out those other fields through summer jobs, however, I continued to gravitate more and more to working with Foster Ed, agreeing to be the group's student leader as a 2L. It was experience in Foster Ed that inspired me to pursue

additional experience in education law, and I supplemented what I had learned through my work with the student I was paired with in Berkeley Law's Education, Defense and Justice for Youth (EDJY) Clinic at the East Bay Community Law Center.

As law school drew to a close for me, it was clear that the original field of law I intended to pursue was not for me, and I was fully committed to youth law, having participated in Foster Ed for three years and externed at many Bay Area youth-serving legal organizations. In applying for a fellowship project, I leveraged my experience both in Foster Ed and in the EDJY Clinic, to fill a critical gap observed through both encounters. After defending high school students from expulsion and realizing that they had unmet special education needs that stretched back to elementary school, as well as struggling to advocate for a preschool-aged foster student to get badly needed services to begin his school career on an equal footing, the project I developed advocated a model of early intervention legal representation for foster youth ages zero to five with complex educational, mental health, and developmental needs.⁷

After beginning the Equal Justice Works Project at the East Bay Children's Law Offices, I was able to hit the ground running, due to my significant exposure to dependency and experience with special education advocacy. I quickly developed an expertise in the needs of young foster children and the strategies that lawyers could use to meet them. My work was published by the American Bar Association's Children's Rights Litigation Committee⁸ and presented at the National Association of Counsel for Children's annual conference.⁹ This work was tremendously valuable in elevating East Bay Children's Law Office's practice in meeting the needs of their youngest clients, but also in my continued work in the field of youth law, now representing older youth at Bay Area Legal Aid.

★ ★ ★

⁷ <https://www.equaljusticeworks.org/fellows/tori-porell>.

⁸ <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/legal-representation-for-the-youngest-clients-a-holistic-approach>.

⁹ https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/2020_conference/nacc_virtucon2020_program.pdf.

COMMUNITY & ECONOMIC DEVELOPMENT CLINIC:

UC Irvine School of Law

CARRIE HEMPEL & ROBERT SOLOMON*

TEACHING TRANSACTIONAL LAW BY PRESERVING AFFORDABLE HOUSING

Over the past fifty years, law schools have moved, somewhat begrudgingly, from a pedagogy featuring doctrinal lectures and the Socratic method to a greater inclusion of experiential learning. Experiential learning is a broad concept. Definitions include the notion of “learning through doing,” with reflection afterward, but there is little consensus beyond that. As

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor’s introduction on page 3).

* Carrie Hempel and Robert Solomon are Distinguished Clinical Professors of Law at the University of California, Irvine School of Law, and co-direct the law school’s Community & Economic Development Clinic. Carrie and Bob thank Cresencia Meno and Naomi Aguilar for their research and editing assistance. We also thank our wonderful former students who responded enthusiastically to our request for contributions to this article and provided the comments shared below. Finally, we are very grateful to Professors Camille Pannu and Ana Marie del Rio for their excellent co-supervision of our students’ work on the two projects highlighted in this article, and to former California Rural Legal Assistance attorney Blaz Gutierrez and his colleagues for co-counseling the Shady Lane litigation with CED.

students demanded increased real-world experience, a push supported by the American Bar Association and the organized bar, law schools began and expanded clinical programs, in which students moved from theory to practice and, in many cases, from the classroom to the courtroom. Clinical courses, in which students practice law supervised by faculty who are also practicing lawyers, became a common offering in many U.S. law school curricula in the latter part of the twentieth century. At many schools, however, such courses still are available only to a small percentage of students. The University of California, Irvine School of Law (“UCI Law”), which opened its doors to students in 2009, has a vibrant legal clinic environment, not surprising for a school founded with clinical legal education as a core function. In this article, we provide two case studies that include student comments about their experiences. We believe these descriptions exemplify UCI Law’s approach.

I. THE CREATION OF A LAW SCHOOL THAT PRIORITIZES TEACHING THROUGH PRACTICE AS WELL AS ANALYTICAL EXPERTISE

The structure and substance of UCI Law’s Community & Economic Development Clinic (“CED”) is a byproduct of a University of California Regents 2007 decision to create a new law school at the University of California, Irvine. UCI faculty and prominent members of the Orange County professional community put together a successful proposal for a new law school that articulated four broad goals. Two of those goals facilitated the creation of UCI Law’s vibrant clinical program: (1) a stated dedication to “public access and public education”; and (2) clinical education as a central focus, so as to encourage students “to explore the social, intellectual and professional benefits of a career in poverty law, civil rights, and public interest law.”¹

¹ The other two were an explicit focus on disciplinary and interdisciplinary work of the kind seen at great universities and a greater degree of faculty collaboration with colleagues across the UCI campus than the norm at many other law schools. As discussed below, the fourth goal mirrors one of the clinical program goals, to involve UCI students from other disciplines, as appropriate, in clinical courses. See Proposal for a School of Law at the University of California, Irvine (Jan. 4, 2001). After six years of effort by administrators, faculty, and others dedicated to the goal of a public law school in Orange County, the University of California Board of Regents approved the proposal in July 2007.

UCI Law commenced in July 2008 with fourteen founding faculty and one year to devise a curriculum, before the first class of sixty students arrived in August 2009.² Our founding dean, Erwin Chemerinsky, articulated his central vision for the curriculum as “to do the best possible job of preparing students for the practice of law at the highest levels of the profession.” During that initial year, the founding faculty met once a week to discuss and determine the content of their vision of an ideal law school curriculum. They initially decided the courses to include in the first year, and then voted to require that each student complete a substantial clinical course taught by one or more full-time faculty as a requirement for graduation (“core clinic”).³ Each core clinic would be taught for six units, with a minimum of 220 practice hours and a maximum of eight students per faculty. This decision created the foundation for UCI Law’s plan to hire at least ten full-time clinical faculty, and the creation of the current ten core clinic courses, including CED.⁴

As the founding dean for the clinical education program, Carrie articulated a combination of requirements and goals for core clinic courses.⁵ She advised that UCI Law should create a variety of types of core clinics to provide students with enough options to allow them to select a course that would assist them in developing competencies they anticipate they will use in their career. Carrie suggested UCI Law strive to create core clinic

² The founding faculty were Erwin Chemerinsky (Dean), Dan Burk, Linda Cohen, Joseph Dimento, Catherine Fisk, Carrie Hempel, Trina Jones, Elizabeth Loftus, Rachel Moran, Carrie Menkel-Meadow, Beatrice Tice, Grace Tonner, Kerry Vandell, and Henry Weinstein.

³ For a description of the first-year curriculum courses, see Carrie L. Hempel & Carroll Seron, *An Innovative Approach to Legal Education and the Founding of the University of California, Irvine School of Law*, IN *THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE* 169 (Scott L. Cummings ed., 2011) (UC Irvine School of Law Research Paper No. 2011-20, <https://ssrn.com/abstract=1851702>).

⁴ The other nine core clinic courses are the Civil Rights Litigation Clinic, Criminal Justice Clinic, Domestic Violence Clinic, Environmental Law Clinic, Immigrants’ Rights Clinic, Intellectual Property, Arts, and Technology Clinic, International Justice Clinic, Ninth Circuit Appellate Litigation Clinic, and Worker’s Law and Organizing Clinic. UCI Law has previously had two iterations of a core clinic in Consumer Law, although this course will not be offered in the upcoming year.

⁵ UCI Law also has several elective clinics that are most often taught by part-time faculty with expertise in specific subject matter areas such as employment, international human rights litigation, reproductive rights, and tax.

courses that would complement areas of non-clinical faculty expertise, to provide opportunities for faculty collaboration and offer students additional courses to complement their clinical education. She also advised that all core clinics: (1) structure their courses so that students, with close supervision, serve as the primary advocates for clinic clients, rather than faculty; (2) maintain caseloads that provide students with various intellectual challenges, in working through complicated substantive issues and in practicing sophisticated legal skills; (3) include some projects or cases that have the potential of an impact greater than addressing an individual client's needs; (4) provide their services pro bono to clients who otherwise would not be able to obtain legal representation; and finally, to the extent possible (5) design courses that provide opportunities for students to collaborate with professionals and/or graduate students in other disciplines.⁶ Beginning in fall semester 2011, UCI Law offered its first class of sixty students four core clinics to choose from, including CED.⁷ CED initially was the only core clinic with two faculty.

Fourteen years into its existence, UCI Law has, for the most part, succeeded in creating a variety of core clinics that accommodate students' preferences. We say "for the most part" for two reasons. First, students do not always get their first choice of clinical course, but more than 90 percent end up in a clinic of their first or second choice. Second, the current set of core clinics does not yet provide a proportionate opportunity for non-litigation experiences when compared to the number of students interested pursuing a non-litigation practice.⁸ This past year, students could select among core clinic courses in appellate litigation, civil rights litigation, community and economic development, consumer law, criminal justice, domestic violence, environmental law, immigrants' rights, intellectual property, arts, and technology, international justice, and workers' law and organizing. Many of these core clinics involve subject matter areas that can

⁶ See Carrie Hempel, *Writing on a Blank Slate: Drafting a Blueprint for Experiential Learning at the University of California, Irvine School of Law*, 1 U.C. IRVINE L. REV. 147, 154–155 (2011), <https://scholarship.law.uci.edu/ucilr/vol1/iss1/10>.

⁷ The three other original core clinics were Ninth Circuit Appellate Litigation, Environmental Law, and Immigrants' Rights.

⁸ Three of the current ten clinics provide primarily non-litigation experiences: CED; Intellectual Property, Arts, and Technology; and International Justice.

be complemented by enrollment in non-clinical courses in the same area. Clinic faculty have autonomy in their choice of clients, cases, types of services offered, and limitations on their services. Nonetheless, all core clinics have adopted the four goals articulated above, except for the International Justice Clinic, which generally does not represent clients, as is common for clinics working in international law.⁹

UCI Law is one of a handful of law schools, if not the only U.S. law school, to require and guarantee an in-house clinical course for each student prior to graduation. This dedication of substantial school resources to clinical education is possible only because of UCI Law's foundational commitment to provide such a course for every student. The founding faculty took to heart the repeated conclusions of several important studies on the strengths and weaknesses of U.S. legal education: that most law school curricula do well at teaching analytical thinking, also termed technical expertise, but generally do not do well at providing students the means to acquire the hands-on skills necessary to successfully practice law.¹⁰ In the pages that follow, we share two stories about the extent to which hands-on learning has had a positive impact on the lives of our clients, as well as on the education and careers of our students.

⁹ Examples of UCI Law core clinic efforts that have resulted in positive changes in law and society include: (1) the Criminal Justice Clinic's success in expanding the legal grounds for the compassionate release of federal prisoners to include consideration of whether the prisoner, if sentenced today, would receive a shorter sentence for the exact same offense. See *United States v. Poulcott*, 510 F. Supp. 3d 1137 (N.D. Ga. 2020); (2) the Domestic Violence Clinic's successful legislative advocacy for the enactment of SB 374, which made California the first state to have a law concerning reproductive coercion; and (3) the Immigrant Rights Clinic's litigation of a class action suit to uphold local community members' Fourth Amendment rights during encounters with immigration agents at or near their homes. See First Amended Complaint, *Kidd v. Wolf*, No. 2:20-cv-03512-ODW-JPR (Oct. 27, 2020).

¹⁰ See, e.g., AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (the MACCRATE REPORT); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (The Carnegie Foundation for the Advancement of Teaching, 2007); ROY T. STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association, 2007).

II. A SHORT HISTORY OF CED'S DEVELOPMENT AND LEARNING OBJECTIVES

We first taught CED in the fall of 2011.¹¹ While we were both experienced clinicians, with Carrie's fifteen years at the University of Southern California Gould School of Law and Bob's twenty-six years at Yale Law School, we faced several unknowns. UCI was a new law school with no prior clinical program, and Orange County was a blank slate, where we had few contacts. Worse, as the school year approached, we had no clients.

We did have a set of principles, most of which conformed to our experience. We would represent community-based groups and meet with clients in their communities. Students would be involved in client selection, following a process in which they would conduct an intake interview with the client and make a presentation to the class, with a recommendation as to whether to accept the request for representation. We then would ask the students as a group to answer two questions: should we as a clinic accept this client and, if yes, who is willing to do the work? We would advise the students that the discussions can be lengthy, and include considerations of priorities, allocation of resources, conflicts of interest, pedagogical value, competency, and long-term decision-making that may affect future generations of CED students. Finally, we would emphasize a problem-solving approach that includes both transactional and litigation strategies, offering clients the full range of services they would find in a law firm.

This type of practice is unusual for clinics focused on community economic development work. At a national conference of clinical law professors that we attended a few years ago, the consensus view was that UCI was the *only* CED clinic offering litigation services. While our policy was made easier by the fact that we both had litigation experience, it was also informed by our belief that a commitment to problem-solving would take us down unexpected paths and we would need to have multiple tools to help clients negotiate those paths.

¹¹ In this article, the terms “we,” “our,” and “us” refer to the authors, rather than the CED clinic as a whole.

A. Clinic Learning Objectives

As the CED syllabus explains, our learning objectives for our students include improving their: (1) listening, interviewing, negotiation, and legal drafting skills; (2) understanding of the dynamics of and work within groups; (3) ability to apply doctrine to real-world cases; (4) problem identification and problem-solving abilities; (5) writing skills in the context of emails, internal memoranda, memoranda to clients, demands to opposing counsel, and other written work product; and (6) oral skills through discussion of projects in weekly team meetings and formal presentations to clients, other students, opposing counsel, and possibly courts. In the classroom component, students learn about differing theories of community and community development, organizational development, and effective group work. Students also learn some real estate, housing, business organization, nonprofit corporation, tax, and employment law, and explore the impact of historical and current racial and other forms of discrimination in the communities we serve.

In addition to the more tangible skills outlined in our syllabus, we structure our course and the way we work with our students in an effort to teach them to take initiative and be creative in their approach to problem-solving, learn when and how to exercise judgment in evaluating client goals and cases, communicate effectively with their clients, and reflect on how the work they are doing does or does not match their own conceptions of professional identity. Finally, because virtually all of the clinic's clients are formally and informally defined groups rather than individual clients, we ask our students to consider and reconsider two questions: who is the client we represent, and what does the client want?

B. Initial Development of CED Clients, Including CED's First Two Mobile Home Park Resident Groups

On the last day of orientation, the day before our first class, CED had its first client, a community development group in Santa Ana challenging California's Redevelopment Act. Then that client referred us to a Santa Ana business group. A colleague referred us to a scholar seeking to preserve the intellectual property of former slaves. When Pitzer College and the City of Ontario sought to form a new organization to develop a community garden on city land, the project director sought advice from her mother,

a clinical law professor in New York, who said, “You know, there’s this new law school in Orange County . . .,” and CED had another client. CED added other clients during that first year, but it was not until late spring 2012 that the clinic first became involved in representing resident groups at mobile home parks. CED’s mobile home park practice originated from two separate events, each of which was to have a major effect on its work and the cumulative effect of which was to define the clinic in ways we could not have predicted.

The first of these events began with a simple request. One of our first students, Sam Lam (2012),¹² now a senior counsel at Skybound Entertainment in Los Angeles, wanted to reach out to Orange County’s Vietnamese community, many of whom lived in mobile home parks in Westminster. Sam arranged a Saturday morning meeting with former state Senator Joseph Dunn, who was instrumental in drafting California’s Mobilehome Residency Law (MRL). Those who attended the meeting were: CED students and faculty; Senator Dunn; Henry Heater, a lawyer representing several mobile home park residents; and Maurice Priest, a former lobbyist for Golden State Manufactured-Homes Owners League (“GSMOL”) and the president of a nonprofit tax-exempt corporation named Resident Owned Properties (“ROP”). Our three guests trained the CED group in California Mobilehome Law and suggested types of services for which mobile home resident groups needed pro bono representation. Not long after the meeting, in the best tradition of our profession, Henry Heater referred to CED a San Bernardino rent increase case and Maurice Priest asked CED to help a group of San Juan Capistrano mobile home park residents form a nonprofit tax-exempt organization to purchase their park.¹³

The second event occurred shortly before spring semester 2012 final exams. UCI Law’s Environmental Law Clinic sponsored a talk by a California Rural Legal Assistance (“CRLA”) lawyer on the oppressive environmental conditions and management practices at a small mobile home park in Riverside County’s Coachella Valley. Several Environmental Law Clinic students wanted to help CRLA, so we accompanied those students and

¹² The date in parentheses next to each former student’s name denotes their year of graduation.

¹³ The San Juan Capistrano mobile home park referral is the subject of one of the two case histories we discuss below.

a few more CED students on a two-day field trip to talk to residents and county officials. We left knowing that CED would continue to be involved, but also that CRLA would be lead counsel. We did not have a plan, and we did not yet know where this project would lead us. We did not know that the Capistrano Terrace and Shady Lane projects, described in the pages that follow, would substantially influence the course of CED's work. In the next two sections, we describe CED's work over the next seven to ten years on these two projects, including the work of our students, the decisions made, the results achieved, and the effects of these experiences on our students and their careers as attorneys.

III. SHADY LANE

Shady Lane Mobilehome Park is located in the Coachella Valley unincorporated town of Thermal, California. Thermal is well-named, as during the time CED represented its clients, the average high temperature for June through August was 106 degrees, and temperatures of 115 degrees or higher were not unusual. Many of the residents were Latino farmworkers living in unpermitted mobile home parks with ongoing water, sewage, electrical, and air-conditioning problems. In midday in the summer, it was not unusual for the electricity in Shady Lane Park to fail, resulting in residents not having air conditioning in their mobile home units. Consequently, temperatures in the units sometimes reached 120 degrees.

In many ways, Shady Lane Park was a typical residence for California farmworkers. The property became a mobile home park when a farmworker asked his coworker, Mr. Garcia, if he could park his mobile home on Garcia's land. Garcia agreed — and started a business — eventually laying fifty-six pads on which to place homes and building a four-apartment structure for his family. The electricity was inadequate, the sewage consisted of open septic fields dug by residents, and the water came from a contaminated well. Eventually, Garcia contracted with his neighbor, who ran a mirror-image park adjacent to Garcia's, to share use and maintenance of a better well on the neighbor's property. On the day he died in 1998, Garcia transferred the property to six of his seven children. Although the elder Garcia never secured a conditional use permit ("CUP"), his children started the

process, only to abandon it when they learned the projected costs of necessary upgrades.¹⁴

In 2011, Riverside County issued the Garcias a notice of noncompliance with health and safety regulations. The Garcias responded by serving the residents and County a notice that they intended to close the park in one year.

In Spring 2012, CED began working with our co-counsel, CRLA. We filed a complaint and a motion seeking a temporary restraining order in Riverside County Superior Court to prevent the park's closure. The complaint alleged several habitability claims, based on deplorable conditions in the park, and that the owners failed to follow MRL requirements for proper notice of a landowner's intent to close a park.

Although CRLA was lead counsel, the lawyers agreed that Meg Tanaka (2013), then a UCI Law second-year student in the CED clinic, and now an attorney at the Orange County Office of County Counsel, would argue the TRO. Meg reports:

I had the opportunity to argue a temporary restraining order request to enjoin the owners from improperly closing the mobile home park. My classmates and supervisors spent time mooting and posing various questions to test our legal arguments. I learned strategies from our supervisors about how to prepare notes for oral argument. They emphasized the importance of truly listening to the question asked while not losing sight of the goal of preventing the park's imminent closure. On the morning of the court hearing, I remember all of us waiting on the benches in the courthouse. When the case was called, I barely started my argument before the judge began asking questions about the timeline of our request. I quickly had to pivot away from my notes to directly respond to the court's questions. I was thankful for all the team preparation and relied on our collective research to argue about the catastrophic impact of the mobile home park closing and residents losing their homes.

¹⁴ Municipal and regional planning commissions grant conditional use permits to allow a landowner to legally use their land in a way not permitted by zoning regulations. These permits are often subject to conditions imposed at the time of granting that require movement toward eventual compliance with applicable regulations, and the ability to revoke the permit if the landowner does not meet certain milestones.



SHADY LANE MOBILEHOME PARK RESIDENTS PHOTO COLLAGE.

Courtesy UCI Community Economic Development Clinic.

During oral argument on the motion, the Garcias' legal counsel agreed to the residents' demand to keep the park open, eliminating the court's need to grant a TRO. This was the first victory in this case for our clients, who told us their most important goal of the litigation was to keep the park open to maintain their community. The other goals the residents articulated, in order of importance, were stabilizing rents, securing reliable access to air-conditioning in summer months, and improving wastewater system management to eliminate sewage overflows and ensure the ability to operate washing machines.

Several semesters of CED students represented the clients in the discovery phase of the litigation, which lasted for approximately two years. Students propounded written discovery, answered defendants' discovery requests, and defended depositions of several park residents. Alex Ackel (2016), also a second-year law student when he began working on the Shady Lane project, and now a senior associate trial attorney litigating plaintiffs' medical malpractice, civil rights, products liability, and personal injury claims at the Seattle law firm Friedman Rubin, observed this about his experiences representing the residents:

When I first started working on the Shady Lane Mobile Home Park project, the case was in active litigation. From the outset, the lawsuit faced a major challenge: how do you on one hand allege that the owners must keep the park open, and then also allege that the park is completely uninhabitable? Perhaps even more

challenging was the fact that no matter how successful we were in litigating the case, the owners would never be able to afford the needed repairs.

In Spring 2014, the court ordered the parties to mediate and assigned an attorney the court described as “one of his best mediators” to the task. After two rounds of mediation, the parties in November 2014 negotiated and agreed to principal terms of a conditional settlement. The settlement agreement provided Shady Lane Park residents twelve months to identify and approve a buyer to purchase the property from the defendants for \$225,000.¹⁵ In the interim, the owners agreed to make certain repairs to the park’s electrical system.

CED’s next big hurdle in the case was to find an appropriate buyer. The residents informed CED that they wanted a nonprofit corporation to own the park but did not want resident control. The task was made more difficult because the park did not have a conditional use permit, which meant that an owner could not legally require the residents to pay rent.¹⁶

Starting in early 2015, our students embarked on a series of efforts to find a buyer and begin renovation of the park. Alex recalls the challenges we faced in looking for a new owner by the deadline and his work on a contingency plan in the event we could not:

Finding a new buyer who had both the experience and resources to operate the park in the right way proved to be difficult. As a stop-gap, we came up with a creative solution; we created a nonprofit to act as a transitional owner that could begin the development planning process while we searched for a permanent owner.

In February 2015, CED students filed the paperwork to incorporate Shady Lane Mobilehome Park Inc. (“SLMP”). Three Coachella community

¹⁵ \$225,000 was \$75,000 less than the amount CED believed the park was worth, based on the calculation of the cash flow of a fully permitted park reduced by an estimate of the expenditures necessary to bring the park up to permitted standards. The settlement agreement did not become final until September 2015, which allowed the residents an additional six months after the principal terms were set to find a purchaser.

¹⁶ Amazingly, throughout the course of the litigation and during the period after settlement before the new owner obtained a CUP, Shady Lane Park residents voluntarily paid their rent each month, presumably understanding the importance of those continued payments to their goal of the continued existence of their residential community.

members, one of them a park resident and leader of the informal resident organization, agreed to sit on the initial board of directors, along with the two of us. Despite the potential for future conflict of interest issues with park residents, we agreed to serve as directors and counsel for SLMP after obtaining the consent of residents and with the knowledge that CRLA would still serve as counsel for residents and their informal organization. The potential for conflicts between the residents and the corporation led to a formal split between CRLA and CED. We each represented separate interests, and everyone was concerned that the residents not lose the value of independent counsel. We were all aware of another mobile home park in Coachella Valley where the new nonprofit owner raised rents to improve the park and the actual conflicts that arose. In our case, as we moved toward selling the park to a new owner, questions did arise, but they never erupted into actual conflict. CRLA's continuing role as the residents' attorney helped resolve issues at an early stage.

Also in spring semester 2015, students began what would turn out to be over three years of effort to obtain a CUP to end the park's many years of illegal operation. Several teams of students worked continuously on the various tasks Riverside County required an applicant to complete before it would issue this permit, including meeting with various county officials involved in the CUP process, vetting, retaining, and working with experts to complete numerous reports, making presentations to other local officials and commissions, and exercising judgment about when and whom to push harder to move the process forward.

In addition three students took the initiative to conduct online research for sources of funding for the park. They came up with two possibilities: a pre-construction grant from the California Department of Water Resources for pre-construction work to bring a water and sewage system to the park, and a second state grant to provide for emergency drinking water. These students drafted applications for both, and both were approved. The emergency water grant provided \$69,000 to the park and was subsequently renewed. The grant to design a new water and sewage system presented a serious time crunch, and the students submitted the application electronically at 11:50 pm, barely meeting a midnight deadline, the day before their law school graduation ceremony.

Nahal Hamidi (2016), currently a real estate attorney at Tesla, was one of those graduating students. She worked on the Shady Lane project for at least two semesters. She recalls the following about her work to provide her clients better living conditions:

I gained invaluable firsthand legal experience including negotiating a settlement agreement, drafting a purchase and sale agreement, forming a nonprofit corporation, and applying for a conditional use permit to legally operate the park. Most importantly, I learned about creative lawyering to make sure my client's needs were being met. During our representation of the park and its residents, one ongoing habitability issue the residents were facing was the inadequate water and sewer systems. The water supplied to the park was contaminated with chromium 6, which poses a risk of cancer when ingested. Although we were simultaneously working on settlement efforts, we realized that the water and sewage issues needed to be solved as soon as possible, and the residents would potentially not have sufficient resources to solve this issue even after settlement was reached. We quickly became experts in assessing the costs and feasibility of different sewage and septic systems; researched potential methods to treat chromium 6; and researched potential grants which could help address these issues. We applied for and successfully obtained \$250,000 in grant funding from the California Department of Water Resources (DWR) Proposition 84 grant program to provide park residents access to clean drinking water and to install a functioning sewer system.

In spring 2016, CED started to reach out to potential buyers and potential lenders in the event SLMP became the purchaser. We met with Clearinghouse CDFI to see if it would be willing to lend money for the park's purchase.¹⁷ After a few meetings, despite the relatively small loan amount, Clearinghouse determined that it would not finance the acquisition of Shady Lane Park because of the uncertain amount of expenses the county would eventually require to bring the property into compliance with state

¹⁷ Clearinghouse CDFI is a Benefit Corporation that "addresses unmet credit needs throughout the U.S. and in Indian Country through direct lending, equity investments, and financial assistance. <https://www.clearinghousecdfi.com>.

and local regulations. We had funding to design a water and sewer system, but it was impossible to determine what the ultimate cost of that and other improvements would be, as well as whether we would need to temporarily relocate residents during the renovation and what that would cost the park.

Also, during spring 2016, CED identified a very promising potential buyer, the Caritas Corporation (“Caritas”). Caritas is a faith-based tax-exempt nonprofit corporation dedicated to providing affordable housing in California, specifically through ownership and management of mobile home parks. Initial conversations went well, and CED worked with Caritas staff to draft a joint-venture LLC to buy, renovate, and manage the park.

A few weeks prior to the September 2016 deadline for purchase pursuant to the settlement agreement, however, Caritas informed CED that its board of directors was not willing to approve the purchase for a park without a CUP. Caritas suggested an alternative: it would lend SLMP the money needed to purchase, and in return, SLMP would give Caritas the option to purchase the park once it obtained a CUP. If Caritas decided to exercise its option to purchase, the outstanding balance of Caritas’ loan to SLMP would be forgiven in return for the transfer of ownership of the property.¹⁸ SLMP and the park residents accepted the offer and shortly after, SLMP became what we hoped would be the short-term, interim park owner.

This turn of events put even greater pressure on CED to get a CUP for SLMP as soon as possible. As we painfully learned, getting this permit ended up taking quite a while longer and quite a lot more work. Christopher Valentino (2018), now a real estate associate in the San Francisco office of Gibson, Dunn & Crutcher, remembers his efforts to get the CUP application approved:

When I joined the Shady Lane project in Fall 2017, the project had been going for at least six years by that point, and my team’s job was to oversee the final approval of the conditional use permit by the County Planning Board, a task that three or four previous groups of students had worked on for years. On paper, this was a project that everyone could get behind, but the challenge was two-fold: (1) getting the county to pay attention to our project long enough

¹⁸ The Purchase and Sale Agreement, Option Agreement, and Loan Agreement are all available on request.

to gain momentum, and (2) organizing our third-party partners and getting them to deliver their specific pieces of the project (be that a survey, capital funding, or a management plan) while we had the county's attention.

I remember that getting the CUP across the finish line required: (1) sheer unrelenting force of will, and (2) coordination. Getting responses from the county on even the most basic of items took constant follow-up (emails, phone calls, voicemails) and was a serious impediment to moving our application forward to the commission hearing. We utilized a dual track method of both constantly following up with the Planning Department (in the nicest way possible) and engaging with local elected officials to help put pressure on the Planning Department to respond to us. This strategy worked, and we got the Planning Department's attention, but then we had to deliver all the outstanding items necessary for a commission hearing, which meant we had to coordinate with a series of third-party partners to provide the necessary technical and managerial expertise to convince the planning commission that the project would be successful (i.e., be able to satisfy the conditions of approval and bring the park up to certain code requirements).

This experience operationalized the term "zealous advocacy" for me. It showed me that successful transactional lawyering is about moving forward, no matter how "stuck" the case may be, and trying alternative means of advocacy when the formal procedures are indifferent to your client's cause. Procedural, or substantive, laws are only as useful as the organizations designed to implement them.

In June 2018 the Riverside County Board of Supervisors approved the conditional use permit. At a July 2018 meeting between Caritas and CED, Caritas exercised its option to become the owner. In April 2019, SLMP formally transferred its ownership to Caritas and CED's work to transform the park into an affordable housing community was finally complete.

In sum, although many clinical programs have litigated habitability issues and others have closed on real estate purchases, in the Shady Lane project, CED did both, as well as serving as the de facto developer to bridge the litigation and the purchase. We believe this is the only time a law school

clinic has filled all three roles, and it exemplifies our view of what we mean by problem-solving. The problem took us down an unexpected path, and we responded with determination, finding creative solutions to achieve our clients' goals.

IV. CAPISTRANO TERRACE

Capistrano Terrace Mobilehome Park is a 150-unit residential park built in the mid-1950s on a steep slope overlooking Interstate 5 in San Juan Capistrano, California. By 2000, the park was in poor condition. In 2007, residents filed a failure-to-maintain lawsuit against the owner that resulted in a substantial judgment, leading the owner to seek bankruptcy protection. In the U.S. Bankruptcy Court, the Creditors Committee approved a resolution in 2012 whereby Resident Owned Parks Capistrano Terrace ("ROPCT") would purchase the property for the amount of the debt, including attorney's fees. ROP, the Priests' nonprofit mentioned above, would manage the park for the benefit of the residents and ROPCT would resell it to the residents for the purchase price, earning no equity. Maurice Priest was the president of both organizations and his wife, Diane Priest, was the vice-president.

Also, in 2012, Mr. Priest, as ROP's president, negotiated a purchase and sale agreement ("PSA") between ROPCT and the park's resident association, Capistrano Terrace Mobilehome Owners Association ("CTMOA"). The agreement provided that the park would be sold within three years to a tax-exempt entity who would own it on behalf of the residents. Mr. Priest asked CED if it would be willing to work with the residents to form such an organization to purchase. CED agreed and was retained by CTMOA, after which the clinic learned of two additional agreements: a management agreement in which ROP stated all funds would be used for the benefit of the park, and a separate agreement in which CTMOA retained ROP to be its exclusive agent in securing financing for the purchase of the park, with a broker's fee. In addition, CED determined that rather than using excess capital for the benefit of the park, the manager (ROP) was retaining the funds with the intention of keeping them when the park was sold to another entity, even though the purchase and sale agreement stated that

all funds were to be used for the benefit of the park.¹⁹ CED's work to form a tax-exempt entity and draft bylaws suddenly looked more complicated.

To further confuse matters, when Maurice Priest met with the residents, he told them that once he got financing, the residents would own their property, when, in fact, the PSA provided that the property would be owned by a nonprofit organization, controlled by the residents. Although on several different occasions, CED corrected Mr. Priest at resident board meetings, the residents had already heard Priest's incorrect assertion on many occasions. Unfortunately, several residents believed the property would be subdivided and they would own the land underneath their homes, without understanding that this would mean they would need to find money to pay what would amount to a \$66,000 prorated cost per unit to pay off the mortgage and liens — money we believed most residents did not have. Our belief was confirmed at meetings with residents and through a review of income statements required by funders.

Nevertheless, Capistrano Terrace residents had suffered for years under difficult conditions and the opportunity to purchase their community generated a great deal of enthusiasm among them, along with the conflicting visions of the park's future ownership structure and fears that ROP was not acting in their best interest. Residents learned that ROP had taken ownership of several other parks with the stated goal of creating resident-owned parks but had not yet transferred any of those parks to other ownership. Many residents expressed concern that ROP would use this opportunity to add their park to its growing, seemingly permanent, portfolio.

Lindsay Anderson (2018), a second-year student at the time, and now a community association counsel at Epsten in San Diego, reflected on what it was like as a law student to work on the project during this time:

Working in the Community and Economic Development Clinic is what made law come alive for me. Reading cases and attending classes were a necessary evil of school, but the CED Clinic is where I found my passion. During my time in the clinic, I was privileged to work with a wonderful group of mobile home park residents who

¹⁹ The PSA states that ROPCT “shall use the remaining portion of monthly space rents . . . to pay for the proper operation, maintenance, management, and reserve payments to assure that the subject property is well maintained.”

were trying to purchase their mobile home park. Working with a homeowners' association is like nothing else. It is a crash course in handling client emotions and expectations. *Everything* is personal because the board members live there. The board members' passion is contagious. They are so invested in their community that you cannot help but become invested as well. Every up of the association is your up and every down is your down, but if you are lucky like me, every triumph of the association is your triumph.

We formed Capistrano Terrace Organization ("CTO") as a 501(c)(3) tax-exempt organization. As with many of our clients, the residents at Capistrano Terrace had a wide variety of skills, but managing a corporation was a new experience. Like many volunteer boards, there was frequent turnover, magnified by the fact that CTO had yearly elections, with one-half of the board seats open. Residents were highly invested in the elections for board positions that were work intensive, as the board coped with purchasing and operating a 150-unit housing complex.

Parth Jani (2020), currently a labor relations attorney in the Irvine office of Jackson Lewis, also reflected on his experience representing the CTO board:

By fall 2018, the newly elected board needed to be advised of its bylaws and proper procedures to run both a board and community meeting. This required CED students to focus on taking the bylaws of the park and training board members in the proper procedures. The challenge was taking a legal concept, such as the importance of a quorum, and explaining it to individuals who did not have a legal or sophisticated background. Students put together PowerPoints, met with one another to prepare presentations, and presented certain topics to board members by using interactive styles, such as fill-in-the-blank sheets. These training meetings with the new board allowed students to tap into their own creativity and think about how to explain any concept without relying on too much "legalese."

This interactive approach and training sessions we held for the new board members of CTO proved to be working because when we would go to their meetings, we could see new members making

sure there was a valid quorum to run a meeting. They would rely on the Robert's Rules of Order cheat sheet another student made for them when an issue came up on how to conduct a vote. I was privileged enough to be on this project for four semesters. Over that time, I got to see a newly minted board learn new terms, understand their bylaws, and run meetings with minimal supervision.

ROP's efforts at refinancing, which depended on HUD-insured and state loans and which continued for several years, were all unsuccessful, and the residents feared that ROP would own the park in perpetuity. The financing was made more difficult by the fact that the park property needed substantial slope remediation to meet current safety standards, a process that increased the loan amount by several million dollars. CED also was concerned that as ROP continued to remove funds from the park's reserves, it had little incentive to sell to CTO. In addition, ROP spent over \$500,000 on engineers, architects, and other experts to complete the loan package, and treated these costs as a loan to be repaid by CTO, even though ROP had used rental income to pay these costs. CED believed that such costs were implicitly covered under the PSA's terms as a cost for the benefit of the park.

Mark Stamper (2016), a second-year student working on the CTO project, and now a deputy public defender in the Kern County California Public Defender's Office, stated:

My first clinic project initially involved helping mobile home park residents form a nonprofit and purchase their park. The project evolved as other students and I identified major misrepresentations by the residents' agent along with what we believed were significant misappropriations of funds. Our professors encouraged us to further investigate and research these issues. We identified several causes of action, including breach of contract, breach of fiduciary duty, and fraud. We met frequently as student-attorneys to discuss how to present our findings to the client and what strategies to recommend. Our professors offered advice and guidance as necessary, but generally allowed us to make our own decisions on how to proceed. We presented our findings and advised our client at weekly meetings. We learned to answer questions confidently and help

resolve disputes that arose along the way. The project also provided my first opportunity to interact with opposing counsel. This began with somewhat friendly questions that evolved into formal demands and ended in mediation when those demands fell through.

With all these issues pending, CED brought suit on CTO's behalf against ROP, ROPCT, Maurice Priest and Diane Priest. The litigation posed difficult real-world questions of professional responsibility. The ROP president, a member of the California bar, had drafted the PSA and presented it to CTMOA, which was unrepresented at the time. We were confident that a court would interpret ambiguous provisions against ROP. If we were correct, CTO would prevail in litigation and recover a substantial judgment. On the other hand, CTO's main objective was to purchase the park on behalf of the residents, and litigation would delay that process. Furthermore, any recovery would be used to reduce the purchase price, which meant that it would be effectively amortized over the length of the loan and each resident would receive a small benefit.

As noted above, we try to teach the students to consistently focus on the client and the client's needs and this was a perfect example of a case where a strong legal argument did not serve the clients well, the legal equivalent of a successful operation in which the patient died. With the CTO board's approval, CED negotiated a settlement that resulted in a new PSA with a defined purchase price, less than the price to which ROP claimed it was entitled, but greater than what we felt CTO could attain through litigation. The settlement process was difficult for clients, students, and attorneys. Lindsay Anderson (first quoted above) reflected on her role:

I was a student in the clinic right at a pivotal moment for CTO. The clinic had filed a lawsuit on behalf of CTO against the owner of the park — this owner had purchased the park with the promise of selling the park to the homeowners once they had organized and were ready for ownership but just kept moving the goal posts — and CTO needed to decide whether to settle or to take the lawsuit all the way. It was difficult to advise on because we were confident in our case, our client was righteously angry, and the terms for settlement kept changing.

We did not know if settlement was even possible, so we continued down two paths simultaneously for as long as we could. On the one hand, we were pushing hard for settlement. I attended negotiation calls with the owner and their attorney. I assisted with drafting settlement agreements and with loan applications, as CTO had no funds and was looking to purchase a multi-million-dollar mobile home park. I led calls with structural and civil engineers to discuss the issues with the slope that would need to be addressed after the purchase. On the other hand, we were moving forward with the lawsuit. I appeared in court for a case management conference (and immediately realized that I wanted to be a transactional attorney rather than a litigator!).

So many pieces were moving at once! At a time when I think other supervisors would tighten the reins or become micromanagers, Bob and Carrie encouraged us to think creatively. Throughout the entire experience, I felt empowered to experiment and safe in the knowledge that I was being shepherded by two brilliant legal minds.

Eventually we came to the point where the settlement would fall apart if CTO did not dismiss the lawsuit. Would scorching the earth in an epic lawsuit be satisfying? Duh. But was that truly what was in the best interest of the client? I remember struggling to know what to advise. There were so many hurdles — an unhelpful current owner, a strong willed and difficult to sway president, an ever-changing board, private financing and potential state sponsored financing, disenchanted community members — and so many ways for everything to blow up and go horribly wrong.

Watching Bob and Carrie struggle with this as well made me realize that this was not a situation with a definite answer. Bob's optimism and Carrie's pragmatism are a wonderful match. Advising in a situation like this, when there is no clear right path, takes courage and watching it modeled in Clinic helped to shape the attorney that I am today: one who keeps my client's best interests at heart and never stops fighting for them.

Unlike Shady Lane, Capistrano Terrace was fully permitted, with a strong cash flow, and a purchase price of \$10 million for a park with an appraised value of \$21 million. However, CTO had no cash and no assets. ROP, as CTO's

broker, based its financing plan on federal and state grants, but MPRROP, the state funder, rejected ROP's application and without state funds, the federal HUD grant was insufficient.²⁰ CED restructured and resubmitted the MPRROP grant, but MPRROP's restrictive interpretation of income disregarded the rent of any resident who refused to complete an income verification form, resulting in MPRROP's rejection of the second application.

At that point, CED returned to Clearinghouse CDFI, even though as noted above, it had rejected Shady Lane's application for financing because CED was unable to provide a specific dollar amount for bringing the park up to code. This time, however, Clearinghouse came through and financed the full purchase price of \$9,985,000. In April 2018, CTO closed on the property and became the owner of Capistrano Terrace. Two years later CTO was able to take advantage of low interest rates and refinance, which enabled it to build a substantial reserve, improve the property, and ensure that the units will remain affordable. Throughout the process, CED students represented CTO in closing the refinancing loan, securing a new manager, negotiating easements, and advising the board as issues arose.



CAPISTRANO TERRACE ORGANIZATION (CTO) BOARD MEMBERS (SEATED, WITH ONE CHILD OF THE BOARD PRESIDENT), LAW STUDENTS, AND AUTHORS CARRIE HEMPEL AND BOB SOLOMON (TOP RIGHT).

Courtesy UCI Community Economic Development Clinic.

V. CODA: FORMER STUDENTS' REFLECTIONS ON CED'S IMPACT ON THEIR CAREERS

The CED clinic is not structured, as are many clinical courses, on consistently teaching a set of legal skills to every class of students, such as learning how to file and argue a temporary restraining order, create and provide legal support to a nonprofit corporation, or defend a criminal case. Clinics

²⁰ MPRROP is the commonly used acronym for California's Mobilehome Park Rehabilitation and Resident Ownership Program, a grant and loan program managed by the California Department of Housing and Community Development.

structured in this manner can perhaps articulate more readily tangible skill development goals for every student. Instead, as noted at the beginning of this paper, we structure the work of the CED clinic around meeting our organizational clients' goals, which leads to our clinic students' practicing different skills depending on their project assignments and when they are enrolled in the clinic. Also, as noted above, many of our students enroll in subsequent semesters, to continue to work with clients and on projects to which they become passionately attached. Many of our projects are complicated, messy, and some are still not completed after the ten years the CED clinic has served as the clients' legal counsel. Our students graduate with a variety of experiences, but it is our goal that in every case, they leave UCI Law better prepared to tackle their entry into and continued experience in practicing law. In this last section of the paper, we share some of our students' reflections as to how their CED experience has contributed to their still relatively new legal careers.

Alex Ackel (first quoted above) reflects that:

Since graduating six years ago, I have come to appreciate the value of the experiential learning I received in the Community & Economic Development Clinic. I learned the important lesson that as legal professionals, you cannot always avoid risk. In fact, by taking risks you force yourself to find creative solutions for your clients, which ultimately leads to continued learning and growth.

Nahal Hamidi (first quoted above) notes:

The skills I gained in the clinic are skills I directly applied post-law school. After law school, I worked at two different law firms specializing in low-income housing — and one of the main reasons I chose those firms and succeeded at them was because of my experiences and knowledge gained through the CED Clinic.

Christopher Valentino (first quoted above) shares this:

Coordination may be a corporate buzzword that is thrown around all too often, but the concept of coordination is essential for the practice of law. I first learned that in Shady Lane because we had to coordinate with several third-party partners whose technical knowledge was essential to convincing the county to approve the

CUP. But my subsequent practice has reinforced this. No single lawyer, no matter how skilled, can answer all of a client's questions; but a skilled lawyer can be the person who assembles a team that can answer all of a client's questions and that can get the job done. More broadly, my time in clinic showed me how important humility is in the practice of law. Attorneys have a reputation of being brash, arrogant, and full of themselves. This reputation is not without a grain of truth. However, clinic showed me that the best attorneys are those who approach their work with humility, listen to their clients, and empower their colleagues.

AJ Talt (2017), a corporate transactional associate in the Silicon Valley office of O'Melveny, states:

One of the focuses of the CED clinic was always asking ourselves 'What are the client's goals and how can we achieve them?' I have found this to be a particularly helpful question I continue to ask myself on a daily basis during my practice, as it can be tempting to focus on things that I may feel "right" about but do not ultimately matter to the client. For example, when I am negotiating a transaction, I may think that a term should be written a certain way because it is done that way for 95 percent of people in my client's position, but if that term ultimately does not matter in achieving my client's goals, I have to remind myself that it should not be a priority. I do not think I would be as successful in understanding clients in my current practice and customizing my communication style to their specific needs without the experience I had at the CED clinic.

Parth Jani (first quoted above), who worked on the Capistrano Terrace project, finds:

The benefit of working with the CTO board of directors was that it allowed me to practice how to explain complicated concepts to people who do not have a legal background. This is a skill that I use in my career today as a young associate advising businesses on the implications of a lawsuit and the potential defenses we will use. For example, when drafting a client email, there are times where my first draft contains legal terms without any explanations. However,

one thing I learned in CED was to take a step back and think how someone with no legal training would understand what I was trying to communicate. I do this when drafting client emails, which has proven to be helpful in my career.

And finally, Mark Stamper (first quoted above) reflects:

I participated in UCI's Community and Economic Development Clinic for three semesters in law school. Six years into practicing law, I believe I learned more from the clinic than the rest of law school combined. The clinic gave me practical experience and taught me lessons far more valuable than most of the reading and lectures from the rest of law school. I have received compliments from colleagues and judges regarding my poise and demeanor handling difficult situations in court. I acquired those skills from my experiences in UCI's clinic and from the guidance of the clinic's professors.

CONCLUSION

In the two case studies discussed above, although CED was able to achieve its clients' goals of nonprofit ownership of their mobile home parks, not all the clinic's efforts on behalf of its clients have ended as well. Still, both projects exemplify our pedagogy, in which we place strong emphasis on student responsibility, community service, team collaboration, developing professional judgment, and creative problem solving. We have attended enough clinical law professor conferences to know that our clinic is an outlier in terms of both the breadth of legal tools we are willing to help our students employ, and the variety of substantive areas of law CED students learn in order to assist their clients. This type of practice means that our students will not all have the opportunity to learn the same set of skills. And although CED may not always achieve its clients' goals, this approach puts the community at the center of the clinic's work and gives students the mandate to listen to a client's problem. That's the starting point and we are open to using whatever legal tools the solutions to those problems may require.

ENERGY LAW AND POLICY CLINIC:

University of San Diego School of Law

JOSEPH KAATZ*

TRAINING FUTURE CLIMATE AND ENERGY ATTORNEYS THROUGH COLLABORATION AND PARTNERSHIP

The purpose of the Energy Law and Policy Clinic (Clinic) instructional content is to develop in students a fundamental understanding of the complexity of energy and climate issues in California by performing legal work for state regulatory agencies or local government. Students are challenged to gain an understanding of complex areas of laws that form the legal structure of regulatory action in the state and to come to terms with the difficult tradeoffs between reducing greenhouse gas emissions, supplying reliable and affordable energy, and balancing environmental justice with economic, technical, and political limits. Students come away with an understanding of what this work entails and how to successfully practice in

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor’s introduction on page 3).

* Joseph Kaatz serves as the staff attorney at the Energy Policy Initiatives Center (EPIC) at the University of San Diego School of Law and also supervises the Energy Law and Policy Clinic.

these areas, both in terms of the challenges and opportunities that exist. This Clinic is unique in that, by partnering with a state agency or local government, students are in a position to inform regulatory and policy decisions that may impact the entire state, a region, or a city.

The outcomes from this Clinic are twofold: first, to produce a high-quality work product on a topical issue for our client in a way that better informs the client and the students; and second, to train law students through a professional experience in an applied experiential setting that improves each student's legal research, reasoning, drafting, and editing skills while further developing their competence in client management, ethics, oral presentation, time management, and working collaboratively. The work product that is completed represents countless hours of effort, discussion, and thought. For students, the work outcome is an opportunity to impact issues that affect millions of Californians.

Often, the completed work serves as the underlying research and drafting for future regulations, court briefs, legislation, or other policy decisions. The Clinic's work has included, but is not limited to, the following areas: cap-and-trade, greenhouse gas reduction and removal, Clean Air Act regulation, environmental enforcement authority, community choice aggregation, energy data privacy, energy efficiency implementation, renewable energy mandates, statutory implementation of agency mandates, power plant siting, transmission interconnection regulations for renewable energy, increases in vehicle-related emissions caused by statutory land-use changes, and fee versus tax issues.

The following will discuss the Clinic's background, teaching objectives, outcomes, and conclude with alumni reflections.

BACKGROUND AND HISTORY

The Energy Law and Policy Clinic was created in 2008 to further the Energy Policy Initiatives Center's (EPIC) mission to train law students and to provide objective information and analysis to policy makers. Because of EPIC's mission, the Clinic structure does not include engaging in litigation or advocacy. Instead, the Clinic seeks to partner directly with regulatory agencies to perform legal research and produce requested work product.

EPIC sponsors the Energy Law and Policy Clinic (Clinic) every spring semester. The Energy Law and Policy Clinic is one of three course offerings sponsored by EPIC, with the Clinic being the only offering that combines EPIC's mission to both train law students in climate and energy law and provide objective information to policy makers. The Clinic matches a small group of students each year who have taken the Energy Law and Policy course or Climate Law course, have energy or climate experience, or share an interest in these areas, with an energy- or climate-related local government or state agency to conduct legal research on topical issues. It is unique in that the client is a sophisticated government entity working on complex legal issues in the climate or energy field that sets the stage for students to gain experience as outside counsel while working with and learning from agency attorneys and staff. The Clinic is designed to serve client needs while aiding students in successfully entering the job market by building upon and sharpening the skills developed and the knowledge gained during each student's time in law school.

The diversity of California regulatory agencies offers a broad range of opportunities in terms of subject matter, work culture, and purposes that benefit the student experience. It also allows the Clinic students to engage in the ever-changing work of these agencies as statutory mandates, policy, and the world evolve over time. The Clinic has worked with the California Energy Commission (CEC), California Air Resources Board (CARB), California Public Utilities Commission (CPUC), the Governor's Office of Planning and Research (OPR), and local governments such as the City of San Diego. Rarely has the Clinic worked on the same issue twice, unless the legal landscape has changed and the issues are new. This is both challenging and exciting. It is challenging for a supervising attorney to prepare students and for the students to gain an expertise in a short period of time on complicated issues. It is exciting because the issues are topical, timely, and highly motivating.

CLINIC WORK SUBJECTS LEAD TO JOB OPPORTUNITIES

Part of the benefit of working with a local or state agency on a topical subject is that the expertise and experience gained by students can open job

opportunities upon graduation. Over the years, these opportunities may be either specific to a particular area in which that a student gained expertise during the Clinic or in an area where the general experience of the Clinic lends an advantage over other candidates for that position.

One project where the specific topic led to a job in a directly relevant practice area focused on aiding the Office of the City Attorney, City of San Diego, with the creation of a community choice aggregator (CCA) to implement its climate action plan as part of its greenhouse gas mitigation plan. The subject area of our research focused on the legal requirements of CCA governance structures, implementation plans, and financial separation from the city general fund. Students analyzed the statutory authorization for creating a CCA, as well as all existing and proposed CCA governance structures and implementation plans in existence at that time in California. The students applied their analysis to a wide range of issues, including forming a CCA joint powers authority that would meet regional concerns over how to weight board member voting rights given the significant disparity in size between the City of San Diego and all other potential local government members in the region. The students also vetted issues over startup financing, reserve allocations, withdrawal rights, the power charge indifference adjustment proceeding at the CPUC, and ultimate decertification and shutdown of the CCA. The final products included a draft governance structure, implementation plan, and related legal memoranda on various other topics. From this work, two students were ultimately hired by the law firm that became outside regulatory counsel to the now fully operational local CCA, San Diego Community Power (SDCP).

During another Clinic, we performed work for the CEC on how to parse the legislative requirements of Senate Bill 350 (2015) for implementation across several regulatory agencies. Students learned firsthand the difficulty faced by agency attorneys in implementing major amendments and additions to state code that change policy direction while not necessarily granting new authority, nor clearly expressing how to implement or resolve conflicts with existing mandates. The students learned many practical lessons as they struggled to understand the legislative intent of SB 350 and the possible ways for it to be implemented. The students gained experience analyzing existing statutory mandates and resolving the identified conflicts and shortcomings created by the newly mandated statutory changes.

It was the first time that many of the students realized how unclear statutes can be and the difficulty in providing legal counsel in the regulatory world. Several students were able to take this experience and apply it to positions at the CPUC, the Federal Energy Regulatory Commission, and in the private sector. This experience and the lessons learned allowed these students to stand out from their peers and pursue career paths that reflected their interests from the moment of graduating.

The following will discuss the Clinic's core teaching objectives and outcomes.

DEVELOPING COLLABORATIVE STUDENT LEADERSHIP

One of the Clinic's primary objectives is ensuring the time and space for student collaborative leadership. This facilitates the ultimate goals of producing high quality work for the client while developing student skills through a real-world experience — ensuring each student leaves the Clinic with the ability and confidence to be successful when they graduate.

The operation of the Clinic continues to move toward greater student leadership. Over time, the Clinic has transitioned from being led by the supervising attorney to being led by the students themselves through collaboration. This is a lesson learned from observing a former student exercise collaborative leadership where she used her natural leadership style to work with her peers to meet deadlines, explain complex issues, and resolve issues constructively. Student leadership grounds the investment in and responsiveness to the work and client. Her leadership style was so effective in terms of management and outcome that it began the transition to this type of organizational structure. Ultimately, students come away with the experience of running a complex legal project where they manage deadlines and workflow to produce the ultimate work product. It also frees the supervising attorney to work collaboratively by guiding students through the research of complex legal issues and drafting of work product while focusing on developing core legal skills.

To encourage this outcome, students are invited to exercise collaborative leadership in deciding what research to perform, setting timelines to complete drafting, managing the client relationship, and deciding how to

present complex legal conclusions to a varied audience. Such freedom and responsibility sometimes overwhelm students. Many can attest to feeling uncomfortable with the weight on their shoulders, given the complexity of the subject matter and frustration with the process at various times. But it is in these moments that students collectively come together to think through how to approach complex issues and assign tasks to meet deadlines, build confidence, and analyze old problems with new eyes. It is also where the supervising attorney provides better training through guiding, suggesting, and encouraging instead of defining, assigning, and concluding. The space granted for struggle and creativity may be one of the best outcomes of the Clinic because students rise to the challenge when no one is telling them how or why the work should occur in a particular way. Ultimately, they learn what it means to timely and competently address their client's needs.

Through this process, students learn to lead and to collaborate to produce a wide range of work products that include objective legal memoranda, databases, and policies. It is flexible enough to allow students to respond to an unexpected change in client need at any point during the semester. Students learn to package their work products as requested by the client, but without losing the hard-earned work and creativity that can influence sophisticated clients. They also gain the confidence to disagree with the client when needed, respectfully of course.

IMPROVING THE CORE LEGAL SKILLS OF LEGAL RESEARCH, ANALYSIS, WRITING, AND EDITING

As important as leadership skills are, developing each student's core legal drafting and research skills remains the primary focus of the Clinic. Each semester, students submit writing samples as part of their application. It is a first look at where their research and writing skills are presently, which reflects a range of abilities. Over the course of the Clinic, students will teach and learn from each other as they research, draft, and edit each other's works.

Every semester, students begin with either no, or a basic, understanding of the issue. By the end of the semester, they have gained an expertise that is rivaled by only a handful of other experts in the state. The instructional

content regarding research takes the form of: (1) providing initial research and teaching enough background material to bring students up to speed within the first weeks of the semester; and (2) leading the development of a research plan to approach the subject area. This may also include assigning drafting of internal legal memoranda to form the basis of the overall project or developing a framework to piece various research areas together. Once enough research is complete, we collectively draft an outline and assign sections with clear deadlines. We also discuss how the editing process will evolve and the time crunches that will inevitably emerge throughout the semester. Once drafting deadlines are met, the editing process begins. Students are assigned to edit the work of their peers in a process that allows each student to review and edit the entire work product. We discuss the minimum types of editing that are necessary, time permitting, to produce the highest quality work product possible. We also dive into how editing processes may evolve over time and ways to streamline both the drafting and editing processes to work more efficiently.

Over the many years of running the Clinic, there has not been a single student who did not improve one or more of these skills over the course of the semester. Learning to evaluate and plan out research on complex issues, as well as how to draft and edit the resulting work, are invaluable skills the students hone through the Clinic. It builds confidence and competence. It often marks a significant achievement in law school because it may be the only opportunity to lead and learn while performing impactful energy and climate work. Students often reflect on how they found the expertise gained and work performed rewarding and beneficial, which is illustrated by the reflections of a couple of students herein.

BUILDING AND MAINTAINING THE CLIENT RELATIONS

At the beginning of every Clinic, most students are shy about interacting with the client. They often need to be prodded to ask questions and lead discussions, particularly over the phone or in a digital conference. This remains one of the more difficult skills to develop in students over a short semester. In some semesters, there may be one or two students who are comfortable with leading client communications and interactions, and often the rest are happy

to leave this area to those who volunteer (though allowing such would be a disservice to the students and the opportunity this Clinic offers).

Developing the skill of effectively managing client relationships remains a core teaching objective. It is another example where the use of student collaborative leadership serves as one of the best means of students' becoming comfortable and competent at interacting and managing a client. It also may be one of the first experiences a student has providing legal advice to a client and being confronted with a client who challenges or disregards their advice, which is not surprising given that the Clinic works directly with agency attorneys and staff, some of whom have decades of experience.

Being disregarded after a semester of work is a frustrating but necessary lesson for the students. Students need to learn to respectfully disagree with a client where their legal analysis supports a different action or multiple options. This situation occurs often enough in the Clinic to make this lesson a major focus of internal discussion during the semester. Students are prepared and guided in how to manage a hard or contentious conversation with a client as they approach an issue from the outside and as they are made aware of the highly ingrained institutional culture that is a characteristic of many regulatory agencies. It is also a central skill when working on issues that are on uncertain legal ground or deal with new technologies or challenging tradeoffs that may not fit neatly into existing statutes and regulations, which is often the case in the energy and climate practice areas.

Learning to navigate client relationships through the Clinic, the students emerge as better prepared lawyers with the ability to manage both their own expectations and their client's, to advise, objectively analyze, and to accept and learn from the client's own appetite for risk or political limits.

LEGAL ETHICS, CONFIDENTIALITY, AND ATTORNEY-CLIENT PRIVILEGE

Most students join the Clinic either currently enrolled in or yet to take a professional responsibility course. They are familiar with the ideas of confidentiality, privilege, and other basic ethical requirements, but they have never read the duties required of licensed attorneys. The Clinic introduces the requirements imposed on licensed attorneys and focuses on how to practice under our duty to protect both client confidences and

the deliberative process that is entailed in working for regulatory agencies. Students are trained in confidentiality to competently communicate via emails or orally when performing factfinding for their work. They are trained in preserving privileges and learn to practice in a way that always protects client privileges. Finally, the students learn to perform conflict checks and understand that their future work may require a conflict check and, if required, may limit who they represent or what they work on unless they receive client consent in accordance with the governing rules of their respective jurisdiction.

In learning to practice ethically, students benefit from their role in the Clinic because it allows them to make mistakes and learn from agency attorneys about how to approach certain types of communications and ethically carry out their duties. One simple example of this in practice is remembering to include the word “Confidential” in an email subject line and body. By the end of the Clinic, students know when this is required and that they need to be thoughtful about who the recipient of the email is, the content of the email, and whether confidentiality, privilege, or another ethical duty is involved. The fact that students are now thinking about every communication they make and their duties to their clients means that they are prepared to begin their practice of law.

ORAL PRESENTATION: KNOWING THE AUDIENCE AND SUCCINCTLY VOICING COMPLEX CONCLUSIONS

As we reach the end of each semester, the students are tasked with deciding how they wish to present their work to the client. Students must complete a draft of their presentation and perform at least one dry run before presenting to a client. In years past, we would fly our students to Sacramento or San Francisco to present in person. This offered the added benefit of setting up networking opportunities the day of the trip. In the COVID-19 era, presentations have become exclusively digital, which offers many pros and cons. The pros include that our students are now so familiar with platforms like Zoom that they already have the necessary skills to practice in any number of the work situations of today. Technology offers other key advantages about how to present content, how to present professionally, and

how to use time efficiently. It can also allow students the ability to connect to more people in their chosen practice area, because that person is only a phone or Zoom call away.

When thinking through how to present, students are guided by several questions about the content of what they present: What is the most efficient way to present the content given our time constraints? Who is the audience and what is their understanding of the subject matter? How much content should be in a PowerPoint presentation versus spoken orally? What is a good speaking pace? How do we continue if there are technical difficulties? How should you respond to difficult questions that challenge what you said?

Without exception, I am always impressed by the professionalism that the students exhibit when presenting their work. The content is always presented efficiently and with creativity. There are also always new thoughts that come forth, leading to valuable discussions, largely because complex legal analysis must be distilled for the presentation and audience. Students also benefit from responding to hard questions that challenge their positions, an experience that is much like appearing before a judge or negotiating a contract. Even after a tough oral presentation, students come away with the reward of knowing they presented their work in front of people who make or help inform decisions that affect every person in California. There are few other opportunities in law school akin to this experience.

At the end of the Clinic, students are better trained and better prepared to enter the job market. They are confident in their skills and competent in the subject matter given their experience. It is always the goal of this Clinic to offer the best experience and training each semester so that students can progress and succeed in this profession, whether they go on to practice energy law or pursue another area of law.

ALUMNI REFLECTIONS ON THE ENERGY LAW AND POLICY CLINIC

Lauren Perkins, 2018

Associate, Duncan Weinberg Genzer Pembroke (Sacramento)

Through the learning and experiential objectives discussed at length above, the Energy Law and Policy Clinic (Clinic) prepared me for a career as an

energy attorney. In the classroom, I grappled with learning how to work in a team to accomplish a large project in a short timeframe; this is the reality of working as an attorney, especially when working in a small firm in an evolving field like the energy regulatory realm. A valuable lesson I learned from the Clinic was that every team member is different in terms of their bandwidth and priorities, but every person working on the project plays a crucial role. This is not something you can learn in the typical law school classroom where you have two tests to focus on in a semester and only your own schedule to manage to tackle those tests. Communication, ability to understand and work with differing perspectives to approaching a problem, and confidence to acknowledge and speak up when you need assistance are all skills students hone through the Clinic that are crucial to a successful law practice.

Speaking separately to the learning objective above of practicing with client confidences in front of mind, one smaller though invaluable lesson I learned from the outset of the Clinic is to cautiously consider platforms on the Internet when you are uploading your work product and communicating with clients. What might seem a basic lesson of scrutinizing a user agreement before utilizing a platform turned out to be a fundamental step that cannot be overlooked; in the Internet age, it is easy to succumb to the temptation of using an apparently efficient platform, but lacking security features, which can pose devastating consequences to the client. It is these practical details the Clinic involved that speak to its success in preparing students for a career path as a mindful attorney.

And of course, the moment from the Clinic that is most rewarding to reflect on is the moment immediately following your presentation to the regulatory agency. For my Clinic class, we had the privilege of presenting at the CEC in Sacramento — I remember we were all tired from the hours and nerves we expended on preparation. Having the regulatory agency's staff engage following our presentation with questions facilitated a dialogue that is a unique reward at the end of law school — it is not rewarded through an A on a paper, but rather through the ability to communicate confidently to a client on a topic you poured your semester into.

Ian Kearney, 2018

Associate, Western Energy and Water (Sacramento)

The Energy Law and Policy Clinic was instrumental in my decision to pursue energy law upon graduating law school, and it provided me with valuable experience that allowed me to smoothly transition into the practice of energy law as I began my career.

In general, students seek out clinics because they offer the ability to have a hands-on experience, moving beyond classrooms and textbooks to real-world legal issues and client interactions. This is especially true of the Energy Law and Policy Clinic — the Clinic's mixed focus on administrative law, regulatory practice, and energy and climate matters allows students to have practical insights into a legal practice space that is usually difficult for interested students to enter.

I was immediately attracted to the subject matter of energy law when taking related law school courses. However, beginning down this career path always seemed like a challenge and I had some concern pursuing it. After participating in the Clinic as a 2L, I gained confidence in my understanding of some of the fundamental legal concerns relevant to California energy matters, as well as important experience that led me to a summer position with CPUC's Administrative Law Judge Division. I enjoyed my Clinic experience enough that I participated again as a 3L. These experiences then resulted in my being hired out of law school by a firm that specializes in California energy matters, and my interest and experience in the energy space played a significant role in setting me apart from other applicants.

Beyond the knowledge I gained about this highly technical subject matter, the Clinic taught me some foundational lessons of client management that are necessary to learn as a young lawyer but not easy to come by in the pursuit of energy and climate policy experience. During one Clinic, we had a disagreement with the client over the extent of their authority provided in statute. The Clinic was reassured by our supervising attorney to stand by what we believed to be a reasonable interpretation of statute. And we learned how, in working with an organizational client, it can be useful to first bring a potentially disagreeable opinion to a smaller group via a phone conversation before ultimately building to a larger final written product where the disagreement may be embedded. Despite any eventual

disagreement, the final product was still valuable and delivered what the client desired.

Clients in this space are often making policy judgments in addition to balancing other considerations. Energy lawyers are often sought after for advice that ends up being much different than, say, a criminal matter with clearer rights and boundaries. Client disagreements can occur and with different and varying stakes. Often a conversation is needed to strategize a workable solution for a client to meet their end business or regulatory objective. The Clinic provided an excellent introduction to all of these lessons.

★ ★ ★

AOKI WATER JUSTICE CLINIC:

UC Davis School of Law

ROBERT D. MULLANEY*

THE HUMAN RIGHT TO WATER: MOVING FROM ASPIRATION TO REALITY

After years of organizing, community groups and water rights activists had good reason to celebrate when Governor Jerry Brown signed AB 685 (Eng) into law in September 2012.¹ With the passage of this bill, California became the first state in the U.S. to legislatively recognize a human right to water, declaring that “every human being has the right to safe,

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor’s introduction on page 3).

*Robert D. Mullaney is the current Director of the Aoki Water Justice Clinic at UC Davis School of Law (“King Hall”). I want to thank Professor of Law Emerita Angela Harris and Professor of Law Emerita Mary Louise Frampton at King Hall, and Laurel Firestone, now a member of the State Water Resources Control Board, for their vision and continued support of the Clinic’s work. I also want to thank Pearl Kan, King Hall class of 2013, and Vanessa Lim, King Hall class of 2015, for their invaluable contributions to the Clinic’s foundation and my understanding of it, and Isabel Johnson, King Hall class of 2022, for her editorial assistance with this article.

¹ ENVIRONMENTAL JUSTICE COALITION FOR WATER, THIRSTY FOR JUSTICE: THE STRUGGLE FOR THE HUMAN RIGHT TO WATER, <https://ejcw.org/thirsty>.

clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”²

The bill declared a new state policy that state agencies must consider when adopting or establishing policies, regulations, and grant criteria pertinent to water uses.³ However, the bill was not a panacea; it neither expanded the state’s obligation to provide water, nor did it require the state or water companies to spend additional resources to develop water infrastructure.⁴ Rather than mandate any specific action, the bill instead provided a broad policy statement, setting an aspirational goal for the state to meet.⁵

The need is undeniably great in our state. According to the California Legislature, one million Californians lack access to water that is reliably safe for drinking.⁶ As Tulare County supervisor Eddie Valero remarked about the town of East Orosi’s drinking water: “Imagine youth growing up only knowing water comes from a bottle and not the kitchen tap.”⁷

In fact, drinking water in California remains the tale of two states. In one snapshot, 400 of the state’s largest water systems — those serving more than 3,000 customers — provide more than 90 percent of the state’s residents with safe drinking water.⁸ In the other, as experienced by disadvantaged communities in the San Joaquin Valley, a majority of community water systems are small, serving fewer than 200 customers.⁹ Almost

² CAL. WATER CODE § 106.3 (2013). Two states, Massachusetts and Pennsylvania, have recognized the public’s right to clean or pure water in their state constitutions. See MASS. CONST. art. 97; PA. CONST. art. 1, § 27.

³ CAL. WATER CODE § 106.3(b) (2013).

⁴ CAL. WATER CODE § 106.3(c) (2013).

⁵ DARCY BOSTIC ET AL., SUSTAINABLE FOR WHOM? THE IMPACT OF GROUNDWATER SUSTAINABILITY PLANS ON DOMESTIC WELLS 6 (UC Davis Center for Regional Change 2020).

⁶ CAL. HEALTH & SAFETY CODE § 116765 (2021).

⁷ Joshua Yeager, *East Orosi One Step Closer to Clean Water as Tulare County Moves to Become Administrator*, VISALIA TIMES-DELTA, June 23, 2021, <https://www.visaliatimesdelta.com/story/news/2021/06/23/east-orosi-one-step-closer-clean-water-tulare-county-moves-become-administrator/7718274002>.

⁸ See [California] State Water Resources Control Board, *Frequently Asked Questions: Safe and Affordable Funding for Equity and Resilience Program*, https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/faq_safe_drinking_water_program_overview_factsheet.pdf.

⁹ JONATHAN LONDON ET AL., THE STRUGGLE FOR WATER JUSTICE IN CALIFORNIA’S SAN JOAQUIN VALLEY: A FOCUS ON DISADVANTAGED UNINCORPORATED COMMUNITIES

one-quarter of these small systems do not comply with health-based drinking water standards known as the Maximum Contaminant Levels (“MCLs”) set under the Safe Drinking Water Act.¹⁰ Thus, residents of these disadvantaged communities continue to face a triple penalty: (1) the health impacts of unsafe drinking water; (2) the high cost of the water service provided to them; and (3) the added financial burden of purchasing bottled water for their families.¹¹ “As a result, some impoverished residents pay upwards of 20 percent of their income for water utility fees, bottled water, and related transportation costs, whereas, ‘[i]n the United States, combined water and sewer bills average only about 0.5 percent of household income.’”¹²

California faces a great challenge to ensure that all of its communities have access to safe and affordable drinking water but has taken strides in the past decade to address this urgent need. Regarding the enormity of a similar human rights struggle, Dr. Martin Luther King Jr. struck the right tone when he stated: “We shall overcome ‘because the arc of the moral universe is long, but it bends toward justice.’”¹³

In this article, Section I outlines California’s legislative and administrative response to the moral imperative of a human right to water. Section II recounts the foundation of the Aoki Water Justice Clinic (“Clinic”) at UC Davis School of Law (“King Hall”). In Section III, the article provides several case studies as well as reflections by participating law students to illustrate ways in which the Clinic’s students helped to effect meaningful change for disadvantaged communities in our state.

13 (UC Davis Center for Regional Change 2018), <https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT.pdf>. A “disadvantaged community” is defined as “a community with an annual median household income that is less than 80 percent of the statewide annual median household income.” CAL. WATER CODE § 79505.5.

¹⁰ LONDON ET AL., *supra* note 9, at 14.

¹¹ *Id.* at 8.

¹² SAFE WATER ALLIANCE ET AL., BARRIERS TO ACCESS TO SAFE AND AFFORDABLE WATER FOR DISADVANTAGED COMMUNITIES IN CALIFORNIA 6 (2015), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Shadow-Report-on-Right-to-Water-JS25-150511-1.pdf>.

¹³ Martin Luther King Jr., *Address at the National Cathedral: Remaining Awake Through a Great Revolution* (March 31, 1968); see <https://www.youtube.com/watch?v=EinMxyjSDwo>.

I. CALIFORNIA'S STEPS TO ADVANCE THE HUMAN RIGHT TO WATER

The State of California typically finances public infrastructure such as water projects with general obligation bonds, which require approval by 50 percent of the voters.¹⁴ In 2014, the Legislature placed Proposition 1, a water bond, on the November ballot to increase the supply of clean, safe, and reliable water.¹⁵ Proposition 1 specifically targeted its drinking water funding to assist disadvantaged communities and required the State Water Resources Control Board (“Water Board”) to implement a technical assistance program for these communities.¹⁶ In the election, California’s voters overwhelmingly approved Proposition 1, authorizing \$241.8 million for drinking water projects.¹⁷

In March 2015, the Legislature again focused on assistance to disadvantaged communities by establishing the Office of Sustainable Water Solutions, now a part of the Water Board’s Division of Financial Assurance.¹⁸ The Office is intended to provide financial and technical assistance to disadvantaged communities and small drinking water systems to ensure the effective and efficient provision of clean and affordable drinking water.¹⁹

¹⁴ Alf Brandt, *Water Infrastructure Funding in California: Who Should Pay to Keep the Tap Running?*, 46 McGEORGE L. REV. 165, 175 (2014), <https://scholarlycommons.pacific.edu/mlr/vol46/iss1/10>; see <https://lao.ca.gov/ballotanalysis/bonds>.

¹⁵ LEGISLATIVE ANALYST’S OFFICE, THE 2015–16 BUDGET: EFFECTIVELY IMPLEMENTING THE 2014 WATER BOND 3 (2015), <https://lao.ca.gov/reports/2015/budget/water-bond/water-bond-021115.pdf>.

¹⁶ PAC. INSTIT., INSIGHTS INTO PROPOSITION 1: THE 2014 CALIFORNIA WATER BOND 12 (2014), <https://pacinst.org/wp-content/uploads/2014/10/Insights-into-Prop-1-full-report.pdf>; CAL. WATER CODE § 79725(c); STATE WATER RESOURCES CONTROL BOARD, TECHNICAL ASSISTANCE FUNDING PROGRAM PROCEDURE MANUAL 5 (2020), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/proposition1/docs/tech_asst/tafp_procedure_manual.pdf.

¹⁷ Brandt, *supra* note 14, at 165; State Water Resources Control Board, *Proposition 1* (2022), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/proposition1. The Water Board administers Proposition 1 funds for drinking water projects. *Id.*

¹⁸ CAL. WATER CODE § 189 (2015).

¹⁹ CAL. WATER CODE § 189(b)(5) (2015); see State Water Resources Control Board, *Office of Sustainable Water Solutions* (2022), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/sustainable_water_solutions.

In February 2016, the Water Board approved Resolution No. 2016-0010, adopting the human right to water as a core value and declaring its implementation to be a top priority in the Water Board's programs and activities.²⁰ In particular, the Water Board directed the Office of Sustainable Water Solutions to provide technical and compliance assistance to disadvantaged communities to evaluate solutions and select a sustainable approach that supports the human right to water.²¹

In its Human Right to Water List, the Water Board currently identifies 416 public water systems, serving more than 1 million residents, as either out of compliance or consistently failing to meet health-based drinking water standards.²² Recognizing the magnitude of this problem, the Legislature has repeatedly increased the Water Board's authority and capacity to address failures in these water systems. For example, the Water Board received additional authority to order a mandatory consolidation when a public water system, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water.²³ In addition, the Water Board may appoint an administrator to perform the administrative, technical, operational, legal, or managerial services for a failing water company.²⁴ The Legislature also increased funding for these efforts by passing SB 200 in July 2019, which provides \$130 million per year for 10 years for the Safe and Affordable Drinking Water Fund.²⁵ To effectively administer this fund, the Water Board established the Safe and Affordable Funding for Equity and Resilience ("SAFER") program, which strives to "bring true environmental justice to California and address the continuing

²⁰ See STATE WATER RESOURCES CONTROL BOARD, ADOPTING THE HUMAN RIGHT TO WATER AS A CORE VALUE AND DIRECTING ITS IMPLEMENTATION IN WATER BOARD PROGRAMS AND ACTIVITIES 5 (2016), https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0010.pdf.

²¹ *Id.* at 6.

²² STATE WATER RESOURCES CONTROL BOARD, 2022 DRINKING WATER NEEDS ASSESSMENT 34 (2022), https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/needs/2022needsassessment.pdf.

²³ CAL. HEALTH & SAFETY CODE § 116681 (2022); CAL. HEALTH & SAFETY CODE § 116682 (2022).

²⁴ CAL. HEALTH & SAFETY CODE § 116275 (2019); CAL. HEALTH & SAFETY CODE § 116686 (2019).

²⁵ CAL. HEALTH & SAFETY CODE § 116766 (2022).

disproportionate environmental burdens in the state by assisting with providing safe drinking water in every California community.”²⁶

II. THE FOUNDATION OF THE AOKI WATER JUSTICE CLINIC

According to the Water Board, more than a million people in California were exposed to unsafe drinking water from the tap in their homes and schools last year.²⁷ This problem can be found in nearly every part of the state, but areas like the San Joaquin Valley and Salinas Valley are disproportionately impacted due to reliance on groundwater contaminated by the overuse of fertilizer in irrigated agriculture.²⁸ Arsenic and nitrate, two of the primary drinking water contaminants in the state, disproportionately affect low-income and Latino communities.²⁹ Moreover, in the midst of California’s historic drought in 2014–15, many families and communities found themselves without water at all.³⁰

California’s water governance is a patchwork of legal structures composed of both public and private entities, small and large.³¹ Many rural communities in the San Joaquin Valley rely on small groundwater systems for their potable water supply.³² In addition, “state small water systems,”

²⁶ State Water Resources Control Board, *SAFER Program: Frequently Asked Questions*, https://www.waterboards.ca.gov/drinking_water/programs/safer_drinking_water/docs/20200416_safer_faqs.pdf.

²⁷ STATE WATER RESOURCES CONTROL BOARD, *supra* note 22, at 34; CAL. HEALTH & SAFETY CODE § 116765 (2020).

²⁸ UC DAVIS CENTER FOR WATERSHED SCIENCES, ADDRESSING NITRATE IN CALIFORNIA’S DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER 3 (2012), <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>; see *Monterey Coastkeeper v. State Water Resources Control Bd.*, 28 Cal. App. 5th 342, 346 (2018).

²⁹ LEGISLATIVE ANALYST’S OFFICE, EXPANDING ACCESS TO SAFE AND AFFORDABLE DRINKING WATER IN CALIFORNIA, A STATUS UPDATE 6–7 (2020).

³⁰ Between 2012 and 2016, more than 2,500 domestic wells failed, primarily in low-income communities of color in the San Joaquin Valley. BOSTIC ET AL., *supra* note 5, at 6.

³¹ Camille Pannu, *Drinking Water and Exclusion: A Case Study from California’s Central Valley*, 100 CAL. L. REV. 223, 256 (2012) (listing examples of public and quasi-public governance districts). According to the Water Board, California has over 7,000 public water systems. STATE WATER RESOURCES CONTROL BOARD, *supra* note 22, at 28.

³² LONDON ET AL., *supra* note 9, at 13.

which serve between 5 and 14 connections, are not regulated by the Water Board but are overseen by county health officers.³³ Although these small systems may maintain independence and autonomy over their water systems, they are also vulnerable to water contamination through human sources, such as nitrate contamination from fertilizer.³⁴ Finally, between 1.5 and 2.5 million California residents rely on domestic wells, which are not regularly monitored by the federal or state government.³⁵

Because of California's patchwork water management system, there is no uniform solution for California's water needs. Finding solutions — including solutions for the poorest communities — is a crucial issue, however, especially given California's recurring droughts and the increasing impact of climate change on the state.

In 2013, Professor Angela Harris became the inaugural director of the Aoki Center for Critical Race and Nation Studies ("Aoki Center") at King Hall.³⁶ Under her direction, the Aoki Center sought to develop a clinical component to foster its work, which would allow students to understand and apply critical race theory ideas in a real-world context, while contributing to the quality of life of underserved communities. The clinical projects would create opportunities for law students to provide effective representation for these communities.

The 2014 passage of Proposition 1, which authorized the Water Board to fund technical assistance programs under the state's drinking water program, provided a potential pathway for change.³⁷ In public comments submitted to the Water Board, Professor Harris advocated that this new technical assistance program should include funding for legal assistance for community water solutions for small disadvantaged communities.

³³ LEGISLATIVE ANALYST'S OFFICE, *supra* note 29, at 4.

³⁴ UC DAVIS CENTER FOR WATERSHED SCIENCES, *supra* note 28, at 3 (in study area, cropland contributed 96 percent of nitrate contamination to groundwater).

³⁵ LEGISLATIVE ANALYST'S OFFICE, *supra* note 29, at 4.

³⁶ The Aoki Center was established to honor the life and work of Keith Aoki, a faculty member at King Hall who died an untimely death in 2011. Professor Aoki was an accomplished and respected scholar who used words, art, music, and engagement to create a significant body of work in civil rights, critical race theory, intellectual property, and local government law.

³⁷ LEGISLATIVE ANALYST'S OFFICE, *supra* note 15.

In 2014, Professor Harris met with Laurel Firestone, the co-executive director at Community Water Center (“CWC”), to discuss potential collaboration on projects. The CWC is a well-established nonprofit organization with the mission to act as a “catalyst for community-driven water solutions through organizing, education, and advocacy in California.”³⁸ Professor Harris also met with Pearl Kan, King Hall class of 2013. With funding from Equal Justice Works, Ms. Kan had joined California Rural Legal Assistance, Inc. (“CRLA”) in 2013 to work on issues of nitrate contamination in the Salinas Valley. Under the supervision of Professor Harris, King Hall students began working on a number of projects with CWC and CRLA.

In one of these projects, Vanessa Lim, King Hall class of 2015, conducted a needs assessment, involving both legal research and interviews with local advocates. Ms. Lim drafted a working paper outlining the legal problems facing Californians served by small water systems, compiling the resources available to them, and recommending further projects. This study served as a foundation for the potential development of a legal services clinic for these small systems.³⁹

In 2016, Professor Harris, collaborating closely with Laurel Firestone of CWC, submitted a grant proposal to the Water Board to fund the establishment of a new King Hall environmental justice clinic. The proposal built upon Vanessa Lim’s needs assessment in which Ms. Lim observed:

- The lack of available legal information imposed barriers to compliance with water quality standards and legal requirements of local governance structures;
- A lack of compliance with water quality standards and legal requirements of local governance structures increased costs for disadvantaged communities by exposing them to fines for failure to comply with rules;
- These communities were also denied access to potential state funding due to a failure to comply with corporate formalities and a lack of information about the requirements for applications;

³⁸ See Community Water Center, *Mission + History* (2022), <http://www.communitywatercenter.org/history>.

³⁹ Vanessa Lim, *Minding the Gap: Increasing the Accessibility of Legal Information and Assistance to Empower Communities and Implement California Water Law and Policy to Increase Clean Water Access For Disadvantaged Communities*, WILLAMETTE ENVTL. L.J. 35 (Fall 2015).

- The lack of legal information hindered public participation, accountability, and the community's ability to effectively manage its water resources;
- Information about legal duties of local governing agencies is important because it enables communities to meaningfully participate in making important decisions about water resource management that impact them;
- The lack of legal information inhibited the ability of communities to exercise local control over water resource management and increased the financial barriers to clean water solutions;
- Even when legal information was available, it was either not easy to obtain or overly complicated and technical;
- Finally, relevant information was often available only in English or online in a state where more than 43 percent of residents spoke a language other than English at home and where many rural communities did not have access to high speed Internet.⁴⁰

In light of these myriad barriers, Professor Harris emphasized in the grant proposal to the Water Board that communities needed legal assistance and advocates to achieve long-term drinking water solutions. This approach takes into account that “[i]n the long run, true *water justice* requires sustainability, and this necessitates that impacted residents become empowered to assert themselves in the water policymaking arena and to influence decisions about water resources and water services that impact their community.”⁴¹ After review, the Water Board awarded a grant to UC Davis in November 2016, agreeing to fund the Clinic’s work to provide legal technical assistance to small disadvantaged communities to develop and implement their capital improvement projects. Subsequently, King Hall established the Clinic and hired Camille Pannu as the inaugural director for the Fall 2017 term.

⁴⁰ *Id.* at 54–56.

⁴¹ Rose Francis & Laurel Firestone, *Implementing the Human Right to Water in California’s Central Valley: Building a Democratic Voice through Community Engagement in Water Policy Decision Making*, 47 WILLAMETTE L. REV. 495, 519 (2011) (italics in original).

III. THE AOKI WATER JUSTICE CLINIC'S WORK

The Clinic combines transactional law, policy advocacy, and strategic research to ensure that low-income California communities receive clean, safe, and affordable drinking water. It is the first law school clinic of its kind in the country.⁴² This Section will briefly describe the seminar component of the Clinic and then address the Clinic's practice. The Section will conclude with some observations by Clinic students about their experiences.

A. THE SEMINAR

The Clinic is designed as a one-semester course for second- or third-year law students; students can register for a second semester to continue to work on assigned matters. The Clinic's work spans the intersection of environmental and transactional law, but some students have not taken any survey courses in those areas when they register for the Clinic. Consequently, the seminar component necessarily covers a broad range of topics to provide the students with a framework to recognize and analyze the problems that our Clinic's projects will present. Because our work focuses on disadvantaged communities, we introduce concepts of community lawyering and the environmental justice movement.⁴³ To understand the current, inequitable water delivery system in California, we discuss the historical roots of discrimination in our state such as redlining, exclusionary zoning, racially restrictive covenants, and

⁴² In applying transactional lawyering to address the effects of poverty and discrimination, the Aoki Water Justice Clinic follows the path of Professor Susan R. Jones who recognized that law schools can serve as centers of "action research," probing "solutions to poverty through active exploration of social problems." Gregory E. Louis, *Bridging the Two Cultures: Toward Transactional Poverty Lawyering*, 28 CLINICAL L. REV. 411, 420–21 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4106798; Susan R. Jones, *Alleviating Poverty: What Lawyers Can Do Now*, HUM. RTS. 11 (August 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/alleviating_poverty.

⁴³ Paul R. Tremblay, *Counseling Community Groups*, 12 CLINICAL L. REV. 389 (2010), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1289&context=lsfp>; Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENVTL. L.J. 688 (1995); *The Mother Earth Podcast: Dr. Robert Bullard* (June 11, 2020), <https://www.motherearthpod.com/drballard>.

discriminatory county planning and spending policies.⁴⁴ Turning to the substantive law, the seminar reviews the requirements of the federal Safe Drinking Water Act and California's efforts to implement it.⁴⁵ In a state served by over 7,000 water systems, we examine state laws governing special districts, the taxation authority of public agencies, and public meeting laws.⁴⁶ Because so many rural communities rely on groundwater as their sole source of drinking water, we address the passage and implementation of the Sustainable Groundwater Management Act.⁴⁷ Finally, the seminar seeks to demystify the drafting of corporate documents, contracts, and easements so that the students can move beyond a tentative grasp of first year doctrinal law classes to the practical application of these legal concepts.⁴⁸

⁴⁴ Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008), <https://www.uclalawreview.org/cities-inside-out-race-poverty-and-exclusion-at-the-urban-fringe>; Camille Pannu, *Bridging the Safe Drinking Water Gap for California's Rural Poor*, 24 HASTINGS ENVTL. L.J. 253 (2018), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1419&context=hastings_environmental_law_journal; RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

⁴⁵ James E. Salzman, *The Past, Present and Future of the Safe Drinking Water Act*, UCLA SCHOOL OF LAW, PUBLIC LAW RESEARCH PAPER No. 19-37 (2019), <https://ssrn.com/abstract=3463976>; California State Water Resources Control Board, *Safe and Affordable Funding for Equity and Resilience* (2022), <https://www.waterboards.ca.gov/safer>.

⁴⁶ SENATE LOCAL GOVERNMENT COMMITTEE, *WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS?: A CITIZEN'S GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA* (2010); LEAGUE OF CALIFORNIA CITIES, *PROPOSITIONS 26 AND 218 IMPLEMENTATION GUIDE* (2021); LEAGUE OF CALIFORNIA CITIES, *OPEN & PUBLIC V, A GUIDE TO THE RALPH M. BROWN ACT* (2016).

⁴⁷ WATER FOUNDATION, *GROUNDWATER MANAGEMENT AND SAFE DRINKING WATER IN THE SAN JOAQUIN VALLEY: ANALYSIS OF CRITICALLY OVER-DRAFTED BASINS' GROUNDWATER SUSTAINABILITY PLANS* (2020); Kristin B. Dobbin, "Good Luck Fixing the Problem": *Small Low-Income Community Participation in Collaborative Groundwater Governance and Implications for Drinking Water Source Protection*, 33 SOC'Y & NAT. RESOURCES 1468 (2020); BOSTIC ET AL., *supra* note 5.

⁴⁸ TINA L. STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (2d ed. 2013); KENNETH A. ADAMS, *A MANUAL OF STYLE FOR CONTRACT DRAFTING* (4th ed. 2018); CONTINUING EDUCATION OF THE BAR, *ADVISING CALIFORNIA NONPROFITS* (3d ed. 2021).

B. THE CLINIC'S PRACTICE

Under the supervision of the Clinic director and a staff attorney, law students deliver direct legal assistance to clients, working with these communities to navigate funding opportunities, form new management entities, merge water systems, draft agreements, bring systems into compliance, and strengthen governance. The Clinic also offers community trainings, and develops templates and guides for community advocates. Pursuant to the Water Board's 2016 grant, the Clinic performs a broad range of tasks, including the following:

- **COUNSELING AND LEGAL ADVICE TO WATER SYSTEMS IN DISADVANTAGED COMMUNITIES:** about federal, state, and local statutes, regulations, and policies concerning topics such as drinking water, land use, groundwater, the corporate form, tax obligations, ethics laws, and the human right to water.
- **TRANSACTIONAL WORK:** to make a community eligible for grant funding for water system improvements. These tasks include, but are not limited to, consolidating with a nearby system, establishing an intertie connection, establishing a corporation (e.g., drafting articles of incorporation and bylaws), drafting and reviewing planning and construction contracts, submitting applications for tax-exempt status, developing an option contract to help a community drill a test well, and drafting and reviewing contracts to buy water or property rights.
- **NEGOTIATIONS:** on behalf of small water systems (e.g., to consolidate into a nearby system, buy water, and purchase land or an easement).
- **LOCAL AGENCY WORK:** to advise local agencies on compliance with relevant agency law (such as the Brown Act, Proposition 218, Local Agency Formation Commission procedures, ethics laws, or the Safe Drinking Water Act).
- **LOCAL POLICY WORK:** to help water systems establish local rate policies, shut-off policies, or well drilling policies or ordinances.
- **PREPARE LEGAL DOCUMENTS:** required to submit Drinking Water and Clean Water State Revolving Fund funding applications for the planning and construction of capital improvement projects.

The following four matters illustrate the types of issues handled by the Clinic.

LAKE COUNTY INTERTIE AGREEMENT — California has faced an increased danger from wildfires in the past decade. In Lake County, three wildfires caused widespread devastation in 2015 and then the Clayton Fire forced residents to evacuate in the towns of Clearlake and Lower Lake in August 2016.⁴⁹ In the aftermath of these emergencies, the Clinic assisted three small water companies in Lake County to negotiate and draft an Intertie Agreement among the companies. The proposed interties will allow each water system to take delivery of treated water from one of the other companies in an emergency. This construction will enhance each system's operating flexibility and protect against water supply shortages within their service areas. In the process of reviewing the companies' water rights, however, the Clinic discovered an obstacle — two of the water systems had existing water sales agreements with a Yolo County water agency that did not allow out-of-district water transfers by the water companies. To resolve this issue for the two companies, the Clinic negotiated an amendment to the water sales agreements to permit a water transfer in an emergency.

SAN JOAQUIN COUNTY CONSOLIDATION — Some mobile home park owners operate their own wells to provide drinking water to their tenants within the park. In San Joaquin County, two mobile home parks relied on wells contaminated with arsenic. The County Health Department issued a compliance order to these companies, directing them to comply with the MCL for arsenic. For these small water systems, a treatment system to remove arsenic would be too expensive and complicated to build and operate. In general, small public water systems often struggle to pay for infrastructure or its maintenance due to poor economies of scale (i.e., a small ratepayer base) and a lack of technical staff. As a result, the Water Board supports consolidations when it is feasible.⁵⁰ In this instance, the Clinic assisted a nearby city that was willing to extend its water service

⁴⁹ See Guy Kovner & Christi Warren, *Lower Lake Burns as Clayton Fire Forces Evacuation of Clearlake Residents*, THE [SANTA ROSA] PRESS DEMOCRAT, August 14, 2016, <https://www.pressdemocrat.com/article/news/lower-lake-burns-as-clayton-fire-forces-evacuation-of-clearlake-residents>.

⁵⁰ See State Water Resources Control Board, *Drinking Water Partnerships and Consolidation* (2022), https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html.

to these mobile home parks, which are located outside the city's limits in the unincorporated county. This project required the Clinic to draft and negotiate an annexation agreement between the city and the mobile home park owners, and to assist the city in its application to the Water Board to pay for installation of the water mains to extend the city's drinking water service to the mobile home park residents.

TULARE COUNTY APPLICATION FOR TAX EXEMPTION — Small water companies are often beset by managerial and technical difficulties as well as water quality issues. A small water company in Tulare County relied on a single well contaminated by nitrates. An adjacent city indicated its willingness to annex the water company's existing service area if the company would upgrade its existing distribution system. Before it could qualify for a Water Board construction grant to improve its distribution system, the company first needed to apply for state and federal tax exemptions. When it applied for the exemptions, the company found that its corporate status had been suspended due to a company officer's failure to file tax returns. In addition, the secretary of state notified the company that it did not qualify as tax exempt because it was organized as a for-profit corporation. The Clinic assisted the company to amend its articles of incorporation to qualify as a nonprofit mutual water company and submitted the restated articles to the secretary of state for approval. After the Clinic advised the company on the amendment of its bylaws, we submitted the amended corporate documents and delinquent tax returns to the Franchise Tax Board and the IRS, which then approved tax-exempt status for the company. The restoration of its corporate and tax-exempt status will allow the water company to qualify for a Water Board grant under the SAFER Program to upgrade its infrastructure. As a result of these system improvements, the neighboring city will agree to annex the small water company's service area and serve these residents with potable water.

TULARE COUNTY EASEMENT — Small water companies in the San Joaquin Valley often need extensive upgrades to their water treatment and distribution systems to comply with state and federal drinking water requirements but are not able to pay for the cost of these upgrades due to both their small ratepayer base and the predominantly low-income residents of the community. One small Tulare County water company had

applied to the Water Board for construction funding to improve its distribution system and install a larger water storage tank to provide additional resiliency for the system in drought conditions. In order to obtain grant funding from the Water Board, the water company had to qualify as tax exempt to avoid a tax penalty. With the Clinic's assistance, the company obtained state and federal tax exemptions. In conferring with the system's operator, we confirmed that construction of the new tank would also require the company to obtain additional storage area and road access to the storage area for maintenance of the tank. The Clinic met with the owners of an adjacent parcel to discuss the proposed project. The project was delayed due to a misunderstanding of the terms of an existing easement and the proposed easement. After meeting with the company's operator, the Clinic explained the terms of the scope of the existing easement to the adjacent landowners, and then negotiated the terms of a new easement and a quitclaim deed to extinguish the existing easement.

In each of these matters, the Clinic students worked on teams and interacted frequently with the company representatives, who often run these small water companies as volunteers. The students learned to persist under adverse conditions, advising their clients to manage unexpected twists in the course of the cases. As Professor Louis remarked in a similar context, "if law students contribute simply by being community navigators — that is, going out into communities and helping small business owners navigate bureaucracy — then they will have advanced the struggle for equity."⁵¹

C. STUDENT EXPERIENCES

In the *Secret of Happiness*, Joel ben Izzy recounts a tale about Nasrudin, a teacher and scholar "known as much for his wisdom as his foolishness."⁵² Nasrudin explained to a student that "the secret of happiness is good judgment." "But," the student asked, "how do we attain good judgment?" "From experience." "Yes," said the student. "But how do we attain experience?" "Bad judgment."⁵³

⁵¹ Louis, *supra* note 42, at 444.

⁵² JOEL BEN IZZY, *THE BEGGAR KING AND THE SECRET OF HAPPINESS* 206 (2003).

⁵³ *Id.* at 206–7; see also <https://www.storypage.com>.

As Professor Mlyniec stated, “clinical teaching is personal and designed to accept students where they begin and to maximize their potential to learn.”⁵⁴ In this context, supervisors “must be intentional and transparent about their intervention . . . to make the student aware that the collaborative nature of clinic writing gives both the supervisor and student some degree of ownership of the final product.”⁵⁵ While supervision remains the key to clinical education, the basic tenets of clinical education require the *students* to assume the role of a lawyer and to perform those tasks in the context of real projects.⁵⁶ In short, we all must have the opportunity to err, to reflect, and to learn from our mistakes.⁵⁷

In this section, three students, each of whom participated in the Clinic for two semesters, provide a synopsis of their experiences. As the students explain, they worked in the Clinic with a team of other law students and a supervising attorney, learning to handle novel and complex legal issues. The Clinic affords the students the opportunity to draft clear and concise legal documents, to communicate with busy and distracted clients, to negotiate and mediate between opposing parties, and to overcome communication gaps. Through the Clinic’s work, they learn to be nimble and to provide competent representation to underserved communities as ethical attorneys.⁵⁸

⁵⁴ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 511 (2012), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1773&context=facpub>.

⁵⁵ *Id.* at 524.

⁵⁶ *Id.* at 517, 536.

⁵⁷ In his “Lessons for Action,” Professor Isao Fujimoto advised his students: “Reflect on what you do: Experience is not what you did or what happened to you. Experience is what you do with what you did or what happened to you.” DANIEL J. O’CONNELL & SCOTT J. PETERS, IN THE STRUGGLE: SCHOLARS AND THE FIGHT AGAINST INDUSTRIAL AGRIBUSINESS IN CALIFORNIA 230 (2021).

⁵⁸ The ABA’s McCrate Report established four values that lawyers should possess when they enter the practice of law: (1) Provision of competent representation; (2) Promotion of justice, fairness, and morality; (3) Improvement of the profession; and (4) Professional self-development. Mlyniec, *supra* note 54, at 538. As Professor Mlyniec reminded us, “The privilege and responsibility of an academic is to use the case or project to explore the larger questions about the role of a lawyer, the process of lawyering, lifetime learning, personal development and growth, and the values that support the profession.” *Id.* at 571.

1. *“The Clinic taught me to be persistent to help those in need of assistance, while remaining compassionate and pragmatic.”*

Working with the Clinic has been the most challenging, yet rewarding experience I have undergone in law school so far. I have been passionate about climate change and the protection of our natural resources from a young age. Because of this, I was drawn to the Clinic for its commitment to helping low-income communities throughout California receive access to clean and safe drinking water. I was also eager to get hands-on experience on transactional projects, and observe the dynamics between different water companies.

During the past two semesters, I had the opportunity to collaborate with team members on a variety of cases, while learning about water law, disadvantaged communities, and the intersection between the two. In one of the cases, I helped a small water company in Southern California with non-drinkable, contaminated water merge with a neighboring system in order to comply with the state’s drinking water standards. In the fall semester, I collaborated with another student to draft a merger agreement for the two water companies. By doing so, I was able to bridge the knowledge I acquired through my coursework with practical experience. Although I had studied mergers in my Business Associations class, I did not learn how they apply to water companies. Furthermore, drafting a legal document differs greatly from the theoretical study of the subject matter.

Having witnessed the struggles faced by small water companies in rural areas that have been overlooked by the system, I chose to extend my time with the Clinic once the semester was over, to contribute some sort of stability to already precarious situations. The second semester presented new challenges that further highlighted how simple things such as the lack of effective communication can impact people’s ability to access drinkable water. The Clinic taught me to be persistent to help those in need of assistance, while remaining compassionate and pragmatic. This time has been instrumental in preparing me for success in my future law career, by giving me the tools to develop practical skills I would not have acquired otherwise.

— Chiara Veronesi, Class of 2023

2. *“The Clinic has also taught me to embrace uncertainty and to systematically wade through difficult issues to develop competence.”*

My work in the Clinic for two semesters was one of my law school highlights. I had the opportunity to interact with impactful environmental justice groups and to work on a variety of cutting-edge issues. My Clinic experience made me a more determined and versatile problem solver and shaped my professional identity.

During my first semester, I contributed to a near final draft of an Intertie Agreement, which was designed to establish emergency connections for three water systems in Lake County. Once built, the intertie system will strengthen Lake County’s resiliency regarding wildfires and droughts. It was satisfying to work at the forefront of a project that will create a lasting benefit by helping vulnerable communities adapt to the challenges of climate change.

I worked on two interesting cases in the second semester. In the first matter, we examined the technical, managerial, and financial capacity of a small, rural water company as it applied for Water Board funding. In a second project, we assisted a water system administrator assume her duties in managing a small rural water company during a consolidation with a nearby city. Because this is one of the first public administrator cases, we literally got to see the law develop.

At the Clinic, I connected with dedicated public interest groups. For example, we worked with a grassroots organization that has transformed community life in farmworker communities in the Eastern Coachella Valley. I also assisted a community group to evaluate legislative proposals regarding equitable repayment plans to increase water affordability during the Covid-19 pandemic. Again, thanks to being part of the Clinic, I gained insight into key legal and equitable issues of our time.

Overall, I enjoyed the collaborative aspect of the clinical work and the experience of working with fellow students, the Director, and our clients as a team. The traditional law school environment is more individually focused, which does not accurately reflect most attorneys’ legal practices. The Clinic has also taught me to embrace uncertainty and to systematically wade through difficult issues to develop competence. Generally, the Clinic provides legal assistance to communities on specialized and technical issues to push projects forward. Tackling difficult and unfamiliar tasks

is a common theme of the Clinic. This problem-solving aspect of clinical work greatly strengthened my lawyering skills and was one of the most rewarding aspects of my law school experience.

— *Christian Smit, Class of 2022*

3. *“The Clinic reinvigorated my passion to study law and made me realize the true value of my legal education.”*

The Clinic has sharpened my legal skills, given me practical work experience, and solidified my love of water law. One of my cases involved a community services district and a Native American Tribe working to address the various issues that plague the water system. In that case, I researched and drafted memoranda involving access methods to tribal land, participated in negotiations among the parties, and strategized with my peers on ways to effectively tackle the project’s issues. I’ve also worked on other projects that involve entirely different concerns and skillsets. For example, the Clinic recently took on a unique case that requires us to provide legal assistance for a water system administrator. This new project included drafting a technical assistance work plan that lays out the Clinic’s tasks, analyzing the Water Board’s evolving standards for water system administrators, and clarifying the necessary steps for dissolution of a California nonprofit corporation. The Clinic has also allowed me to draft consolidation agreements, assist with filing easements with a county recorder’s office, and act as a liaison with the Bureau of Indian Affairs, among other things.

While improving legal skills and obtaining practical work experience are the most obvious benefits of working in the Clinic, there are other subliminal advantages as well. Not only does the Clinic allow students to experience the unique obstacles faced in water law, but it also gives them the opportunity to provide legal assistance to those in poor, disadvantaged communities across California. Whether it be assisting a Native American tribe with providing water to its community, or consolidating two dilapidated water systems into a single, working system, the Clinic provides a way to cultivate these experiences. In sum, the Clinic has reinvigorated my passion to study law and made me realize the true value of my legal education.

— *Matthew Navarrette, Class of 2022*

IV. CONCLUSION

Safe drinking water should be a human right equally available to all communities. Yet lack of access to safe and affordable drinking water continues to severely impact low-income and Latinx communities in California, particularly in the San Joaquin Valley.⁵⁹ California has taken an important step to address this human rights problem by funding the Safe and Affordable Drinking Water Fund and establishing the SAFER program. However, realization of the human right to water is not simply a question of infrastructure that a benevolent government can dole out to its communities and then record as another “mission accomplished” on a webpage.⁶⁰ “Rather, it is an ongoing process”⁶¹ in which lawyers and law students can serve as a “tool for communities to strengthen their own voice and strengthen their own power around these issues.”⁶² As the Honorable Cruz Reynoso stated: “Overcoming California’s water challenges will undoubtedly require a change in how water policies are made and who is making them. As Latinos, we will have to take our place at the table.”⁶³ Through the work of the Aoki Water Justice Clinic, we seek to train future California water attorneys to listen, learn from, and respond to these communities in order to build their capacity to address their pressing needs.

★ ★ ★

⁵⁹ LEGISLATIVE ANALYST’S OFFICE, *supra* note 29, at 6–7.

⁶⁰ Rose & Firestone, *supra* note 41, at 512, 521.

⁶¹ *Id.* at 521.

⁶² Symposium, *Environmental Justice: Access to Clean Drinking Water*, 57 HASTINGS L.J. 1367, 1379 (2006), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3636&context=hastings_law_journal.

⁶³ Rose & Firestone, *supra* note 41, at 521 n.102, *quoting* The Honorable Cruz Reynoso, *Foreword* to Paola Ramos, *Latino Issues Forum, Promoting Quality, Equity, and Latino Leadership in California Water Policy: An Introduction to Water Issues Impacting Latino Communities in California* 6 (June 2003). The Honorable Cruz Reynoso served as the first Latino justice on the California Supreme Court from 1982–86. He also taught as a professor at the University of New Mexico (1972–76), UCLA (1991–2001), and King Hall (2001–06). As a professor and professor emeritus at King Hall, Justice Reynoso remained an active faculty member at the Aoki Center and the law school until shortly before his death at age 90 in 2021. See <https://www.ucdavis.edu/news/cruz-reynoso-uc-davis-and-california-icon-dies-90>.

NEW MEDIA RIGHTS' INTERNET & MEDIA LAW CLINIC:

California Western School of Law

ART NEILL*

Consider the following client situations:

- A documentarian making a film about LGBTQ history needs to incorporate archival photos and video into their film.
- A small business that created an educational website and app for K–12 students needs to understand how to comply with state and national privacy laws.
- An individual writing their first graphic novel needs a collaboration agreement with an illustrator.
- A pop culture media critic challenging gender stereotypes on YouTube needs assistance responding to an overreaching copyright DMCA take-down notice from a large movie studio.

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor’s introduction on page 3).

* Art Neill, Associate Clinical Professor of Law and clinic director at California Western School of Law, is the founder and executive director of New Media Rights, a member-supported nonprofit that provides legal services, educational resources, and policy advocacy for creatives and entrepreneurs. The author would like to thank Erika Lee, the current assistant director of New Media Rights, for providing edits to this article, as well as shaping the clinic. Also, thank you to Shaun Spalding, former assistant director, for his many years helping to shape the clinic.

Each of these clients needs intellectual property (IP), privacy, and technology-related legal assistance, yet they cannot afford legal services. The documentarian went on to a successful release of their film at film festivals and on public television. The small business added schools and school districts as clients and grew their business. The graphic novelist received a publishing deal. The pop culture critic successfully fought back and saw their video restored. These are examples of the types of cases addressed by New Media Rights' Internet & Media Law Clinic at California Western School of Law (New Media Rights) in San Diego.

This article will discuss New Media Rights in four parts:

1. Why do we have IP, arts, and technology clinics like New Media Rights?
2. What is New Media Rights, and how do we benefit the students and the community?
3. What is the structure and pedagogy of the clinic?
4. What are our hopes looking forward?

1. WHY DO WE HAVE IP, ARTS, AND TECHNOLOGY LAW CLINICS LIKE NEW MEDIA RIGHTS?

In the last twenty-five years, the internet has become the central crossroads for cultural, political, and social interaction. IP, privacy and media law services are expensive, and they are not typically addressed by direct legal services organizations. Indeed, a visit to the Legal Services Corporation that supports local legal aid organizations only describes the legal needs of low-income individuals within the categories of family, housing, employment, consumer, military, and disaster-related legal issues. However, the use of the internet for sharing goods, services, and ideas naturally leads to an increased need for specialized legal services. Intellectual property and technology-related clinics were one of the fastest-growing types of legal clinics in the United States over the last decade. Yet there is still a need for intellectual property and technology-related legal services and educational resources regardless of a client's ability to pay.

The work of IP, arts, and technology clinics serves a variety of important public interest goals. First, the services cultivate and encourage freedom of speech. When a pop culture critic on YouTube receives a fair use

analysis and assistance writing a DMCA counternotice from our clinic to fight back against efforts to silence their otherwise legal speech online, the clinic directly impacts the overall cultural dialogue. These clinics can provide an opportunity to push back against online harassment and marginalization, and relatively obscure areas of copyright law and platform terms of service can become integral to freedom of speech and civil discourse in our democracy.

In addition to the legal services gap this type of clinic fills, it also provides an opportunity to expose students to the public interest values in tech law. After being in the clinic they can “see” the public interest values where they couldn’t before. We equip them to consider the public interest as they go into practice as lawyers.

Also, areas such as intellectual property, privacy, and technology-related law are some of the fastest growing areas for employment opportunities for law graduates.¹ Incoming students are interested in and even demand this type of subject matter clinic. Being located in California, a center for culture and technology production, makes such a clinic an obvious addition to a law school curriculum. So, in this way, we are meeting the demands of our current and prospective students.

2. WHAT IS NEW MEDIA RIGHTS, AND HOW DO WE BENEFIT THE STUDENTS AND THE COMMUNITY?

Now that we’ve talked about the big picture need for intellectual property, privacy, and technology law clinics, let’s take a deeper look at New Media Rights in particular. New Media Rights is a program of the nonprofit law school California Western School of Law, based in San Diego. We offer legal services, education, and policy advocacy to underserved creators, entrepreneurs, organizations, and internet users in the areas of intellectual property, media, free speech and internet law.

¹ See, e.g., <https://lawschooltoolbox.com/how-to-develop-a-career-in-technology-law-and-policy>; <https://www.alanet.org/career-center/career-resources-and-articles/articles-from-robert-half/2022-forecast-in-demand-practice-areas-and-jobs>; <https://www.clio.com/blog/emerging-areas-law>.

Our clients include journalists, freelance writers, photographers, artists, filmmakers, nonprofits, researchers, and technology businesses, among others. These clients represent free speech, nonprofit services, and business ideas that may die on the vine or be the victims of improper censorship without access to these services. Over the years we've provided services on thousands of matters to our clients.

New Media Rights has been a program of California Western School of Law in San Diego since 2012, but began in 2007 as part of San Diego-based Utility Consumers' Action Network. The program started as a confluence of my own interests that developed in law school in the early 2000s, as social media, blogging, and podcasting were just beginning. Through my practice as a consumer rights' attorney and background with music and technology, I saw a growing demand at the point where creativity and technology intersected with the law: specifically, the need for public interest legal services related to the internet and new media.

The program has raised funds from foundations (including the California Consumer Protection Foundation, Rose Foundation, Mozilla Foundation, Prebys Foundation), government (City of San Diego), and individual donors.

Each semester, eight to ten students participate in the program. Six are new clinic students, and the rest are returning student fellows who get a chance to work on new and more advanced types of client matters, as well as on educational and policy projects. The clinic is engaged in teaching students to practice transactional law, more specifically internet and media law.

Our staff consists of an executive director, assistant director, and staff attorney. All three are attorneys licensed in the state of California. This allows us to work on California state matters, but also United States federal matters, including copyright and trademark law.

Our services can be divided into three parts: direct legal services, legal education, and public policy advocacy. Students are involved in all three of these aspects of the services we provide.

A. DIRECT LEGAL SERVICES

We offer full-service legal assistance within our areas of expertise rather than serving solely as a referral organization. Clients receive legal services

regardless of ability to pay or any other criteria, with a particular focus on clients who:

1. Are in financial need;
2. Provide a public interest benefit to the San Diego region or California;
3. Would not have access to legal assistance otherwise;
4. Provide a significant community or public benefit, rather than a simple profit motive (examples of public benefit include qualities like providing (a) better access to public information, (b) more business and government accountability, or (c) new perspectives to the cultural landscape); and
5. Use the internet to fill unmet needs in media, arts, information and culture.

As discussed, our clients include a broad variety of creative and technology-focused clients. Here are a few historical client examples of the nearly 3,000 client matters we've worked on over the years:

■ Anita Sarkeesian, the founder of the *Feminist Frequency* website, is now one of the most well-known cultural commentators in the world, including being named among *Time* magazine's most influential women. Anita started out with a YouTube channel, and her effort to launch a series discussing gender stereotyping in gaming received vicious, misogynistic harassment in the form of takedowns of YouTube content, death threats, vandalism of her Wikipedia page, and efforts to flag her successful Kickstarter as terrorism. New Media Rights successfully supported some of Anita's efforts to defend her rights online, specifically related to YouTube harassment.

■ Nanome, Inc., created virtual reality software that allows users to build and interact with molecules such as carbon, oxygen, nitrogen and hydrogen by reaching out and grabbing the component atoms. Originally educational-focused software, today Nanome's VR tools aid in drug discovery, molecular modeling, rational protein design, VR learning experiences, COVID-19 spike protein exploration, and more. In their early stages, Nanome sought services from New Media Rights.

■ *Painted Nails*, a film by Erica Jordan and Diane Griffin, is about a Vietnamese nail salon worker, Van Hoag, whose health deteriorates after being exposed to various chemicals at her job. The film follows Hoag's family, but also the broader effort to pass legislation at the California Legislature

to protect cosmetic workers from toxic chemicals. New Media Rights provided legal services, and *Painted Nails* later screened at film festivals and on PBS all over the country.

■ *Adios Amor*, a film by Lori Coyle and Jane Greenberg, tells the story of farmworker advocate Maria Moreno, a predecessor of Cesar Chavez. After working with New Media Rights, the film was distributed through *Voces* on PBS and many film festivals, including the San Diego Latino Film festival.

B. LEGAL EDUCATION

Demand for our types of specialized legal services vastly outpaces supply. To reach additional individuals the program can't take on as clients, New Media Rights has created a vast array of innovative educational resources. We distribute video, text, and software guides we create through our website, on YouTube, in-person as workshops, and through media outlets. We aim to expand the public availability of easy-to-understand legal resources regarding intellectual property, media, free speech, and internet law.

These materials are intended to help creators, entrepreneurs, organizations, and internet users (1) understand their rights, (2) engage in self-help, and (3) empower themselves to be more discerning consumers of legal services.

Content development is based on our actual experience serving creators, entrepreneurs, organizations, and internet users.

We openly license many of our educational resources. In cases where we do not openly license resources, there must be some nexus to other organizational goals such as sustainability (for example, we charge a reasonable price for our book to ensure there is money to keep it updated with new editions). Additionally, the resources we develop sometimes incorporate existing openly-licensed content with the goal of adding value to that existing work.

Examples of our educational work include the following:

Website

The New Media Rights website welcomes hundreds of thousands of visitors each year, now totaling millions of users who have accessed our website and educational resources.

Fair Use App

We spend a lot of time at New Media Rights advising filmmakers, creators, and technology startups about copyright, fair use, and when they can and can't reuse content. We find that education about fair use prevents unnecessary legal disputes, helping creative projects and new businesses flourish. But what if there were an interactive way to teach even more filmmakers, creators, and technology startups about fair use?

Enter the *Fair Use App*. To create this app, New Media Rights filtered down many years of experience to create an app that can help video creators better understand:

- When they can reuse content;
- How their choices affect a fair use argument; and
- When it's time to talk to a lawyer.

Work on the app began in 2012, and it launched in 2015. Today, some law schools have courses or clinics that produce apps, but New Media Rights was an early pioneer in this space.

While the app isn't intended to provide automated answers on specific fair use questions, it is helpful as a tool for individuals to make better decisions about when and how to reuse content.

The app can be accessed freely at <http://newmediarights.org/fairuse>.

New Media Rights also licensed the app to the University of California, which adapted it for use internally to help train UC faculty and staff on copyright and fair use matters.

The Fair Use App was years in the making and is the result of work by dozens of individuals. I led the project, which involved many team members working directly with local San Diego design firm FYC Labs to develop the app. The team also included Staff Attorney Teri Karobonik; Advisory Board members and former legal interns Shaun Spalding '11, Lauren Brady '14, and Kyle Welch '14; Advisory Board members Hani Anani, Jonathan McIntosh, Phelan Riessen and Cy Kuckenbaker; alumni Alex Johnson and Ashley Gray as well as current New Media Rights Assistant Director Erika Lee.

Don't Panic Book

Our book, *Don't Panic: A Legal Guide (in plain english) for Small Businesses and Creative Professionals* covers the legal issues a creator or entrepreneur

may encounter and when to reach out to a lawyer. The book has been adopted in over twelve undergraduate and graduate courses (at Berklee College of Music, San Diego State University, San Diego City College, Seattle University and more) to teach legal concepts to students.

Don't Panic covers a range of legal situations that may arise, from the inception of a business, or the creation of a work, to that dreaded moment (that hopefully doesn't happen) when one receives a demand letter from an attorney for the first time. The book serves as a valuable guide to preventing and resolving legal issues. The book is organized to help readers quickly jump to specific information that will help them understand legal issues associated with a particular stage of work/production.

Community Presentations and Collaboration

We also frequently:

1. Organize and participate in community engagement events, panels and legal advice nights with local arts and technology education groups; and
2. Speak to classes at local universities, community colleges, and even high schools on intellectual property and privacy related issues.

We have collaborated with local groups and institutions like San Diego Media Pros, the San Diego Press Club, the San Diego Film Consortium, KPBS, San Diego State University, San Diego City College, and Arts for Learning San Diego. We are also connected with and/or have collaborated with state and national organizations, including the Alliance for Community Media, American Society of Journalists and Authors, the Investigative News Network, the Digital Media Law Project at Harvard University's Berkman Center for the Internet and Society, the Organization for Transformative Works, the Media Law Resource Center, the Electronic Frontier Foundation, California Lawyers for the Arts, and many other legal clinics and organizations that work in this area of law.

YouTube Channel

We have produced dozens of YouTube videos on legal topics that have been viewed over 650,000 times. Law students participated in the creation of the videos, from writing scripts to appearing on camera.

C. PUBLIC POLICY ADVOCACY

To help regulators and legislators understand the practical implications of policy decisions, we engage in public policy advocacy in our areas of expertise. We've filed comments, testified, and participated in regulatory proceedings at the U.S. Copyright Office, the Federal Communications Commission, the California Public Utilities Commission, the Department of Commerce, and the Office of Technology and Science Policy. Topics have included Net Neutrality, DMCA Anti-Circumvention Proceedings, copyright reform, technology policy, and the copyright small claims court proceedings. I also served three terms on the Federal Communications Commission's Consumer Advisory Committee, where I co-chaired the Broadband Committee.

We collaborate and coordinate our advocacy efforts with other groups where possible. As an example, we consulted with a coalition of writers and journalism organizations working to shape state legislation that affected the employment status of freelance writers.

Since 2009, the clinic has been part of DMCA Anti-Circumvention Proceedings at the Copyright Office. Through this process, we've helped achieve exemptions to the copyright laws that apply to filmmakers and video creators nationwide. These exemptions allow them to break encryption on DVDs, Blu-ray, and online media in order to make a fair use. Fair use is a doctrine that allows content reuse without permission for narrow purposes, such as commentary and criticism. However, most digital content is encrypted in today's media ecosystem, and since federal law prohibits breaking encryption, it is difficult for content creators to engage in fair use without the ability to also break this encryption. Although one has every right to make a fair use of third-party content under the law, without access to the content, that right is meaningless.

Recently the clinic made multiple filings regarding the Copyright Small Claims Board, which is the new federal copyright small claims forum. Many of the clinic's clients will be drawn into this new small-claims-court-like process, and we made a number of recommendations to help achieve a fair process for all parties.

We've even contributed to various amicus briefs over the years that have helped ensure a balance in copyright law that works for independent creators who use the internet to distribute their work.

Whether it's ensuring freedom of speech for video creators, advocating for net neutrality, or helping to shape a fair copyright small claims board, our advocacy is informed by what we learn through the provision of direct legal services. It is also a meaningful way for students to understand the role of the lawyer in shaping the law and informing policy makers about how policy is working (or not working) on the ground.

Policy Work Examples

Here is a list of our policy and amicus briefs over the years:

- *Comments of Technology and Intellectual Property Clinical Law Professors*, Docket No 2021-9 (filed February 3, 2022).²
- *Copyright Claims Board: Initiation of Proceedings and Related Procedures*, Docket No 2021-6, *Comments of New Media Rights* (filed November 30, 2021).³
- *Petitions for renewal of DMCA exemption classes for computer programs (digital jailbreaking)*,⁴ *noncommercial video*,⁵ and *documentary films*⁶ (July 2020).
- *In the Matter of Registration Modernization*, Docket No 2018-9, *Comments of New Media Rights* (filed January 15, 2019).⁷
- *SB 822 NMR Letter of Support for California Net Neutrality Law* (April 11, 2018).⁸

² <https://tlpc.colorado.edu/wp-content/uploads/2022/02/2022.02.03-Tech-and-IP-Clinical-Law-Professors-Comment-on-CCB-Law-Student-Attorney-Participation-NPRM-final.pdf>.

³ <https://www.regulations.gov/comment/COLC-2021-0004-0127>.

⁴ <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Jailbreaking%20-%20New%20Media%20Rights.pdf>.

⁵ <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Noncom.%20Videos%20-%20New%20Media%20Rights.pdf>.

⁶ <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Documentary%20Films%20-%20New%20Media%20Rights.pdf>.

⁷ <https://www.newmediarights.org/sites/newmediarights.org/files/New%20Media%20Rights%20Registration%20Modernization%20FINAL.pdf>.

⁸ <https://www.newmediarights.org/sites/newmediarights.org/files/SB%20822%20NMR%20Letter%20of%20Support.pdf>.

- *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, FCC 17-60, Comments of New Media Rights July 17, 2017.⁹
- *Petitions for renewal of DMCA exemption classes* for computer programs,¹⁰ noncommercial video,¹¹ and documentary films¹² Docket No. 2017-10 (July 2017).
- *Press Freedom Groups Letter to Federal Communications Commission in support of Title II Net Neutrality* (2017).¹³
- *In the matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2014-07, Comments of New Media Rights (Filed February 6, 2015).
- *In the Matter of Protecting and Promoting the Open Internet*, Comments of New Media Rights, GN Docket No. 14-28 (Filed July 15, 2014).
- *Guide to Intellectual Property & Fiscal Sponsorship Agreements for Scientific, Research, and Archival Projects*. (September 3, 2014) (with Marko Radisavljevic).¹⁴
- *Garcia v. Google*, No. 12-57302 (9th Cir. 2014) *Brief of Amici Curiae Electronic Frontier Foundation, American Civil Liberties Union, Public Knowledge, Center for Democracy and Technology, New Media Rights, American Library Association, Association of College and Research Libraries, and Association of Research Libraries in Support of Defendants-Appellees* (Corynne McSherry, Nathan Cardozo, Lee Rowland, Brian Hauss, Michael Weinberg, Teri Karobonik, David Sohn, Jonathan Band).¹⁵
- *In the Matter of the Public Comment on Intentional Interruption of Wireless Services*, GN Docket No. 12-52, Comments of New Media Rights (Filed April 30, 2012).

⁹ <https://www.newmediarights.org/sites/newmediarights.org/files/New%20Media%20Rights%20Open%20Internet%20Comments%20FINAL%207.17.2017.pdf>.

¹⁰ <https://www.copyright.gov/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Jailbreaking%20-%20New%20Media%20Rights.pdf>.

¹¹ <https://www.copyright.gov/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Noncom.%20Videos%20-%20New%20Media%20Rights.pdf>.

¹² <https://www.copyright.gov/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Documentary%20Films%20-%20New%20Media%20Rights.pdf>.

¹³ https://www.newmediarights.org/sites/newmediarights.org/files/press_freedom_net_neutrality_letter.pdf.

¹⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567848.

¹⁵ <https://lca.x0x8kvd0-liquidwebsites.com/wp-content/uploads/2018/04/lca-amicus-garcia-v-google-17apr14.pdf>.

- *Remedies for Small Copyright Claims*, Docket Number RM 2011-10, Comments of New Media Rights (Filed January 17, 2012).¹⁶
- *The matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM. 2011-7, Comments of New Media Rights (Filed February 10, 2012).
- *In the Matter of Applications of AT&T, Inc. and Deutsche Telekom A For Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Petition to Deny of New Media Rights, Utility Consumers' Action Network, and Privacy Rights Clearinghouse. (Filed May 11, 2011).
- Additional publications.¹⁷

STUDENT BENEFITS

Student results are how this clinic measures success. Having a well-established program brings candidates interested in this field to our school. We train students to be ready to hit the ground running when they start working as an attorney. Their experience with cutting-edge legal issues from artificial intelligence, to virtual reality, to drones, to NFTs, prepares them for practice in an ever-evolving technological landscape. New Media Rights' graduates have held positions at entertainment companies like Netflix, Lionsgate, and William Morris, global nonprofits like Wikimedia Foundation and the Free Software Foundation, as well as law firms large and small.

COMMUNITY BENEFITS

New Media Rights takes pride in having a significant impact locally in its home city of San Diego, California. The program has deep roots and significant impact in both the technology and arts communities.

In the technology community, we are a resource for legal services, free clinics, and educational presentations. We collaborate with community events like TechCon San Diego, Startup San Diego, March Mingle, and partner with local tech organizations like the Miramar College REC Innovation Lab. While we've worked with startups across San Diego, this

¹⁶ https://www.copyright.gov/docs/smallclaims/comments/noi_10112012/new_media_rights.pdf.

¹⁷ <http://ssrn.com/author=1346806>.

particular relationship with Miramar College offers law students access to a more diverse array of tech startups, as the incubator is located at a local community college.

In the creative community, New Media Rights partners with our local PBS affiliate, KPBS, on their Explore Local Content Project. Each year, we provide a Law 101 presentation for local producers in the KPBS Explore program. Many local television shows, radio shows, and podcasts have worked with our clinic from the pre-production stage to distribution.

We also partner with San Diego City College, San Diego State University, San Diego Film Consortium, and many more community groups.

3. WHAT IS THE STRUCTURE AND PEDAGOGY OF THE CLINIC?

Our purpose is to train future lawyers. The clinic course consists of our learning outcomes, learning experiences, and assessment of both students and the course itself. This is how we provide value for our students. New Media Rights instructors know that it's extremely important to approach teaching with intentionality — and to build on the huge amount of scholarship from the clinical community regarding how to teach in a clinic.

The general philosophy in our program is that students learn well by doing. We aim to give students legal frameworks that they can then apply to real-life factual scenarios. So, while we do directly teach more traditional lectures that establish legal frameworks for students, we're looking for as many chances as possible during the semester where the student can actually be the lawyer.

A. LEARNING OUTCOMES

Learning outcomes begin with alignment with the relevant ABA standards. New Media Rights' outcomes align with ABA Standard 302 which establishes the goals of developing law students' legal knowledge, ability to communicate legal concepts, and ethical understanding, among others.

The clinic also is aligned with the larger mission and institutional goals of our law school, California Western School of Law. In addition, our clinic design is informed by clinical best practices as published by CLEA, and by many years of attending AALS national, entrepreneurial, and tech clinic

gatherings, where we have also spoken and helped shape the field (particularly in the area of working with students on public policy advocacy and building legal technology, such as our fair use app).

Our big picture goal for the clinic is to familiarize and help students become proficient in internet and media law practice for creative and technology clients, with an emphasis on intellectual property, privacy, and media law.

The key learning objectives for students are to gain skills, knowledge and values through their work with creative and technology clients. The experiences we provide to reach these learning objectives are critical to the clinic experience.

Skills

During their time in the clinic, students will be able to provide practical, actionable legal services and deliverables, including writing communications, conducting real-time client interviews, and drafting memos and contracts. This means that students need to perform legal analysis and produce deliverables (contracts, memos, etc.). In addition, students need to be able to communicate to clients the business implications of their legal advice. How does a filmmaker need to change their film based on your analysis? How does a business owner need to change their business practices? It can also often be critical that the client actually knows how to use the deliverable. For a contract, the student needs to explain to the client both what the agreement does, and what the client needs to do to make it effective. This may mean explaining which fields of the document the client will need to fill in, and how to figure out who the authorized signer is for the other party.

We also aim to develop less visible lawyering skills. The clinic is an ideal setting for students to identify big picture and more immediate goals in the representation, to prioritize tasks, plan, and consistently review progress and revise their approach as necessary in shifting factual scenarios.

By learning these skills, we want students to come away more confident in being someone's lawyer. They will be practicing soon enough, so this is an opportunity for them to get the feel for the multi-dimensional aspects of real-life client representation. We work to foster an environment to develop problem-solving, creative lawyers.

Knowledge

As far as legal knowledge, we want students to gain a deeper understanding of internet, media, and intellectual property law issues, and apply this knowledge to client representations. We focus particularly on the application of copyright law and contract drafting to new technologies and creative industries.

Values

Students will also develop values that can guide them in any area of law practice. The values relate to their responsibilities to themselves, others, and the larger legal system. We want students to develop integrity, as well as respect for themselves, their clients, and other parties. Students should learn the level of competence it takes to represent an individual client, which they can use as a reference for competence in their practice. They should also commit to unbiased behavior. We want to develop empathy, hard work, and commitment. In addition, students learn about zealous advocacy in the transactional world, which is often not so much a zero-sum game, or nearly as adversarial, as in litigation. Lastly, we want students to develop values that relate to creating a just legal system and ensuring access to legal information and services through pro bono work.

B. LEARNING EXPERIENCES

The basic components of clinics are classroom work and supervision. But first, a few practical notes about how the clinic functions:

Before we ever get to class or start work with a client, we are transparent with the students about what is expected.

Students receive a syllabus, detailing the learning objectives, course readings, and other expectations for the course. They also receive a clinic handbook that covers everything from how to check in with their supervisor and teammate each day, to file naming conventions, to how and when to track changes. Clinic documentation is extensive and includes guides on memo and email drafting, as well as how to approach a new assignment. We've deconstructed the lawyering process so that students can start to see lawyering as a process, helping them develop their own style and approach.

Students meet with supervisors and with their partners before the first class and before they receive their first case, and during those initial meetings we discuss expectations as far as teamwork, communication, taking ownership of cases, and how they will be assessed.

Students typically work with two or three clients on a total of three to five matters during the semester. Clients are usually in a creative or technology industry, and could be an individual, small company, or nonprofit, usually with a nexus to the internet. Students work in teams of two, and they have a classroom component as well as clinical hours where they do the work for their clients.

Classroom work

The classroom experience consists of four elements: interactive lectures, case rounds, simulations, and final presentations:

Interactive Lectures

At the first class we provide an introduction to the clinical experience as well as the classroom seminar. We identify our expectations, explain how students will be assessed, and highlight important resources available to students during their time in the clinic.

We then move to our substantive interactive lectures, which are front-loaded in the first half of the semester. These center around specific copyright and contract drafting topics. While these are lectures, they are highly interactive and relate directly to the work the students are doing. Typically, we follow the pattern of establishing a legal framework, such as copyright analysis or contract drafting, and then have students immediately apply that framework through problems developed based on actual clinical client situations.

Throughout the semester, we connect these interactive lectures with their actual cases again and again, scheduling case rounds for groups working on casework to discuss elements of their cases that are directly relevant to that class's interactive lecture.

Case Rounds

Here, facilitated by supervisor questions, students reveal how well they understand a client's case (who is the client, what is their industry/tech,

what legal services they need, what are the paths available to the client), discuss key lawyering decisions they are making, and explain how the legal knowledge they've learned in lectures is applying to their casework. Students reveal their assumptions, beliefs and other learning about the process of lawyering. Rounds often touch on reflection and discussion about case planning, including analysis of the client's goals, identification of the decision-makers who affect the clients, different alternatives that clients have to achieving their goals (there are often multiple paths), and the consequences that follow from certain decisions.

Case rounds provide the other students in the class the opportunity to learn vicariously about other types of clients, industries, and aspects of different representations, and sometimes provide input on how to proceed. Rounds not only enrich students' experience at the clinic, but also provide the students who aren't in the group on call with an opportunity to participate in decision making on cases for which they are not directly responsible.

Overall, case rounds are a chance for students to step away from the actual representations and reflect on their work as lawyers facilitated by a professor. It is a unique and productive part of a clinic as a moment for reflection and learning.

Simulations

Toward the end of the semester, students have finished substantive lectures and represented clients on multiple matters.

To help them put it all together, we present them with real-life past clinic cases, where students read all the background facts. Then, in class over the course of a few hours, we work through a case from start to finish. Students must elicit and analyze facts, do the legal analysis, and figure out how we're going to advise and help the client.

This is a chance to put all their knowledge and skills to use in real-life scenarios, and again, assume the role of the lawyer.

Final Presentations

During the last class, students give a 35-minute presentation for the class where they summarize their casework. The students must distill many hours of client representations and class into one presentation. The best

presentations go beyond a summary of case work, reflecting on the challenges, and even failures experienced during the semester, and sharing practical takeaways the students will take into their legal careers.

Supervision

Clinical work is all about learning by doing. This is a chance to work with real clients — but to be students while doing the work — and have a supervisor there to facilitate. Supervision is where we guide students who are engaged in the two-pronged efforts of representing clients and learning to be lawyers. In preparation for working with actual clients, students are presented with client cases, basic facts, resources, and some guidance.

Then, week in, week out, students are expected to represent the client. The aim is really to cultivate the students' confidence in representing clients, as well as their understanding of why they are doing what they're doing. To this end, more thorough guidance is given on the first assignment, while later assignments are given to students in a more raw form. These later, more "raw" assignments, allow them to participate in the earliest stages of considering the potential client, case planning, etc.

During the supervision, supervisors are there every step of the way, but encouraging the students to find the answers for themselves. If students draft an email, the supervisor will discuss the tone and content, and work with students on ways they can improve their communications with the client. When students put together client interview questions, they must be able to explain why they are asking the questions and how each relates to the representation. When drafting a contract, students must review and learn about the industry, relevant areas of law, gather examples of relevant contracts and put together an outline of what goes into such a contract. Then they must explain why they've chosen this language, what the default rule is without the language, how the language affects their client and relates to client goals, and how the language relates to industry norms.

So, for work throughout the semester, the supervisor provides real-time feedback and is consistently requiring that the students be able to explain why they made a certain choice.

C. ASSESSMENT

This clinic is graded. We have a structured rubric, and students are graded at midpoint and end of semester on professionalism, class participation, responsiveness to feedback, learning in substantive areas of law, learning in business and technology, teamwork, and demonstrated ethical understanding.

Students can demonstrate achievement on these criteria in class and in work with clients throughout the semester.

Mid-semester and final exit interviews allow us to touch base with students, get the most out of the student's time in the clinic, and help the student think about their future path.

At the end of each semester, clinic professors revisit the semester, talk about what we could do better, and then make adjustments to the next semester's clinic. In this way, the clinic is always evolving.

4. WHAT ARE OUR HOPES LOOKING FORWARD?

In the future, our clinic looks to continue to distinguish ourselves and grow our law school's reputation even further in this field. We are known for our work on fair use defense of online speech, content clearance work, and advocacy at the Copyright Office. We want to be the first stop for pro bono legal services and cutting-edge issues, provide enriching client experiences for students, and excellent services to our clients. Right now, we're working with clients on issues related to new web monetization technologies, NFTs, artificial intelligence, virtual reality, and drones. As new frontiers arise, our clinic will be there, with our students, to meet the challenge.

Our law school has many courses on intellectual property, entertainment, and privacy law, and we plan to continue being part of the rich set of offerings available to California Western students.

Our clinic has created a positive loop, where students participate in the clinic, they gather skills and knowledge, they are successful in practice, and then many go on to hire more recent graduates from our program. Along the way, clients from cutting edge fields, who often would go without legal services, have access to high quality legal services.

ACCESS TO JUSTICE PRACTICUM:

University of Southern California Gould School of Law

CLARE PASTORE*

OFFERING HANDS-ON EXPERIENCE ON IMPACT TEAMS

Like most law schools today, USC Gould School of Law offers a robust clinical program, with seven full-year clinics covering a variety of different subject areas. Each is taught and directed by at least one full-time attorney professor. We also offer a number of “practicum” courses, including the Access to Justice Practicum (“ATJ Practicum” or “ATJP”), which I created and direct. This brief article describes the ATJ Practicum and what sets it apart from our clinics and other experiential courses, and discusses some of the projects we have undertaken since the Practicum’s inception in 2008. Finally, I offer some reflections on teaching and learning in the Practicum.

The two most distinctive features of the ATJ Practicum are that it is focused on impact advocacy rather than direct services to individual

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor’s introduction on page 3).

*Clare Pastore is Professor of the Practice of Law and founding director of the Access to Justice Practicum at the USC Gould School of Law.

clients and that we always work in conjunction with co-counsel from the nonprofit arena. These two features combine to give students an experience not always readily available in law school: the chance to work as part of an (often large) team on an issue selected for its impact on many people or the justice system itself, and to see how litigation or other advocacy is developed from first awareness of a problem through formulation of legal and other strategies, assembly of a team, selection of forum and claims, through litigation, attorneys fees wrangling, post-litigation monitoring, and sometimes concurrent efforts such as legislative advocacy.

USC GOULD'S CLINICAL AND PRACTICUM COURSES

USC's seven clinics include five with public-sector focus — immigration, housing, international human rights, post-conviction, and mediation. Two (small business and intellectual property) have a private-sector focus.

Other than the mediation clinic, which trains students and then places them in courthouses as mediators, our clinics are typically organized around the “student as lawyer” model. With some exceptions, this generally means the student handles the client’s matter from start to finish and makes the decisions (with faculty attorney supervision, of course). For a student, having primary responsibility for a case or matter from beginning to end and being the primary contact with the client(s) are invaluable. Each clinic is directed by at least one full-time professor who is also a licensed attorney.

In addition to our clinics, USC Gould offers a variety of “practicum” courses. The use of this term at USC signals two important things: our practicums are one semester, as opposed to our yearlong clinics; and they are typically three-credit courses instead of the five credits per semester offered by clinics. This latter difference of course means that the number of hours expected of students is considerably less in a practicum. While our clinical instructors usually advise students to plan on committing approximately twenty hours per week to their clinics, the expectation in my three-credit ATJ Practicum is twelve. (Of course, clinical and practicum instructors alike caution students that real-world work in either setting is not guaranteed to fall neatly within these parameters, and that neither clinics nor practicums are a good “bargain” for the credit hours.)

Our practicum courses include a Veteran's Legal Practicum in which students help ex-servicemembers with discharge upgrades, access to benefits, and other issues; a Medical-Legal Partnership, which is a collaboration among USC's law, medical, and public policy schools on access to medical care, medical debt, income and food insecurity, and other issues in which health is affected by legal problems; a Legislative Policy Practicum focused on criminal justice reform; and a Children's Legal Issues Practicum in which students assist families in finalizing adoptions of children exiting foster care. All but one of these Practicum courses were started by adjunct faculty working with community legal services providers.¹

THE ACCESS TO JUSTICE PRACTICUM

The Access to Justice Practicum, which I started in 2008, partakes of elements of both our clinical and our practicum models. Like our clinics but unlike most of our other practicums, the ATJP is taught by a full-time faculty member rather than a part-time faculty member whose primary work is in an advocacy or other organization. Unlike our very subject-specific clinics and our other practicums, the ATJP reflects my background as a generalist anti-poverty and civil rights lawyer, and thus our docket is quite varied. Most importantly, the ATJ Practicum does not strive to give students the chance to direct their own case to the extent possible. Instead, it provides an experience mirroring those of impact litigators like myself: being part of a (sometimes large) team litigating an issue that generally transcends the interests of a single client. We always work as co-counsel with at least one nonprofit agency, typically in Los Angeles, but often elsewhere in California or the country, and sometimes also work with pro bono counsel or (in the case of occasional legislative advocacy) with government or elected officials.

Both experiences (student as lead on a single-client or smaller case and student as part of an impact team) are valuable and many students try both during their law school careers. Both experiences typically offer intensive

¹ The exception is the Legislative Policy Practicum, which was created by Professor Heidi Rummel as an outgrowth of the Post-Conviction clinic she co-directs. Also, the Veterans Legal Issues Practicum's creator and co-director, Laura Riley, has since joined the Gould faculty.

feedback on writing, opportunities to research and draft pleadings and other legal documents, and the chance to see in the wild issues they have only encountered in textbooks, such as discovery, motions to dismiss, ethical questions, and strategic planning. It is my sense however that while the ATJ Practicum is not unique in offering impact experience to students, such opportunities are somewhat rare. Being a small part of a big team allows students to experience collaboration with lawyers of many experience levels, to see a variety of kinds of advocacy on a problem (often including advocacy for individual clients, class action litigation, and legislative and administrative advocacy). Perhaps most importantly, students can get a feel for how advocates move from discovering and analyzing a problem to framing a legal issue to deciding on strategy to filing a case or legislative proposal, and eventually to litigation, settlement, and often post-judgment monitoring or enforcement. Of course, no student sees all of these stages play out in real time during a single semester. But they see important parts, and they must get up to speed on the whole in order to participate effectively. They also get the chance to forge connections with organizations and advocates and get a glimpse into the different cultures and missions of our partner agencies.

While I as the professor am certainly supervising the students' work, I also stress to them that we are working as co-counsel, much as I worked with senior lawyers when I was a novice lawyer at Western Center on Law and Poverty, and much as I have worked with lawyers at all levels throughout my career. This aspect of the Practicum can be challenging for students, who sometimes expect professors to have all the answers and are not accustomed to hearing "I don't know, let's try to figure it out together" from us. (They also sometimes balk at my insistence that we all operate on a first-name basis). This collegial relationship also offers an opportunity to mentor students about practical aspects of being a junior member of a team, such as how to maximize the usefulness of their work to the decisionmakers (senior colleagues or judges), email and communication etiquette, and how to appropriately take initiative while respecting consensus. The best of my Practicum students have thrived in this somewhat non-traditional professor-student relationship, bringing ideas to their teams, taking the initiative to research new possibilities or suggest strategies for

the team, and availing themselves of opportunities to forge connections in the advocacy world.

The Practicum generally enrolls four students each spring, who work on two teams. Each team works on a different matter with one or more partner organizations. I work as co-counsel with both teams. Key to what we are offering our partners is my services as co-counsel to them and supervisor of the students. This is in sharp contrast to my experience as a full-time non-profit lawyer over many years, especially at the high-profile ACLU, where offers of help from students would frequently flood my desk. Although we were often overworked, like most nonprofit lawyers, supervision takes time and it is often difficult or impossible to integrate students if the nonprofit lawyer has to educate them about the issues and the organization, bring them up to speed, and supervise their work, all while carrying the advocate's own caseload and moving the matters along. In the Practicum, by contrast, I stress to our advocate partners that I am not "farming out" my students for them to keep busy, but will come onto the case or matter myself as co-counsel, while supervising the students personally. Also, of course, I remain on the matter until resolution, which is often long after the students' departure. Under these conditions, finding partners is certainly not a hard sell. (When I began the Practicum in 2008, I generally spent a fair amount of time each fall wooing partners and seeking projects; as we have become established, I frequently now receive more requests for co-counsel than I can meet.)

I meet weekly with each student team. They turn in written work twenty-four hours before each meeting, often memos on discrete issues, tables analyzing data, summaries of interviews, or drafts of parts of a brief, complaint, or other document. I give them detailed written feedback at or before our weekly meeting. As with clinics, this intensive feedback on their writing is one of the things students regularly report finding most valuable about the ATJ Practicum.

ATJP PROJECTS

During the Practicum's thirteen years so far (2008–2022, with hiatuses in 2014 and 2018), we have partnered with a veritable Who's Who of Los Angeles nonprofits, as well as groups outside our city or state. These include

the Alliance for Children's Rights, the ACLU, the Wage Justice Center, Western Center on Law and Poverty, National Health Law Program, Legal Aid Foundation of Los Angeles, Neighborhood Legal Services of Los Angeles County, Bet Tzedek Legal Services, Bay Area Legal Aid, Inner City Law Center, Restaurant Opportunities Center, Public Counsel, and Disability Rights Legal Center.

The most ambitious ATJ Practicum projects to date have been those relating to the struggle to end unjust drivers license suspensions in California. Advocates for low-income people had been aware for years of the burden on low-income residents of a toxic mix of California policies: fines for traffic offenses that are among the highest in the nation; over-policing for small infractions, especially in low-income communities and communities of color; automatic imposition of \$300 penalty assessments on infractors who fail to pay on time or show up for their court appearances; and suspension of drivers licenses for those who cannot pay the exorbitant fees and penalties.

After a coalition of California civil rights and anti-poverty groups published the influential 2015 report entitled "Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California," advocates set out to file strategic court challenges to end license suspension. Students and I joined a statewide coalition including the Lawyers' Committee for Civil Rights, the ACLU, the Western Center on Law and Poverty, the East Bay Community Law Center, Bay Area Legal Aid, as well as the Pillsbury Winthrop Shaw Pittman firm. We all worked for several years in a variety of fora to document and challenge suspensions. Northern California advocates sued and quickly settled with one local Superior Court which agreed to end automatic license suspension for failures to pay. Southern California advocates, including us, sued Los Angeles Superior Court and eventually settled for dramatically improved procedures for judges to follow in assessing ability to pay before imposing fees and referring drivers to the Department of Motor Vehicles for suspension. Together the statewide coalition sued the DMV for failing to follow state law requiring that failure to appear or pay be willful before a license could be suspended.

That case, *Hernandez v. Department of Motor Vehicles*, became hotly contested and led to a published appellate opinion, establishing that the DMV could no suspend licenses upon mere notice of a missed court

appearance, but only upon notice of a violation of a statutory violation (which requires willfulness).² The coalition's advocacy also included spearheading a legislative initiative which ultimately led to the end of statutory authority for suspending licenses for failure to pay. This constellation of issues led to four years of student work in the ATJ Practicum. Students were involved in every facet of the multi-year advocacy effort, conducting research and analysis, interviewing clients, observing court procedures to document the experiences of clients, drafting discovery and pleadings, evaluating proposed statutory language, and more. In the end, this extensive, multi-pronged effort by some of California's best advocates led to the restoration of over 750,000 suspended driver's licenses and an end to suspensions for failure to pay.

The Practicum has also been involved in repeat partnerships in foster care reform with the Alliance for Children's Rights. The Alliance represents foster children and their caregivers, not on the dependency court proceedings themselves, but on all the issues that can arise after placement. Often these cases involve securing appropriate educational, mental health, and other services for foster children, especially those with disabilities. The ATJ Practicum has filed three cases with the Alliance and succeeded in all of them in removing barriers to resources that foster children and their caregivers need.

In *Gofas v. California Department of Social Services* (2010), we forced the state to restore the administrative rehearing process it had unlawfully suspended for budgetary reasons. Without rehearings, a foster caregiver had no choice but to file a lawsuit in court if the administrative law judge made a mistake. Filing suits is all but impossible without counsel, and counsel who can bring such cases for free is almost nonexistent, even when the case is a virtually certain winner. Our lawsuit reinstated rehearings and thus restored the ability of caregivers (and everyone else using the health and welfare administrative hearings system) to have a chance to correct erroneous decisions simply and expeditiously. Some of the affected clients received thousands of dollars in back benefits as a result, but more importantly, no caregiver will now be without a simple remedy in this situation.

² 49 Cal. App. 5th 928 (2020).

In *Harris v. California Department of Social Services* (2012), we established that relatives seeking to become foster parents were entitled to an administrative hearing if they were rejected on the basis of old (sometimes decades-old) criminal convictions. Before our suit, if a county denied foster care certification on the basis of a conviction, even a very old one irrelevant to the relative's current suitability, the would-be caretaker had no recourse other than a lawsuit. We established that these denials were within the scope of administrative decisions on which state law requires a hearing, thus once again providing an expeditious and relatively simple way for caregivers to correct errors in the system.

In *Compton v. California Department of Social Services* (2015), we forced the state to eliminate an unlawful requirement that had kept the most vulnerable of all foster children (those with significant intellectual disabilities as well as a history of abuse or neglect) out of a program designed for precisely their situation. Our client received significant financial benefits which had been unlawfully withheld, but equally importantly, the state was forced to drop the unlawful requirement which kept out thousands of such children.

Each of these cases arose because the Alliance had seen the problem firsthand in individual cases and recognized that there was a systemic issue that needed attention. Without the resources of the Practicum, however, the Alliance was hard-pressed to undertake the additional work of filing a suit to challenge the policies rather than negotiate or administratively resolve the individual cases as they came up.

Practicum students played essential roles in each of these cases. They interviewed the clients and drafted the complaints, the briefs, and untold numbers of research memos, data analysis summaries, discovery plans, and the like. Moreover, through our continuing partnership with the Alliance, some students became exposed to an entirely new area of law (foster care) and to the Alliance's robust pro bono program. Indeed, one of the first students who worked on an Alliance case during her 2L spring called me over that summer from her law firm job to ask if she could continue working on the case and whether she could ask the firm if they would be interested in coming on board. The Alliance and I decided that was a wonderful idea, and one of Los Angeles' leading firms ended up co-counseling with us through the remainder of the case. The student, now in private

practice, has become a regular Alliance pro bono volunteer and has told me on several occasions that she feels the Practicum was one of the most valuable experiences in her entire law school career.

The ATJ Practicum has also undertaken two pieces of legislative activity (in addition to assisting on the license suspension legislation discussed above). In 2019, as an outgrowth of the license suspension work, students and I worked with staff to a Riverside County legislator who had become aware of inequities in the traffic school system. The issue was that state law required payment of fines in full before a driver could access traffic school, which meant that many low-income drivers were being shut out from this opportunity to avoid increases in their insurance costs. In collaboration with legislative staff (and the legislator herself, a USC alumna), we interviewed affected drivers, analyzed data, and drafted language for the bill. We ghostwrote analyses for the legislative committees and students traveled to Sacramento to testify in support of the bill. (Fortunately for the bill, but frustratingly for the students, the bill passed out of committee on unanimous consent, so no testimony was needed.)

We also worked on a bill and white paper in 2011 with the Wage Justice Center supporting adoption of a wage lien law. The proposal would allow workers victimized by wage theft to file and foreclose liens against employers' property, similar to the lien long available to construction workers who work on real property. Although the bill did not progress in California, the students' work was widely distributed to advocates around the nation working on similar lien proposals.

We have also written a number of amicus briefs, including two in recent years for the ACLU of New Orleans' Justice Lab Project,³ a national effort to shed light on police brutality in Louisiana via a coordinated effort to file dozens of lawsuits against police. In the wake of renewed attention to racialized inequities in police treatment of citizens, I believe it has been particularly rewarding for students to learn about this very long-term strategic initiative and its myriad of law firm and law school partners around the country, see the how amicus strategy fits into the overall goal, gain exposure to the national and local levels of an important nonprofit organization, and refine their thinking about what is persuasive to judges,

³ See <https://aclujusticelab.org>.

legislators, and the public. In our most recent amicus brief with Justice Lab, we represent the Law Enforcement Action Partnership (LEAP), an organization of current and former law enforcement professionals seeking criminal justice reform, and the very existence of that organization was enlightening to some students.

Other amicus briefs have included one on behalf of nationally known ethics lawyers urging the Ninth Circuit to uphold sanctions imposed on government lawyers who had filed false declarations in a civil rights case stemming from the war on terror, one in a California appellate case involving protecting farmworkers from extreme heat, and one on behalf of the Coalition of Immigrant Low-Wage Workers in a California Supreme Court wage and hour case. In the last case, we also wrote a report, “Voices from the Underground Economy,” collecting worker stories, which has been cited by advocates in other jurisdictions.

Not all of the projects have been shining successes. Although we have won or favorably settled each of the cases on which we have worked, not all of the amicus work led to favorable results. And once (but only once out of twenty-six projects total) we had a project that simply did not offer the experiences I had sought for the students. Our partner organization had tasked students and me with researching and writing a white paper on an important and complex healthcare issue with the potential for statewide impact. The students did a wonderful job interviewing health providers, researching the law, and drafting what I thought was a powerful white paper. But the project proved highly frustrating for both me and them because our partner seemed to become less committed to it as the semester wore on and other items took priority on the organization’s agenda. Our drafts of the report went unreviewed by our partner and ultimately the project was shelved. Our partner agency was apologetic and assured us the problem was not related in any way to the quality of our work, but it was nonetheless frustrating for all of us to feel that our work was not contributing as it could have to an important issue.

That experience forced me to become more concrete in negotiating roles and projects with organizational partners and especially to insist that each potential project have a specific advocate assigned at our partner agency, with a set schedule of meetings and check-ins with us. It can be challenging to navigate the pedagogical needs of the Practicum with

the realities of advocate workloads, and the challenge has proven greater in non-litigation projects which can sometimes slip to an advocate's back burner. In general, however, I feel our work has been well integrated and well received by our partners and their ultimate clients or audiences.

REFLECTIONS ON TEACHING AND LEARNING IN THE ATJ PRACTICUM

Student selection

When the Practicum began, I had detailed discussions with colleagues about whether it was better for me to interview and select students, or simply to allow students to sign up according to their registration priority. At USC we have both models among our clinics and practicum classes, and it is up to the professors to choose which they prefer.

I decided to allow students entry through registration priority, without selection by me, for a few reasons. One is that I was simply uncomfortable choosing among eager, capable students, many of whom I knew from other courses. I was also uncomfortable with the idea that my perceptions of which students were most "dedicated" or truly interested, even if based in large part on their demonstrated commitment to issues of justice and equality, might be incorrect or unconsciously unfair. In my experience, it is difficult to avoid the knowledge that sometimes a resume demonstrating extensive commitment to public service is also one that demonstrates the presence of family resources allowing a student to rack up unpaid or low-paid internships. Giving these students priority over others who might be equally interested or committed but who do not come from families with the means to enable this kind of work seemed unfair to me. This is especially a concern for first-generation law students, who make up a significant share of our class.

Also supporting my decision to allow registration priority to govern entry was my desire to expose students who do *not* plan a public interest career to some of the inequities and flaws in our justice and social welfare systems and make real to them the need for lawyers to help. It is my experience that students who are oriented toward a public-interest career tend to find their way to me if they so desire, since I teach many classes attractive

to that cohort (including Poverty Law, Civil Rights, and Suing the Government) and I advise the Public Interest Law Foundation. But I have often felt that I have perhaps more influence on students *not* oriented this way, as for example when I introduce concepts like the lack of a right to counsel in civil cases in “standard” classes like Civil Procedure or Professional Responsibility. These students might otherwise go through a law school career without much exposure to some of the realities of the system and its effects on the poor or marginalized. And finally, many private sector lawyers will of course be pro bono leaders in their communities, and encountering some of the advocates and issues active in that world can help boost both their pro bono impulses and their ability to fulfill them.

Looking back over the nearly decade and a half of the ATJ Practicum, I feel satisfied that my objectives with regard to student selection have by and large been met. The students who have taken the course are approximately 60 percent public interest-oriented students and 40 percent private sector-oriented students, and some of those headed for private practice have been among my best students, sometimes bringing key knowledge whose utility I might not have foreseen. For example, just this past semester, two students worked with me, Public Counsel advocates, and a private law firm on a case challenging Los Angeles County’s administration of the fraud-ridden PACE (“Property Assessment and Clean Energy”) program which has left thousands of low-income homeowners owing unpayable assessments to the county and at risk of losing their homes. One of the students, who has now graduated and will be working in a firm that counsels municipalities and affordable housing developers, brought a wealth of highly useful knowledge about municipal funding, bonds, and contracting. Similarly, when we worked on the wage lien legislation described above, one student’s background (from courses and a prior summer’s work) in bankruptcy was tremendously useful.

Although I don’t select students for the ATJ Practicum, I do require that they meet with me prior to the finalization of their enrollment. This is because I want to make sure that each student understands the commitment before the semester begins, and especially that they understand that like clinics, the Practicum is not a good “bargain” for the credits — there are far easier ways to earn 3 credits. At times I also gently explore with students whether they may be overcommitted for a particular semester if

they have a heavy courseload, perhaps a job, or perhaps a demanding law review role or leadership obligations in student organizations. Students have excelled in the Practicum despite these other demands, but I always want to make sure they understand that the Practicum hours are substantial and that they cannot simply let work slide in a busy week or month as they might in a standard “podium” class. Although I once had a student drop out because of serious illness, I have never had a student fail to meet Practicum expectations or seriously let their partner down.

Student feedback

Student feedback on the Practicum experience has been overwhelmingly positive. I often continue to hear from Practicum “alums” even after they have graduated and begun practicing. Some are now colleagues in the non-profit world; others are in law firms or government offices. One told me that his work on the farmworker safety amicus brief led directly to his interest in healthcare policy and decision to enroll in a Masters in Public Health program. Many have told me over the years that they enrolled in the Practicum simply to get some hands-on experience with litigation or practice (rather than out of deep interest in the subject matter), but found themselves compelled by the client stories or the systemic injustices they uncovered. Others have expressed how much they appreciated the opportunity to interact with advocates and see strategy develop from problem to theory to case to litigation to resolution. Still others have been daunted by some of the realities of the advocacy world: government defendants who lose a case and then seek to have the underlying law changed; victories that can be hollowed out by noncomplying defendants who hope advocates or judges will simply tire of endless enforcement proceedings; state budget ups and downs that can drastically affect programs. For many, the Practicum experience, like clinics, summer jobs, and other experiential education, can help clarify which parts of lawyers’ work appeals to them: research, writing, interviewing, strategizing, drafting, negotiating. They come to understand many of the different roles, missions, and strategies of advocacy organizations, as well as develop their own views about which kinds of roles, issues, and partners appeal to them. It is gratifying to see students come to understand all the steps involved between detecting a problem and celebrating victory in an impact case or matter.

I do not generally allow students to select which fellow student will be their team partner; instead, this choice is usually a factor of scheduling (who is free at the same time for our weekly meetings; whose workload allows for completion of work early in the week versus later). This too I think is valuable training; it is fairly rare for junior lawyers to have much choice regarding the composition of a team, and they must be flexible enough to accommodate a variety of work and personality styles. In all the years of the Practicum, I have yet to experience a team that could not find a way to work effectively together, and many students have thanked me for (as one put it) “throwing me in with someone I would never have chosen to work with but ended up really appreciating.”

Teaching in the Practicum

Finally, a few reflections on teaching in the ATJ Practicum. Before starting the Practicum, I had over a decade of experience with classroom teaching as an adjunct instructor at USC. I had developed and taught a Poverty Law seminar many times, and regularly taught Professional Responsibility and Civil Procedure as a visiting professor while still in practice at Western Center on Law and Poverty and later at the ACLU of Southern California. The Practicum, however, is quite different from these classroom courses. It took some experimentation to reach what I hope is an optimum balance between guiding students and allowing them the space to experiment, make mistakes, and grow as lawyers, just as young lawyers must do in practice.

I am quite sure that I could not have created a course like the Practicum earlier in my own career, without the contacts in the community developed over two decades of practice and the experience working with lawyers at all levels of seniority. Cultivating and maintaining these ties is both a pleasure and a source of renewal and inspiration for me. As a long-ago Skadden Fellow, I remain active in that circle of advocates and make a point to try to meet the new Los Angeles fellows each year if possible. I attend events at partner organizations and keep tabs on their new projects and initiatives. I also keep up contacts by offering free consultation on ethical issues to nonprofit attorneys — and this latter service has also often benefited me by providing Professional Responsibility exam hypotheticals.

I also try to replicate for students some of my own formative experiences as a novice lawyer in groups of experts at Western Center. In that setting, I quickly recognized one of the things I cherish most about the vibrant nonprofit world: the relative lack of hierarchy and the welcoming attitude toward good ideas and willingness to work, regardless of the quarter from which they come. I try to impart this to my students, the awareness that we are all engaged together on a path in which none of us can yet foresee all the twists and turns, and where everyone's ideas are worthy of consideration. I likewise stress to the students that I have never in my entire career litigated a case or worked on a piece of advocacy as solo counsel and I hope never to do so. Working in collaboration with skilled, creative, committed colleagues has been the most rewarding part of my career as an advocate, and sharing those experiences with students has been the highlight of my career as a teacher.

★ ★ ★

COMMUNITY GROUP ADVOCACY AND SOCIAL-CHANGE LAWYERING CLINIC:

UC Hastings College of the Law

ASCANIO PIOMELLI*

TOWARD A BROADER VISION OF LAWYERING

We lawyers tend to think highly of ourselves. Very highly. That's part of what makes us so popular with the public. Our high self-regard is instilled early in law school in the United States.¹ From the outset, we are told — explicitly, tacitly, insidiously — that we are learning a new, superior way to think that will transcend the less rigorous mode of thinking that got us to law school and, it follows, that dooms the rest of society to an inferior state of wisdom and understanding. We are taught that who

This article is part of the special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Ascanio Piomelli is Professor of Law, University of California Hastings College of the Law. Many thanks to the generations of students with whom I have been privileged to work in the Clinic, to the lawyers and organizers who supervised their fieldwork, and to my dear friend and colleague, Shauna Marshall, with whom I first designed the class.

¹ My discussion of the legal profession, law school, and the societal and historic context in which the Clinic operates is always limited to the United States. Consequently, I will only occasionally insert this geographic and national qualifier, which is always implied.

we were before law school — our experiences, attachments, values, even sometimes our sense of right and wrong — is irrelevant, even possibly detrimental, to our success as lawyers. We must be molded anew. From Alexis de Tocqueville forward, we have been assured that our professional training prepares lawyers to play an essential leadership role in our society.² What a flattering and enticing prospect of a new, wiser, more powerful, professional self. It's hard not to be seduced.

Many have critiqued the narrowness of what law school portrays as “thinking like a lawyer,” but it nonetheless persists. The self-satisfied conviction that lawyers are smarter, wiser, more sober-minded than non-lawyers is a feature, not a bug, of our legal education and profession.

Social justice lawyers are not immune to high self-regard. Indeed, many of us are especially prone to it, viewing ourselves and our tiny sector of the profession as preeminent guardians of marginalized people and as irreplaceable engineers of social change. Law school teaches us, both explicitly and tacitly, that social change stems from brilliant lawyers who strategically craft, sequence, and litigate cases that enable courageous judges to issue groundbreaking decisions. Legal reform and the recognition of new legal rights *is* social change, law school asserts with little rebuttal or qualification. Litigators and appellate judges are presented as expert heroes who change the law and with it our society.³

² De Tocqueville asserted that American lawyers were “the most powerful existing security against the excesses of democracy” given their “instinctive love of order and formalities” and that “they entertain the same repugnance [as the aristocracy] to the actions of the multitude, and the same secret contempt of the government of the people.” 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, ch. XVI (Henry Reeve, trans.) (1835), available at <https://www.gutenberg.org/files/815/815-h/815-h.htm#link2HCH0038>. Even before Christopher Langdell recreated American legal education, de Tocqueville observed:

The special information that lawyers derive from their studies ensures them a separate rank in society, and they constitute a sort of privileged body in the scale of intellect. This notion of their superiority perpetually recurs to them in the practice of their profession: they are the masters of a science which is necessary, but which is not very generally known; they serve as arbiters between the citizens; and the habit of directing to their purpose the blind passions of parties in litigation inspires them with a certain contempt for the judgment of the multitude.

Id.

³ See Ascanio Piomelli, *Rebellious Heroes*, 23 CLINICAL L. REV. 283 (2016).

At UC Hastings, my colleague Shauna Marshall and I created the Community Group Advocacy and Social-Change Lawyering Clinic (“the Clinic”) to expose students to — and encourage them to develop their own version of — a different, broader, more inclusive vision of social-change lawyering. The Clinic aims to highlight non-litigation-centered approaches to making social change that entail partnership with activists and other non-lawyers. It positions students to explore how to work collaboratively *with* community groups, activists, and coalitions to jointly press for social change in multiple arenas, rather than working primarily in the judicial system *on behalf of* marginalized clients and communities.

The intent is not to denigrate impact litigation nor to understate the significance of appellate courts’ recognition of new rights or duties. As readers of this journal know, the California Supreme Court has been a national trailblazer in this realm. But many law school classes cover litigation, and almost none cover the sorts of extra-judicial collective efforts that the Clinic explores. Often, those collective efforts play a vital role in creating the social conditions and cultural narratives that enable appellate courts to act boldly. And concerted action is often necessary to try to ensure that judicially created rights are acted on and preserved against backlash.

Nor does the Clinic denigrate the value of lawyers’ specialized knowledge. A central aim of the Clinic is to frame social change as fundamentally about persuasion and to highlight the persuasive power that informed, organized, mobilized publics and communities have exercised in U.S. history. The Clinic encourages students to view lawyering broadly to include any persuasive activity (including collective action) that seeks to convince a target audience to respond as desired. Rather than acting alone to pursue social change, the Clinic encourages partnering with others — especially with those most directly impacted by the systems we aim to change. Our knowledge of the law is one of the valuable additions we bring as lawyers to our partnerships. But we must act as humble, life-sized partners, not demigods or saviors. We must be open to learning from and with those we seek to serve.

Parts I and II below discuss the Clinic's genesis, aims, curriculum, structure, and projects. Student voices predominate in Parts III and IV, recounting what they learned or appreciated and sharing their visions of ideal social-change practices. Part V on students' career trajectories profiles a Clinic alum who articulates and has embodied the Clinic's teachings.

I. GENESIS OF THE CLINIC

A. The Backdrop of Mainstream Law Clinic Practice

Law school clinics in the United States began to proliferate in the 1970s, as influential funders (the Ford Foundation and the Council on Legal Education for Professional Responsibility) economically incentivized law schools to create them.⁴ Students too pressed for “relevant” classes where they could learn hands-on how to work with clients and serve low-income communities and social movements of the day (such as the Black Freedom movement, student/anti-war movement, the women's movement, etc.). Initially, many law students worked at outside legal aid offices in precursors to what we now call out-placement or field-placement programs. As the 1970s and 1980s progressed, most law schools across the country began to create what we now call “in-house clinics”: on-campus law offices where students earn academic credit to represent clients under the supervision of attorneys. Over time (in some places it took decades), supervising attorneys in clinics became full-fledged members of law school faculties and published articles and books on lawyering skills, lawyers' roles, and approaches to lawyering. Clinics became the place where students and faculty integrated theory and practice as they served lower-income clients and communities.

At the outset, litigation clinics predominated. In those clinics, students represented criminal defendants, tenants, low-wage workers, consumers, youth, survivors of domestic violence, immigrants, all in court cases or administrative hearings. Some handled “small” cases on behalf of individuals, and some handled “large” litigation matters. In the mid-to-late 1980s and 1990s, many schools started mediation clinics where students

⁴ See J. P. “Sandy” Ogilvy, *Celebrating CLEPR's 40th Anniversary: The Early Development of the Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1 (2009).

serve as mediators of civil (and occasionally criminal) disputes. In the past two decades, a critical mass of transactional clinics has developed, in which students represent business entities, community development corporations, or social enterprises to structure deals and advise on corporate governance and compliance issues. In the same time span, policy advocacy clinics have also proliferated, where students represent organizations seeking legislative change or pursue their own policy agendas in legislatures or administrative agencies.

For at least the past three decades, almost all law school clinics have taught an approach called “client-centered lawyering.” The concept was developed by Professor David Binder and his colleagues at UCLA⁵ to distinguish it from a traditional, lawyer-centered practice in which lawyers make decisions or firmly steer clients toward what the lawyer knows to be the correct, emotionally detached, rational decision on how best to proceed. As initially formulated and typically taught, individual client autonomy is at the heart of client-centeredness. The approach seeks to ensure that clients, not lawyers, make key decisions about what their attorney does or doesn’t do for them — because clients have superior knowledge of their own non-legal needs and interests, are generally competent to make sound decisions when given sufficient information, and must live with the consequences of those decisions. Even if each clinic has its own take on what it means, almost all clinics teach client-centeredness as the approach to lawyering they encourage students to adopt.

B. The Space the Community Group Advocacy Clinic Aims to Fill

Client-centered lawyering has much to commend. It is founded on respect for clients and their decision-making capacity. It urges lawyers to listen carefully to clients and to attend to the emotional aspects of problems, not only the rational ones. It pushes lawyers to understand clients’ full range of aims and interests, both legal and non-legal. In all those ways, it is a step forward from the traditional, lawyer-centered model that remains implicit

⁵ See DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977); DAVID A. BINDER, PAUL BERGMAN & SUSAN PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991); DAVID A. BINDER, PAUL BERGMAN, SUSAN PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004).

in most doctrinal classes in law school and persists among many judges, most explicitly when they push attorneys to exert “client control.”

But client-centered lawyering is a generic approach that seeks to perfect the principal-agent relationship between individual client and lawyer in all practice settings; it isn’t focused on how best to pursue social change. It treats each client as a solitary, unconnected individual. It tacitly confines lawyers’ work to the legal realm. And it typically assumes rather than critiques the adequacy of existing legal processes and remedies. It draws a rigid, nonpermeable divide between the legal realm of courts, adjudicative bodies, laws, and regulations, where lawyers apply our expertise, and the non-legal realm of communities, politics, media, popular culture, etc., which lawyers are neither urged to explore nor expected to navigate.

We created the Community Group Advocacy Clinic for students who aim to become social-change lawyers to introduce them to a broad array of strategies and tactics that lawyers and community activists use — most effectively in concert — to press for change. The Clinic invites students to go beyond client-centered lawyering toward an explicitly political vision of activist lawyering that we explore in depth in the clinic seminar and students put into practice in their field placements. Instead of viewing clients only as autonomous individuals, the Clinic encourages students to treat and interact with clients and constituents as connected (or connectable) *members of communities* with shared experiences and interests. It emphasizes too communities’ capacity to act collectively to challenge and change their conditions and to resist their subordination — that is, to resist relationships and material conditions in which those with power, status, and presumed expertise govern or instruct them, expecting obedience, acquiescence, or even gratitude.

The Clinic, which is offered every spring semester, places students at organizations that work — or, at the very least, that will allow students to work — side-by-side as equal partners with community activists in collective action in the social, legal, and political realms. Students refine their abilities to collaborate as they engage in or connect with community organizing or mobilizing, community outreach and education, grassroots lobbying, coalition work, and media advocacy. Rather than speaking *for* clients and communities, students learn to partner *with* them and with allies from other disciplines to press for social change.

Instead of seeing themselves as preeminent engineers of social change, the Clinic seeks to foster students' humility. It encourages them to reconsider legal education's narrow conception of expertise (as bestowed exclusively by professional credentials) and to appreciate the insights, skills, and energy of communities, activists, and other allies. Broadening students' view of lawyering to include community partners opens possibilities for creative collaboration.

II. THE STRUCTURE OF THE CLINIC AND ITS SEMINAR

A. Student Learning Objectives

As the syllabus lays out, the Clinic strives to prepare students, through the seminar and fieldwork, to:

- demonstrate critical understanding of the broad range of approaches to social-change lawyering and the primary persuasive strategies in which lawyers and activists ethically engage;
- articulate a detailed personal vision of the social-change practice they aspire one day to implement;
- demonstrate the ability to collaborate effectively — with student partners, field supervisors, coalition partners, and community members — on fieldwork projects implementing one or more persuasive strategies;
- demonstrate the ability to richly describe, critically observe, and introspectively reflect upon their interactions and initiatives in their fieldwork; and
- demonstrate the ability to facilitate a group discussion, to contribute to classroom discussions and classmates' fieldwork projects, and to give and receive effective feedback.

B. Academic Component

The course seminar, which meets in two-hour sessions twice a week, is structured into three segments. It opens with a three-week introduction to several models and examples of activist approaches to social-change lawyering and to organizing/mobilizing collective action. The course's long middle segment explores key persuasive strategies and activities with

which activists and attorneys must be familiar. And the seminar closes by returning to reconsider the models of social-change lawyering and activism in light of students' fieldwork experience and has each student formulate their own vision of an ideal social justice practice.

The first segment explores Jerry López's vision of "rebellious lawyering," Arthur Kinoy's approach to "movement lawyering," the "law and organizing" practice of the Workplace Project in Hempstead, Long Island, founded by Jennifer Gordon, and the "base-building" efforts of environmental justice and Black Lives Matter organizers.

Jerry López, the preeminent social justice lawyering theorist of the past three decades, is the central influence on my thinking about lawyering — and thus the Clinic's. In his seminal book,⁶ he uses vivid descriptions of fictionalized lawyers and law offices to sketch his vision of "rebellious lawyering," an approach that prioritizes learning from and partnering with clients, community activists, organizations, and other allies to jointly frame issues and to jointly plan, implement, and assess the success of multi-pronged, collective efforts to resist communities' subordination. He contrasts rebellious practice from what he labels a "regnant" (i.e., reigning) approach, in which self-described public interest lawyers work primarily alone to frame and address issues within the confines of the legal system, disconnected from the clients and communities that they see themselves championing but don't treat as essential partners in their work.⁷

Arthur Kinoy, an unsung American giant, recounts in his autobiography⁸ his work as a "people's lawyer" in the 1940s and '50s (working with militant unions and activists to resist the Red Scare) and the 1960s and '70s (working with Black Freedom Movement and student anti-war activists). Like today's self-labeled "movement lawyers," Kinoy sees the lawyer's role as using the legal system to make room for people to organize themselves, to take or retake the initiative, and to use their collective power to press

⁶ GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1991).

⁷ As we discuss, and López elaborates in later works, it is hard to avoid the pull of the regnant approach. No one does so perfectly or at all times, for even as we try to resist systems and practices, we often wind up inadvertently re-creating them.

⁸ ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE'S LAWYER* (1993).

for social change. Tim Phillips,⁹ who took the Clinic in 2007, encapsulated Kinoy's vision: "a people's lawyer does her work not to win legal victories, but to help organizers and activists win their own victories."

Jennifer Gordon, a MacArthur Foundation "genius award" winner, describes in her book¹⁰ the founding, activities, evolution, successes, and limitations of the center for immigrant workers that she founded — and left, once it successfully transitioned to a fully worker-led-and-run organization. She thoughtfully explores the synergies and tensions between law and organizing, and how an organization and its campaigns become and remain member-run. Although she does not call herself a rebellious lawyer, the Workplace Project provides a real-life example of the iterative, continually reassessing and retooling work of putting rebellious ideas into practice. Ariel Test,¹¹ who took the Clinic in 2008, articulated one of my aims in assigning Gordon's book when she admitted: "I didn't think that rebellious lawyering existed outside fictional portrayals. The Workplace Project really demonstrated how wrong I was." And Adriana Barajas,¹² who took the Clinic in 2021, shared that the Workplace Project gave her "faith and hope in what is possible" and "perspective on what success can look like and what it can mean."

The middle segment of the course begins by introducing students to the Powell Memorandum,¹³ to George Lakoff's ideas about the power and

⁹ Tim went on to open a solo civil rights practice in Minnesota representing protesters and activists.

¹⁰ JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2007).

¹¹ Ariel went on to work as a public defender and youth law attorney in Louisiana.

¹² Adriana, a 2022 graduate, is headed to a position as an eviction defense attorney in San Francisco.

¹³ The Memo to the national Chamber of Commerce was a strategically brilliant blueprint crafted by (soon-to-be-Justice) Lewis Powell in 1971 for a multidimensional campaign to be funded by U.S. corporations to re-establish and cement the hegemony of "free enterprise" over American politics, education, media, and society in the face of what he saw as the disconcerting influence that ascendant social movements and left-leaning intellectuals were exercising over politicians and the public at the close of the 1960s and outset of the 1970s. When Clinic students read and discuss the memo, they are incredulous that the Left could ever have been perceived as a serious threat to capitalism, and they are struck by how successfully Powell's aims were achieved; the nation he sought to create is the one in which they've grown up.

necessity of “framing” issues effectively,¹⁴ and to a conceptual framework for recognizing the stages through which disputes develop and how they can be transformed in ways that sharpen or diffuse them.¹⁵ We then explore community legal education, examining more traditional “know-your-rights” trainings (where a trainer instructs an audience on “what the law provides”) and the participatory, popular education approach of the Workplace Project (where a group first discusses its experiences and needs, then hears and questions available legal remedies, and together reflects, if the system doesn’t meet its needs, why it doesn’t and how they might change it). Next, we take a deep dive look at four different models of community organizing or mobilizing: the ACORN model, post-Alinsky faith-based organizing, the Los Angeles Bus Riders Union, and the Occupy, Black Lives Matter, and prison abolition movements. Again, we see that organizers too can be regnant or rebellious. We then explore coalition work and the challenges of working across divides of race and class. Next, we explore lobbying — as traditionally practiced and then, again, the participatory, grassroots approach of the Workplace Project. And finally, we look at litigation, examining the ethical challenges of class action litigation, as well as efforts to connect litigation with other advocacy strategies.

The final segment explores my characterization of participatory democracy as a key connecting thread running through many of the models the course explores,¹⁶ and it introduces students to the work of Ella Baker, an unsung giant of the Black Freedom Movement, whose work exemplifies the idea of democracy as a way of interacting with others. We also conclude our examination of the Workplace Project and the three different iterations of its evolving sense of the proper balance between law and organizing. The course ends with students’ formulation and discussion of

¹⁴ See GEORGE LAKOFF, *DON’T THINK OF AN ELEPHANT!: KNOW YOUR VALUES AND FRAME THE DEBATE* (2d ed. 2014).

¹⁵ See William Felstiner, Richard Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 LAW & SOC. REV. 631 (1980–81). We pair it with a case study of my work in East Palo Alto that illustrates the framework’s utility. See Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000).

¹⁶ See Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006); Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009).

their own visions of an ideal social-change practice they hope one day to found or join.

In the second and third segments of the course, every third class is devoted to “rounds” sessions, where students learn about their peers’ fieldwork and give each other feedback and suggestions. Each student also leads one class discussion to give them experience facilitating discussion — a key skill for working with groups.

C. Fieldwork Projects

Several months before the start of the semester, I simultaneously recruit potential field placement projects and students for the class, looking for projects that mesh with students’ interests and backgrounds. I share with potential placements that the Clinic aims to expose students to non-litigation-based approaches to making social change that will enable them to work closely with community members and activists. And I tend to look for projects that involve issues of racial justice.

I explain that unlike a traditional externship, in which students work on a multiplicity of shorter assignments, I seek a single, clearly defined, discrete, three-month-long project on which a pair of students can work together, not separately, for about fifteen hours a week. Projects need not involve any traditional legal research or writing. Instead, I seek projects where students can take responsibility and initiative (of course, within parameters and priorities that the placement supervisor and community partners set), where they can also receive regular feedback and guidance at least once a week, and where they can interact with community members and groups on one or more of the following activities: community outreach or education, community mobilizing or organizing, grassroots lobbying, coalition advocacy, and/or media campaigns.

I share that, if there is a substantive area of law that students will navigate, it must be straightforward enough to learn in only two to three weeks, otherwise the semester will be too short for students to accomplish meaningful work for the organization. I also share that I’m looking for a project that students can take on for thirteen weeks, take as far as they can, and then hand back to the organization. Often ideas for work that have been on a back burner for lack of resources make good projects for student teams.

I have the Clinic formally co-counsel with the placement, so I can be inside the ambit of confidentiality. This enables me to have students write detailed weekly fieldnotes, which they share with me alone, describing and reflecting on their work. And it enables the class to have rounds sessions in which students discuss their projects with each other, sometimes roleplaying interactions, mooted presentations they will give or materials they will produce, and giving each other ideas and feedback. (In a typical field placement program, client confidentiality prevents students from sharing information about their work with their professor or peers.)

I meet with each student team weekly to discuss their fieldnotes and working relationships. To ensure that the placement supervisor, student team, and I all share the same expectations, at the outset of the semester we each sign a written Supervision Agreement laying out our responsibilities. The agreement includes a paragraph-length summary of the anticipated project and a checklist identifying the types of activities in which students will likely engage. Three or four weeks into the semester, students prepare a written memo to their placement, which they first run by me, containing a detailed description of the project and their expected deliverables, a timetable for implementation of each phase of the project, and a section on challenges they anticipate.

D. Examples of Fieldwork Projects

In 2022, a team of students worked in an urban Central Valley school district with a coalition of community groups seeking to reduce police presence in schools and remove police from protocols for dealing with students' mental health crises. Another team helped a coalition of parents, who had (or are threatened with having) their custody of children terminated by the state, to distill their experiences and policy aspirations into a Family Bill of Rights. A third team worked with a statewide coalition of organizations to advocate for legislation to prevent jails and prisons from transferring people, once they have served their sentences, to Immigration and Customs Enforcement (ICE) detention. And the final team of students mobilized citizens to press their cities and counties to declare support for the Racial Justice for All Act, which would allow anyone convicted of a crime to challenge racial bias in their case.

In 2021, a student team began working with the same education advocacy coalition in an urban Central Valley school district that the team in 2022 continued. A second team met with residents and teachers in a rural Central Valley school district to update a complaint to the Department of Education's Office of Civil Rights brought by African American students and families. Another team worked with a statewide coalition to advocate for budget proposals to shift funds from incarceration to reentry and other community-based programs serving immigrant, LGBTQIA, and communities of color. The final team worked with a legal services organization and other youth-serving groups to design and present workshops for middle- and high-school students on how their school district responds to sexual harm and to encourage students to envision how it might do so more effectively and equitably.

In previous years, teams have worked with a nurses' union to develop and deliver community education presentations on how proposals for universal health care coverage would impact racial disparities in health care access and outcomes and, in another project, helped support nurses' leadership, presentation skills, and engagement in public campaigns to publicize a "Robin Hood Tax" proposal on securities transactions to dramatically increase funding for human services. Another team worked with a local collaborative of East Bay immigration service providers to implement best practices for conducting large group-processing events to help legal, permanent residents complete applications to become naturalized citizens. A Clinic team also reached out to impacted communities and potential expert witnesses to design, and recruit broad public participation at, a hearing before the San Francisco Human Rights Commission on "The Human Rights Impact of the War on Drugs."

In a project that I still use as a model of the energy, creativity, and initiative I hope students will exercise in their fieldwork, in 2013 a Clinic team worked with a coalition of prisoners, advocates, and prisoners' family members to publicize the prisoners' hunger strike and seek to end California's extensive use of long-term, often indefinite, isolation in solitary confinement cells in prisons that are already maximum-security facilities. To launch the campaign, the students drove, assembled, and reassembled a full-size replica of a SHU ("Secure Housing Unit") at events across the state to enable people to visualize and enter a solitary confinement cell. They joined with families to participate in a state legislative hearing and

to protest outside it. They created a social media campaign and designed t-shirts publicizing the campaign to end torture. They even spent their spring break on a visit to Pelican Bay state prison to meet prisoners, whose voices they amplified through social media.

III. WHAT STUDENTS REPORT LEARNING OR APPRECIATING

The next two parts share the experiences, voices, and visions of Clinic students from reflection papers they submitted for the course.

A. The Classroom Community

Spending four hours a week with classmates committed to social justice work, sharing each other's experiences, values, reactions, and dreams, often builds a powerful, supportive sense of community that is, sadly, rare in law school classes. As Alysyn Martinez, who will graduate in 2023, wrote in 2022:

Being able to share space with like-minded people who care deeply about the same values and core goals that I do, allowed me to really find my voice again . . . I have appreciated so much their ability to listen and learn, while also providing their own insights in a respectful and affirming way. It is a completely different environment from any I have ever seen. There is something incredibly inspiring about being able to sit with people that you know care just as deeply as you do about the issues presented and hear them present new ideas that I had never considered or heard of. It was such an honor to hear their thoughts, and it gives me confidence to know that I can share space with them. It's also very comforting to know that people like them exist in law school and in the world in general.

In 2019, Taylor Boutelle¹⁷ shared: "The ability to discuss the readings, our projects, and our personal experiences thoughtfully, with people who had such different life trajectories than me, really pushed my understanding and views." In 2021, Nicole Tashovski¹⁸ added: "Listening to my

¹⁷ Taylor, a 2020 graduate, went on to join the East Bay Community Law Center on its health law team.

¹⁸ Nicole, a 2022 graduate, is headed to a judicial clerkship with the North Carolina Supreme Court.

classmate's ideas and the passion they spoke with helped renew my passion for the work each week. Being surrounded by like-minded individuals you can share ideas with and learn from is my favorite way to expand my thinking.”

B. Personal Growth

Students in all clinics often learn not only important lessons about lawyering, but also come to see and understand themselves differently. María D. Dominguez¹⁹ wrote in 2013: “Sometimes what matters more is not the work we do, but who we become in the process. I leave the Clinic more confident about who I am and what I want to do. Sustainable social change requires continual renewal and reflection. This Clinic provided a safe, nurturing space” for that reflection.

Courtney Oxsen²⁰ wrote, also in 2013, that the Clinic gave her and her clinic partner

an expanded sense of our individual capacity as change agents and advocates. The placement forced us to take initiative, be creative thinkers, collaborate, and creatively problem-solve. Because of how busy things were, we were constantly reassessing our needs and learning how to prioritize our time and the tasks that needed to get done. The limits on our time compared with our expansive goals also forced us to learn lessons in boundary-setting with a supervisor We also learned how to navigate advocacy within a community that is impacted by an issue we are not connected to personally. We feel confident that the connections we made . . . were genuine, and they respected our presence and participation in the movement as legitimate.

C. Exposure to Activities and Models to Emulate or Avoid

Sometimes, students are placed to work with attorneys they consider embodiments of the sensibilities and practices we discuss in class. Megan

¹⁹ Since graduating, María has worked as a community organizer, a dependency attorney working to keep families together, and a county health equity policy planner.

²⁰ Courtney began her career as a public defender and now is a habeas corpus attorney.

Armstrong,²¹ for example, wrote the following paean in 2021 about her supervisor, Linnea Nelson of the ACLU of Northern California's Racial and Economic Justice team:

Linnea is a wonderful model of a community lawyer. She does not act as though she knows what is best for [the community], or that it's her way or the highway. She has absolutely no air of being high and mighty. She does not believe that as a lawyer she is somehow more knowledgeable than the community members she is working with. Instead, she collaborates with members of [the coalition]; she works *with* them on their goals of educational equity and serves them through her work. During meetings, she speaks as a collaborator and sometimes as a facilitator, rather than as a leader. She does not dominate discussions. The main leaders of the conversations at [coalition] meetings are members of the [local] community. Linnea will often ask clarifying questions about what their goals and wants are, will inform them of certain legal information or legal proceedings, and will participate in idea-generation, but she would never tell them what would be best for them. Linnea also does not act as though she is too good for certain jobs; she is happy to be the note-taker at almost every meeting, for example. In these ways, Linnea rebels against the idea that communities are not the experts of their own issues and the idea that she is the most prestigious expert in the (Zoom) room. Seeing Linnea in action taught me that it is possible to be a lawyer who doesn't suck. It is possible to be a lawyer who collaborates directly with communities.

And other times, students see a stark contrast between the ideas and approaches we discuss in class and the practice of their placement. Andrea Banks,²² for example, wrote in 2008 that her experience at her placement was "mostly about learning or solidifying already held beliefs about what kind of lawyer I did *not* want to be . . . rebellious lawyering does not mean just working with people, it's about *how* you work with people."

²¹ Megan, who graduated in 2021, completed a post-graduate fellowship at the ACLU of Northern California and is now a legal aid attorney in San Francisco.

²² Andrea worked for many years as a staff attorney at Bay Area Legal Aid before recently taking a position as a government attorney.

Many students report the Clinic was their first exposure to organizing, to understanding what organizers do, and the different models of organizing. As Sarah Fielding²³ wrote in 2013, before the class she “was not entirely sure what a community organizer does.” She learned “just how useful” an organizer can be to “increase the leverage of the group they are working with.” Although she was not interested in doing it full-time, she gained respect for organizing and hoped to learn how to effectively collaborate with organizers. For others, like Michael Astanehe,²⁴ the Clinic provided a first exposure to coalition work. As he wrote in 2015, “I had never witnessed a coalition before, so [at first] I found the readings hard to conceptualize But now I see the benefits and dangers of working in a coalition.”

A few students enter with an organizing background. Cecily Vix²⁵ wrote in 2004, that before the Clinic, she “hadn’t connected how to be both a lawyer and an organizer. The progressive lawyering models we learned in class taught me that a symbiosis of tactics can be a very useful tool when trying to make social change.” In 2013, María D. Dominguez wrote that she was particularly interested “in reconciling the role of community organizer with the lawyer role,” because she was “somewhere in between and feeling like the lawyer role would eventually be more dominant in my life.” In the end, she determined she could view her “community organizer–lawyer role as a continuum which could take different colors and shapes at any given time, depending on the circumstance. I didn’t have to choose one or the other; there was a way to be in both worlds.”

D. Transformation of Their Vision of Lawyering and Sense of Possibilities

Brian Lambert²⁶ wrote in 2004: “The Clinic helped me better understand and envision the kind of role I can serve as an attorney and the kind of

²³ Sarah went on to become a legal services attorney in rural Northern California. In 2022, after giving permission to include her quote, she added: “I wish pretty much every day that I had more organizers up here . . . so many more folks stand up for their rights when they are standing with others. I take the lessons from the Clinic with me daily”

²⁴ Michael, who graduated in 2015, opened a solo private practice representing workers, tenants, and small investors.

²⁵ Cecily went on to work as an attorney for the National Labor Relations Board.

²⁶ After a fellowship with the ACLU of Northern California Racial Justice Project, Brian has long worked for the Office of Civil Rights of the federal Department of Education.

organization I want to work with. It helped me understand that I do not have to be a lawyer serving in a traditional and limited role, but I can really be creative and find ways to be the best and most effective advocate possible.” Mike Russell²⁷ wrote in 2007: “what I’ve learned at the Clinic has transformed not only my career’s trajectory, but what kind of lawyer I want to be.” Another student wrote in 2008: “My definition of a public interest or social justice lawyer has shifted, been twisted inside out, washed in the river, and hung up to dry. I am not sure that it is even recognizable anymore. But that is a good thing. I could not have asked for a better introduction to the complexities of public interest law.”

Students of color and from working-class backgrounds have shared that the Clinic helped them see space for themselves in the profession. Vasmer Vang²⁸ shared in 2021: “I cannot express how formative this past semester has been for me . . . It is the one rare space in law school I have felt safe, uplifted, and recognized in my power.” Holly Miller²⁹ wrote in 2008:

When I began to seriously consider becoming a lawyer, and began working in a law office, I came face to face with my worst fear, the socialization process I would be expected to endure and ultimately accept to move from my working-class self into the world of the professional upper middle class. This process would surely steal my identity, it would strip from me any attachment I had to the community I came from and those I sought to work with. In the end, I would be an imposter in two worlds, a member of neither the community from which I came nor the community

²⁷ Mike has worked as a legal aid attorney in Alaska, the Texas Rio Grande Valley, and in Cleveland, Ohio. In 2022, after giving permission to be quoted, he shared: “In every job I’ve had, I’ve kept the syllabus and reading materials from the Clinic on my office bookshelf. It’s there right now. It’s there when I need a reminder of what inspired me to do this work in the first place, or how I can do it better.” He added, “Fifteen years into my career, I focus on group advocacy at the Legal Aid Society of Cleveland. What I learned at the Clinic has not only guided me to this point in my practice, it informs what I do every day working with clients fighting for a different future.”

²⁸ Vasmer, a 2022 graduate, is headed to a position as a legal services attorney in Central California.

²⁹ After graduation, Holly went to work at California Nurses Association/National Nurses United, serving briefly in its legal department, then primarily as policy director, and now as chief of staff.

to which I was now conscripted But taking the language I learned in the Clinic and making it my own has changed all that. I don't actually have to change myself; I don't have to make myself less. I can expand my understanding of myself as a social change lawyer. The affirmative roadmap I envision for myself now as a collaborative lawyer is fuller and more rewarding, more in line with my values and instincts, than I could ever have imagined. It allows me to strip away constraints I thought I had no other choice than to accept.

She continued, the Clinic gave her “the language to express my concerns, the courage to grapple with them, and the will not to fall victim to the same failings as many lawyers.” She concluded, “lawyering is not just *what* you do or *why* you do it, but *how* you do it. It's not about working *for* but working *with*.”

In 2021, Leena Sabagh³⁰ wrote that the Clinic “completely transformed my perception of the legal field and my role as an attorney in bringing social change. It provided me a new framework, theories, and language for viewing the legal and social justice field and with training on how to implement these into my future practice.” She added: “Law school had stripped from me the ability to think creatively, but this clinic allowed me to dream beyond a strict legal lens and understand that other strategies are possible. It has made me a more radically hopeful person that freedom and liberation is attainable in our lifetime.”

Megan Armstrong shared in 2021 that the Clinic “has been pivotal to my journey to become a lawyer. It helped me to align my lawyering style to my values and will enable to me to be an effective advocate for justice.” She added that “the idea of *dreaming bigger*” continually recurred to her: “The law is limiting, formal, slow-changing, and archaic. By pulling on other methods and working with many different types of people, we can instead act with creativity . . . and attack an issue on multiple fronts. We *can* think and dream bigger.”

³⁰ Leena, a 2021 graduate, completed a postgraduate fellowship at the San Francisco Bay Area office of the Council on American Islamic Relations (CAIR) and is now a fellow with CAIR's Los Angeles office.

Vasmer Vang in 2021 wrote that the Clinic helped him see that lawyering “can be so much more than just going to court and relying on judicial remedies to solve community issues, so much more than the neat little box that law school and other attorneys make it out to be. It is what you make of it. You can create your own form of lawyering.”

IV. STUDENT VISIONS OF THEIR IDEAL PRACTICE

One of the final written assignments asks students to describe the ideal social-change practice they hope one day to start or join. The assignment invites them to pull together what they’ve learned over the semester and use it to envision how they hope to put into practice the lessons they’ve learned from our readings and discussions, from their fieldwork projects, and from their other professional and life experiences and values.

Students read their peers’ descriptions, and in our last class we discuss each one for fifteen minutes. With only minimal initial modeling by me, our discussions become powerful affirmation experiences, as student after student points out what they appreciate about each peer’s vision.

Nicole Tashovski noted in 2021 that the act of describing her ideal practice in writing helped her see that “it is possible to achieve my goals.” And Alysyn Martinez observed in 2022 that the assignment showed her that “all our practices are what we make of them. We all go into the profession with ideals and values that we hope to embody, but actions speak much louder than intentions. We can be blind to the negative impacts of our actions, if we are not diligent and self-reflective.” Paulina Santana³¹ shared that the discussion of everyone’s ideal practice made clear that “there is no *one* type of social movement lawyer. It’s not about the work you do or the job you have. It’s about how you live and how you engage with others How you enter each space not just as a lawyer but as a human being.”

Below are three lightly edited examples of students’ ideal practices. They illustrate the breadth and diversity of students’ visions and also reveal shared themes.

³¹ Paulina, a 2022 graduate, intends to begin her career as a public defender.

*A. Andrea Banks' Ideal Practice*³²

ANDREA BANKS: If I am going to practice law, I envision it being in a very holistic setting, somewhere that is welcoming to the people it serves and useful in a variety of ways. Because there's so much to starting a practice that I don't know, I envision my ideal practice to be joining an existing but possibly newer organization.

The organization that I would want to join would be a small neighborhood organization located in the neighborhood I live in or close by, so that I can bike to work. It would be new enough that there was still excitement and momentum to change for the better, but established enough that some of the necessary, day-to-day functions had been worked out and there was a sense of trust built within the community. Somewhere between three to seven years would be ideal. The space would be in an old house or building with a porch or a good stoop. There would be more than one floor. It would get decent light, and the windows would open. There would be an outside area in the back or on the side that could be a community vegetable garden which the kids living in the house would participate in maintaining.

The organization would have started as a woman's community organization and small, long-term (roughly one-year) shelter for immigrant women and children. The woman who started the organization would have done so after long being part of the community and seeing the need for these services. Over time, the organization would have evolved and hired a lawyer (also a woman), after realizing that many of the women accessing their services had a variety of legal issues and it was difficult for them to access help, particularly with immigration and domestic violence issues. All staff would be bilingual, as most of the clients speak only Spanish.

The organization would have a focus on self-sustainability. All the women who live in the house are active members of the organization. Many of the program ideas came from the women and their real needs while living in the house. The organization originally ran a variety of classes the women had requested, including English language classes, job training skills, financial skills, parenting, and nutrition. The classes changed and expanded over time, and some became open to the larger community. In

³² Andrea, who as noted above worked as a staff attorney for many years at Bay Area Legal Aid, described her ideal practice in 2008.

exchange for staying there, the women maintain the house and alternate cooking meals. The head of the organization felt it important to have these requirements to give structure to everyone's day and make everyone feel invested in the house. There would be a job board and education information posted in the house, and the focus of the organization would be to provide housing as well as life skills training to get the women back on their feet and supporting their family. The women would rotate childcare based on a self-made schedule so others could attend school or jobs during the day or evening. There are weekly house meetings where grievances are discussed and solved and new schedules for childcare and cooking are made to best accommodate each woman's needs.

The lawyer was originally hired to deal with the legal issues facing the residents. Almost all had immigration issues, some had minor legal issues, and many were relying on public benefits for health care. All were looking for permanent housing. Instead of having to go to several different lawyers to get help with a variety of legal problems, the head of the organization thought it better to have one lawyer in-house, who could work with the women with all their interrelated legal issues. Slowly, other people in the neighborhood began coming in with legal problems. The lawyer had too much work, and so another lawyer was hired. This would be me.

The organization would still be very small at this point, only employing the director, the original lawyer, me (the new lawyer), a receptionist/ secretary, and an office manager. Both the secretary and the office manager are women who formerly lived in the house, because the organization feels that a strong policy of hiring from within helps both the organization and the women. As the new lawyer, my job is to add legal education classes to the classes women take in the house and to help with the drop-in clinic that has spontaneously formed. After speaking with the women in the house individually and hearing their stories and problems, I set out to create classes that will be useful.

The classes would be structured loosely as know-your-rights courses to establish a basic knowledge of how the law does and does not protect rights and how it can be used for the women's benefit. The classes would change and evolve as needed to be useful for the women. Over time, the classes would be opened to the public and the community members who have been coming in requesting legal help. New topics and formats would be added to suit the growing need.

The legal clinic would be the other part of my job and would focus more on typical direct services. We would have drop-in hours in the morning Tuesday to Saturday for any legal issue we deal with. If we don't deal with an issue, then we offer referrals to other local agencies that might be able to help. There would not be separate days for separate issues, because many times people's legal problems overlap. And if a person takes time off work to come to the clinic, we don't want them turned away simply because we didn't designate that day for that specific issue.

The clinic would be on the first floor of the house, and the reception area would be welcoming and friendly. It would be painted a cheerful color (but not garish), and there would be plants in the windows. The receptionist would be bilingual in Spanish and English, and she would be *very* nice and cheerful. She would give each client an estimated wait time and explain that sometimes it takes longer. There would be plenty of seating and a water cooler or pitcher with cups. The seating would be arranged in an informal fashion, not in rows like an airport. There would be toys and games for children and magazines in English and Spanish. There would be lots of literature concerning services in the area, services that we provide at the house, and different fact sheets about issues of importance. The waiting room is very important, because first impressions matter, and coming to a legal services agency is often intimidating and scary. The waiting room should try its best to feel welcoming and homey with amusements to occupy people and their children while they wait.

As the organization grew and services expanded or changed, there might be room for a policy position or someone with litigation experience who could do class-actions. But for the most part, that work would be shipped out to other organizations, so that the focus of the organization could remain on providing quality services for the women who live in the house and those who come to the legal clinic.

*B. Leena Sabagh's Ideal Practice*³³

LEENA SABAGH: My ideal social-change practice would be in a mid-size-to-large city in a neighborhood centrally located and easily accessible to

³³ Leena, who as noted above has been a post-graduate fellow at the Council on American Islamic Relations, described her ideal practice in 2021.

the community it serves. Ideally, it would be near public transportation to ensure members can access it even without cars. The building itself should have a few private offices or rooms, larger spaces for collaboration, an outdoor space with a garden, community pantry, playroom for children, and a kitchen. It would be a space the community comes to not only to organize, but to build interpersonal relationships and a sense of belonging based on shared principles and identity. It would be a clean but homey space with comfortable couches, and posters, photos, and quotes showcasing the history of the organization and prominent struggles and movements for social change and human rights across the world. These posters and inspirational messages would be in Arabic and various other languages spoken by the membership. It would also have computers, white boards, and comfortable seating to facilitate collaboration and democratic participation. In the lobby, there would be job postings, fliers from other organizations regarding their campaigns, and schedules for workshops, clinics, and classes.

I would ideally work for an organization in which I was not an outsider. The organization would thus focus on the Middle Eastern and North African (MENA) and Muslim community. I would join the organization a few years in, after some membership, programs and short- and long-term goals have been established based directly on the decisions of the members and community. The organization would focus on building leadership and self-reliance, a strong sense of community, and putting the communities' struggles in context with other international and domestic fights for social change. The language used to conceptualize this would be the language of human rights, liberation, and freedom. We would not focus on one tactic or strategy for bringing social change but instead experiment and use multiple tactics to achieve our goals and constantly assess their effectiveness and be flexible to changes over time.

Membership of the organization would be comprised of community members who have gone through educational and leadership training. There would be four to five trainings spread over five months for potential members to join. One training would focus on the theories and history of movements across the U.S., to conceptualize the MENA and Muslim struggles and fight for social change as part of a larger history in this country. Another training would focus on connecting the problems MENA and Muslim communities face in the U.S. to larger issues

of imperialism, racism, and state repression. This will allow members to understand their daily lives and struggles as interconnected to those they faced in their home countries and around the globe and as stemming from many of the same structures and powers. The third and fourth sessions would analyze strategies and tools used in democratic social-change campaigns, as well as leadership skills. It would cover coalition-building, policy work, lobbying, direct action, use of media, etc., much like we have done in this class. The last session would give the soon-to-be members a hypothetical campaign or issue to work on where they would develop their own strategy and tactics and then present to the membership committee. This would be followed by a “graduation” celebrating their new skills and knowledge.

The organization would consist of a community organizer, an administrative assistant, operations manager, two attorneys, and members. The administrative assistant and organizer would come from the membership once the organization was established. The rest of the positions would also ideally reflect the community. One of the attorneys would focus on legal clinics and educational workshops. These workshops would be established based on trends and issues presented in clinics, raised by membership, or recent events or changes in the larger community. A few workshops would be more regularly offered to deal with the consistent legal issues the community faces, such as immigration and interactions with the FBI and other law enforcement. Legal clinics would have weekly drop-in hours for non-members to speak to an attorney. These non-members would also meet with the lead organizer and attorney to incorporate less traditional legal and non-legal strategies, like collective action or self-help. They would also be encouraged to become a member and complete the training. At first, this lawyer’s main source of understanding of the local MENA and Muslim community would come through the legal clinics. This attorney would also work with the community organizer in outreach to mosques, churches, local restaurants, cafes, and stores frequented by the community to recruit members and hear directly from the community.

The second attorney would focus on litigation and keeping a pulse on regional, national, and international issues, and on building relationships with relevant organizations across the country. This attorney would report this information back to the staff and membership to keep them informed

on larger political and economic forces and issues that may affect members at the local level. This attorney would also be responsible for maintaining contact with policy makers and lobbyists and update them on what is happening at the grassroots level. But this attorney would have no decision-making power without a vote from the membership. Once voted upon, the membership would also be actively involved with the attorney in this task, and eventually completely maintain it.

Litigation would only be pursued upon a consensus from the membership and as a last resort — to remove barriers to the community organizing itself. If litigation were voted for, it would be pursued in tandem with other tactics and strategies for maintaining pressure; it would be accompanied by campaigns, coalition-building, protesting, and other strategies.

The benefits of membership would include access to the legal clinic and direct representation if needed. The larger community would still have access to legal clinics through drop-in hours. Members would also have access to the amenities of the property, like the kitchen, community garden, workshops by other community members, a community pantry, and possibly even some childcare. Most importantly, the membership would make the strategic decisions of the organization and carry out those decisions through a membership committee. The agenda would be open to whatever the membership feels necessary to discuss, making them the key decision makers.

The organization would not just provide services and be a place of organizing, it would also provide a space for the community to grow and flourish. It would be a place where community members would become empowered to lead their own social change, provide support for one another, and develop interpersonal relations that carry on beyond the walls of the organization. It would be like a second home for the community to learn new skills, support one another, and raise their family around.

The end goal would be to eventually have the organization completely self-reliant on the membership and for all positions to be filled by community members. There would possibly be one lawyer working part-time with the organization who continues to assist with the legal clinic and workshops and the rare possibility of litigation. The hope would be to work myself and others out of our jobs.

*C. Paulina Santana's Ideal Practice*³⁴

PAULINA SANTANA: My ideal social-change practice would be a decentralized abolitionist organization with different chapters across the nation. While the organization would center its focus on criminal justice work, we would also offer several related legal and social services and be involved in various campaigns, projects, and practice areas.

Anti-policing/Anti-prison. At its core, the organization's mission would be to abolish all carceral systems and reinvest resources into our communities. It would work in coalition with other abolitionist organizations on anti-policing/anti-prison projects and campaigns, including policy advocacy, protests, and impact litigation.

Individual Representation. In addition to these larger-scale projects and campaigns, we would also have a direct legal services branch, where criminal defense lawyers would assist in the defense of those who have been charged with crimes. Like public defenders and other attorneys working pro-bono, these attorneys would provide legal assistance for zero cost. However, these lawyers would all be trained in client-centered, trauma-informed lawyering. They would work *with* clients, not just *on behalf of* them, to determine the best legal strategy together.

Housing and Social Services. Because so many individuals targeted by our criminal punishment system have housing and mental health needs, we would also have trained professionals in the organization who would work in tandem with interested community members to provide resources and assistance.

Inside-Outside Mail Program. I would want to coordinate a mail program where we contact folks on the inside. In addition to responding to legal mail, we would establish some type of pen-pal program for more general emotional support. We would open this up to all interested community members so that they may also engage and communicate with people on the inside.

Re-entry Services. For those who have been released from jail or prison, we would also offer a variety of re-entry services, or at the very least connect people to the best organizations that may be better able to offer support.

³⁴ Paulina, a 2022 graduate, who as noted above intends to begin her career as a public defender, wrote this description in 2022.

Educational/Legal Clinics. The organization would also prioritize community engagement and education. This could include a course where people from the community come in, learn some of the specifics of the law from lawyers, but then go on to lead the course themselves for other community members.

We would also offer a course on how to represent yourself in a criminal proceeding. While we will have criminal defense lawyers to offer guidance and support for the more technical legal specifics, I would want people to feel like they can access this information on their own. I would seek to create an environment where folks feel they can confront the legal system with the help of their communities, not just lawyers.

Finally, we would offer each of these courses in different languages. We would also hold weekly, social language-exchange events. We would provide food and drinks and give people a space to enjoy themselves and interact with other people in the community. This would not only promote community relationship-building, it would also allow people to practice speaking other languages.

The Structure. It would be cool if the people who worked in the organization didn't just stick to one area but rotated between these different practice areas and projects. Not only would this hopefully prevent burn-out, but it would allow them to integrate lessons and values from one sector to another.

Location. I don't envision just one location or one headquarters. I would want the organization to have many chapters across the nation, each capable of running itself and accountable to the community it serves. There will be no hierarchical structure.

The location I would want to work out of would probably be in the Bay Area. Ideally, I would want the center to have an open floor plan to encourage collaboration amongst all the different people in the organization. It will have high ceilings and get tons of natural lighting. There will be plants and colorful art everywhere. We will have smaller rooms where we hold our legal clinics and courses.

The People. While some of the details of the day-to-day operations are still fuzzy, I know that my social change practice will be comprised of kind, compassionate, and deeply caring individuals. At the end of the day, the bonds and relationships we form through our work and our passions is more important to me than the small operational details.

Above all, I would want my practice to truly prioritize self-care and community-care.

I hope to create an environment where we all feel safe, supported, comfortable, and content. I would want the work to be energizing for people, and when it's not, I want people to know that's okay too. This work is hard and taking care of yourself while doing this work is hard. Burnout is real. Having moments of doubt/frustration or moments where you feel like you're drowning won't be viewed as a personal issue or a personal failing. I hope people in the organization will feel this is something that can be problem-solved together and not be afraid to be honest about needing extra support. This is all to say: I hope the organization is truly a community that prioritizes not just work, but people.

V. PATHS CLINIC ALUMS HAVE TAKEN

As reflected in the footnotes identifying former students' post-Clinic work, the vast majority do become social justice lawyers. A few, less than ten percent, decide not to become lawyers. Most who have become lawyers launched their careers doing direct services, often in legal aid offices, and sometimes proceed to work in policy advocacy. A few have started their own solo firms. Several have worked for unions. Later in their careers, some have taken government positions. Although rare, a handful of students have joined the organization at which they did their Clinic fieldwork.

The career path of one former student, Sheena Wadhawan, who took the Clinic in 2006, has encompassed many of those paths and embodied the Clinic's teachings. Sheena began her career as an attorney in the Neighborhood Law Corps of the Oakland City Attorney, where she collaborated with city agencies, nonprofits, and community organizers to bring City resources to support community efforts to preserve affordable housing and to combat the harms of the foreclosure crisis on low-income tenants. Three years later, she launched a solo firm representing tenants in Oakland, which she did for two years.

She then moved across the country to work with CASA de Maryland, a large, activist, grassroots, immigrants' rights organization. Serving first as a staff attorney and then as Legal Program Manager, she engaged in the full range of approaches covered in the Clinic: organizing, mobilizing,

grassroots lobbying, coalition-building, media work. After five years at CASA, she became the Advocacy Director of the D.C. Employment Justice Center, working with a team of organizers, staff, and low-wage workers in grassroots campaigns, coalition-building, lobbying, and communications. She then briefly took a position with the federal Office of Civil Rights of the Department of Education.

Moving with her family a year later to Los Angeles, she left the law, becoming deputy director of Everyday Feminism, an intersectional feminist media site, where she supported staff and executives to create a diverse, inclusive, non-hierarchical organizational culture. Having experienced countless micro- and macro-aggressions as a woman of color in social justice campaigns and workplaces, in 2017 Sheena launched and continues to operate a solo organizational consulting firm, where she coaches legal and other nonprofits' management teams (and sometimes entire staffs) to help them live up to their professed values.

In 2016, for a clinical conference recognizing Jerry López on the twenty-fifth anniversary of the publication of *Rebellious Lawyering*, Sheena recorded a video describing the impact López and the Clinic had on her. She shared:

I came to law school with a clear goal of wanting to work for social justice, for a more just and equitable world. I always wanted to serve low-income folks, folks of color, immigrants, because that's the community I come from.

When I came to law school, I had no idea what to expect. I had never known any lawyers. I didn't have mentors in my life at that time. By about halfway through law school, I had met a lot of lawyers — guest speakers in classes, professors, people like that — and I didn't really see myself in any of them. By halfway through, I thought, "Oh, I'm not going to practice law. I'm not going to be a lawyer. I'm not like these people, and I can't do this work this way." I didn't really understand what about it repelled me, but I knew it didn't fit with my sense of how the work should be done.

At that point, I entered the Community Group Advocacy Clinic and we read *Rebellious Lawyering* and other works. The teaching and mentorship of my clinical professors led me for the first time to think and feel: "Oh wow, maybe I can do this. These are the type of

lawyers, this is the concept of lawyering that can work, that really fits with my sense of what works in communities and the kind of work I want to do.” It gave me a framework and the words to use to really understand the kind of lawyer I wanted to be. And that I wasn’t out there alone, that there were others out there thinking about how we do this work and insistent that communities and clients are in the best position to lead the work.

Now, out doing social justice work, I feel so grateful for being able to work alongside communities. I’ve experienced plenty of defeats, but also a fair number of successes, which absolutely came about because they were client-led and community-driven and because I was able to stay true to that guiding principle. I have returned to what I learned in the Clinic again and again to check myself, to be self-aware, and to try to stay true to the meaning of rebellious lawyering: recognizing our privilege and responsibility to do this work *alongside* communities, not *for* them.

In all the settings in which she has worked, Sheena has exemplified values and practices the Clinic aspires to nurture: creativity, tactical and strategic flexibility, humility, a broad vision of lawyering, faith in collective action and the wisdom of impacted people, and commitments to collective liberation and to fighting against subordination everywhere, including in our relations with clients and communities and in our workplaces.

CONCLUSION

It is an honor to have the Community Group Advocacy and Social-Change Lawyering Clinic included in this issue on “legal history in the making” and deemed to be “promoting positive change in the law and society.” In preparing this article, I had the pleasure to reread two decades of students’ reflections, reminding me once again how much I have learned from and with them. I am delighted to convey their thoughts and grateful to have played a role in encouraging them to think expansively about lawyering and working in partnership with communities — and to see so many of them go on to do just that.

WOMEN'S EMPLOYMENT RIGHTS CLINIC:

Golden Gate University School of Law

HINA B. SHAH*

Established in 1901 as an evening law school, Golden Gate University School of Law (GGULaw) is a pioneer in making legal education accessible to many communities traditionally shut out of professional education. It continues that trailblazing history today, being one of the most diverse law schools in the nation: 62 percent of our students identify as people of color, 64 percent as women, 11 percent identify as LGBTQ and 48 percent as first-generation college or graduate students.

The Women's Employment Rights Clinic ("WERC"), established in 1993 by GGULaw, serves the dual purpose of advocating for the most vulnerable workers and providing a training ground for its diverse law students to become competent, ethical professionals. The Clinic's mission is centered on ensuring that every worker has the right to economic fairness, equal opportunity, and dignity in the workplace. Our advocacy is informed by and coordinated in partnership with broader community campaigns for economic and social justice. WERC

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Hina B. Shah is Professor of Law and Director of the Women's Employment Rights Clinic at Golden Gate University School of Law.

is one of a handful of legal clinics in the nation engaged in multi-pronged advocacy, focusing on workplace problems that impact low-wage women workers, many of whom are immigrants and non-English speakers. Through an innovative combination of litigation, and legislative and educational strategies, WERC's mission is to collaborate with grassroots, community-based organizations and worker centers to enhance their capacity for systemic change and to "put law in the service of building the movement's power."¹

Within this community lawyering framework, students acquire essential and transferable lawyering skills, such as interviewing, fact investigation, counseling, negotiation, and trial skills, and they sharpen their oral and written advocacy. The Clinic also provides a unique opportunity for students to learn to be effective social justice advocates by having a focused, strategic vision for change. By combining law and organizing with sector reform, students are able to conceptualize a multifaceted advocacy agenda when they can simultaneously work on litigation and policy reform that are linked. Students have the opportunity to collaborate with non-lawyers, such as organizers and worker leaders, and understand the multifaceted roles that lawyers can play in social movements.

CLINIC DESIGN AND PEDAGOGICAL FRAMEWORK

The Clinic's dual mission to serve low-wage women workers while providing a rigorous learning experience has remained steadfast. The Clinic utilizes a three-pronged community lawyering model, combining litigation and policy advocacy with community education. This model teaches students how to use legal knowledge and expertise to support community organizations and worker centers that are at the forefront of the struggle for economic and social justice. Working closely with these organizations, the Clinic blends individual representation cases with larger impact matters.

What is unique, however, is that rather than diffusing its resources across sectors or without focus, the Clinic engages in industry-specific reform. It borrows this model from union-led organizing campaigns. Very

¹ Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PENN. J. LAB. & EMPLOY. L. 1, 71 (2005), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1232&context=jbl>.

few lawyers, especially legal clinics, combine community-lawyering with sector reform. By using this multi-pronged approach, the Clinic has tackled the dismal working conditions of garment workers, domestic workers, and caregivers and has reshaped the legal landscape for all workers.

Students enroll in the clinic and the companion seminar class for one semester, and can get permission to enroll as advanced students for a second semester. In the seminar and clinic, students gain substantive knowledge, skills, and professional values. These classes work in conjunction to help students acquire and strengthen the core competencies necessary for the practice of law, as follows:

EFFECTIVE CLIENT-CENTERED LAWYERING:

- Communicate clearly and effectively with clients
- Interview clients effectively to elicit relevant facts
- Demonstrate good listening skills, including empathetic, non-judgmental, and reflective listening
- Treat clients with respect
- Establish rapport with clients
- Counsel clients to understand all of their options so they can make an informed decision
- Demonstrate cross-cultural competency (the ability to work effectively with clients from a wide variety of ethnic and cultural backgrounds)
- Engage in zealous oral and written advocacy on behalf of your client
- Understand the broader context of your client's problem and the systems that create the problem
- Explore non-legal forms of advocacy that might help your client's matter

PROFESSIONAL AND ETHICAL CONDUCT:

- Be responsive, responsible, and reliable
- Take ownership of case, take initiative, and engage in problem-solving
- Be thorough and detail-oriented and produce the best final work product
- Effectively manage time to meet deadlines
- Commit to critical self-reflection and be open to constructive feedback
- Work diligently and thoroughly; demonstrate strong work ethic
- Understand your professional responsibility to increase access to justice and critical awareness of systemic issues impacting access to justice (race/class/gender)
- Ability to recognize and resolve ethical issues
- Develop positive working relationships and communicate effectively with Clinic faculty, staff, team members and clinic students

ORAL AND WRITTEN COMMUNICATION:

- Understand the goal of the communication
- Use tone that is appropriate for your intended audience (clients, clinic colleagues, faculty, judges, opposing parties, etc.)
- Effectively organize your oral or written work product
- Speak and write clearly and persuasively
- Use proper grammar and citations
- Effectively use exemplars
- Address feedback and critique and integrate changes throughout the work product

LEGAL ANALYSIS AND REASONING:

- Clearly identify and develop legal issues
- Include the most significant, relevant facts and use them effectively in the analysis
- Clearly explain legal concepts
- Examine and assess the strengths of alternative theories/arguments
- Identify relevant statutes, regulations, and cases
- Synthesize research
- Analogize/distinguish legal authority to your set of facts
- Demonstrate creativity, flexibility, innovation in developing case/project strategy
- Recognize weaknesses in case theory and anticipate adversary's position

Faculty are constantly evaluating the effectiveness of the program to achieve these learning objectives, and, through frequent experimentation in its design, the program has remained flexible to meet the evolving needs of our students and community.

The Clinic

Students enroll in the Clinic for 2 or 3 units with corresponding minimum hours requirements.² The Clinic also accepts Honors Lawyering Program (HLP) full-time externship placements.³ Each semester, WERC accepts up to 12 students in the Clinic including 1–2 HLP full-time placements in the

² ABA Standard 310 requires 45 hours of in-person class for every credit unit. WERC requirements far exceed the minimum hours requirement (162.5 hours for 2 units and 195 hours for 3 units) but during the COVID-19 pandemic when the Clinic operated remotely, we reduced the clinic requirements to the ABA minimum standard.

³ The Honors Lawyering Program provides select, highly qualified students with an integrated practice-based program that combines intensive course work with full-time apprenticeships. The Clinic is an approved HLP placement.

fall. The Clinic regularly has maximum enrollment, with waitlists. It is staffed by two faculty members — a director and staff attorney — who supervise the students. The director is also responsible for the operations of the Clinic and fundraising.

Students are assigned a primary supervisor. In the first week, students submit a self-assessment of their skills and answer a series of questions about their work experience and professional development goals. They meet one-on-one with their supervisor to review the self-assessment and finalize the student's goals. In addition, the students are encouraged to start thinking about looking for their next internship/externship and, for those graduating, discuss their post-bar job search and bar study plans.

Each student is paired with another student (primarily based on the coordination of their clinic hours). Faculty assign students an exercise in collaboration, where they reflect on the challenges and strengths of working in a group, and the student teams then meet to discuss their reflections and steps they will take to ensure effective group dynamics. Each team is assigned cases and policy projects based on their strengths, identification of skills they seek to acquire, their interests, and the Clinic's docket. Law students staff an intake hotline providing advice and counseling to workers on a variety of employment-related matters including wage and hour violations, discrimination, workplace harassment, unemployment benefits, pregnancy, and family/medical leave. In addition, during COVID, students staffed two evening clinics each semester in partnership with community-based organizations. WERC will continue collaborating with additional community organizations to host the evening clinic.

A student will do any or all of the following, based on their hotline/legal clinic intake(s): legal research, investigating the matter, including client and witness interviews, brief advice and counseling, and brief service (e.g., writing a letter, legal research). The Clinic also selects cases from the intake hotline/legal clinics for full representation. For full representation cases, students will engage in any or all of the following: preparing and explaining client retainer agreements, client counseling, document review, drafting administrative or court complaints, representing the client in an administrative hearing, witness and client preparation, drafting pleadings for court cases, drafting and responding to civil discovery, negotiating settlements, etc.

The policy work is more fluid and ranges from researching legislative history, drafting bill language, and drafting comments on proposed regulations, to attending community meetings and lobby days in Sacramento. Students also develop and conduct Know Your Rights training and other presentations to community groups, workers and worker centers.

Faculty supervisors meet weekly with each student team. Prior to the meeting, the team submits a detailed weekly agenda. At the meeting, the students and the professor discuss the assigned cases, projects, and tasks, and identify any problems, including ethical issues. The students are asked to lead these discussions, making initial suggestions on how to proceed on a case or problem area. Throughout the semester, students engage in self-assessment and are provided formative assessments after completing each task (e.g., interviewing, writing a memo) to provide meaningful feedback so that students can improve in real time and gain a better understanding of their performance.

In addition, we conduct two summative assessments of the students' skills and performance in the clinic. At the mid-semester, the students complete a self-assessment, as follows:

REVISIT THE LEARNING OBJECTIVES SECTION OF THE SYLLABUS AND YOUR INITIAL SKILLS ASSESSMENT + PROFESSIONAL DEVELOPMENT PLAN.

For each of the four categories (Effective Client-Centered Lawyering; Legal Analysis and Reasoning; Oral and Written Communication; Professional and Ethical Conduct) write a brief paragraph reflecting on what you have done well and what you hope to improve on. Indicate if you have not had the opportunity to work on certain skills. Based on this reflection, would you modify the initial rankings you provided in your Initial Skills Assessment + Professional Development Plan? If so, how?

REVISIT THE GOALS YOU SET IN YOUR INITIAL SKILLS ASSESSMENT + PROFESSIONAL DEVELOPMENT PLAN.

Which ones have you made progress on? Have your goals changed? How? What are your goals for the remainder of the semester?

ASSESS YOUR SEMINAR PARTICIPATION.

Have you regularly attended class? Have you effectively read the assignments for class and regularly participated in class and shared your opinions? Have you thoroughly prepared for in-class exercises and thoughtfully worked on your reflective writing essays? Include any ways you hope to improve your Seminar participation.

The student and the supervisor then meet to discuss the student's self-assessment and the supervisor provides a summative evaluation. The student and supervisor also review the student's initial goals and either modify them or add additional goals.

At the end of the semester, the students complete a final self-assessment, as follows:

REVISIT YOUR INITIAL PROFESSIONAL DEVELOPMENT PLAN, MID-SEMESTER EVALUATION, AND THE LEARNING OBJECTIVES IN THE COURSE SYLLABUS. ANSWER THE FOLLOWING QUESTIONS:

1. Which areas/skills do you believe you made the most progress on?
2. What in particular did you improve?
3. How were you able to make progress in these areas?
4. Which areas/skills are still a challenge for you?
5. How do you intend to improve these areas/skills in your future endeavors?
6. Did you incorporate feedback that you got from your team partner and your supervisor effectively? What challenges did you have in receiving feedback?

In addition, we solicit feedback on the clinic/seminar, which they can submit anonymously, about what they found most valuable and what can be improved. Again, the student and supervisor meet for the final evaluation, where the self-assessment is reviewed and the supervisor provides a summative assessment of the student's performance, based on the same learning objectives rubric. Faculty supervisors also discuss the students' plans for their next internship/externship and additional coursework to continue to build their skills.

The Seminar

Students enrolled in the Clinic must take the companion 2-unit seminar class. It meets twice a week for 80 minutes each time. In the first week of the semester, the seminar has an intensive boot camp training. It is a five-hour, mandatory training on the first Friday of the semester. The boot camp allows the Clinic to onboard students immediately to start handling ongoing cases and to familiarize them with Clinic procedures. Depending on the immediate pending needs of the Clinic, the boot camp will address substantive employment law, intensive interview training, trial skills, and/or policy work. The bootcamp also focuses on professional and ethical skills

and, during COVID, the nuts and bolts of remote representation. WERC invites two Clinic alumni (usually at least 5–6 years out) during lunch to discuss their journey from law student to practicing attorney.⁴ The alumni speak also about what they gained from the Clinic and how it fit into their legal experience. The alumni lunch is always a highlight, both for the alumni and the clinic students, allowing Clinic students to build their legal network. Finally, at the beginning of the semester, students write a definition of what justice means to them. They then revisit this definition during the final class and discuss whether they still agree with their definition of justice and whether they achieved justice in their cases/projects.

The substantive classes are taught with the same method as podium doctrinal classes. Students have case readings, the Socratic method is used for case discussion, and then hypotheticals are integrated during class discussion. Certain classes designate “case experts” where several students are assigned to lead the discussion, which allows for a deeper and more nuanced understanding of the cases.

Legal skills classes are a combination of the theory of the underlying skill, a simulated hypothetical, and a skills exercise. Students have several opportunities for mock interviewing and counseling clients, including a video-taped review. The mock interview is then used as the basis for the Case Theory class, where students develop a case theory on their “mock case” along with a legal elements chart. In a subsequent class, the students use these materials to create a fact investigation plan. The Fact Investigation Class integrates the fundamentals of case planning and fact investigation but also incorporates memory recollection and bias. Recognizing that students need more repeated exposure to fundamental skills, the Clinic professors designed a writing component to the seminar in conjunction with the IL legal writing professors and the director of academic development. The students are given a closed universe of legal research and a discrete legal problem for which they write a motion arguing why their client is entitled to a penalty under applicable law. The students write a detailed outline, then attend class to discuss legal analysis and structure of the brief, and then submit a draft. Their supervisor provides written and oral feedback, and the student submits a final brief.

⁴ The alumni lunch was suspended during the time the Clinic operated remotely because of COVID-19.

The supervisor also provides written and oral feedback on the final brief. In addition, students submit several written reflective exercises, including a reflection on identity, power and privilege, and client-centered counseling. The seminar also has case rounds — which the professors are constantly experimenting to make them more dynamic — scheduled at times when students are at a critical juncture in their case/policy work.

Depending on the Clinic's docket, the seminar will focus on the skill acquisitions necessary for the Clinic's case and policy work. When the Clinic has upcoming hearings, students are taught trial skills and they practice direct and cross examination in mock sessions, introducing and admitting evidence and making objections. When there is a large policy project, an additional class, Social Justice Lawyering: The Role of Lawyers as Problem-Solvers, is added to the syllabus. This class widens the students' lens on the varied ways that lawyers are problem-solvers.

THE CLINIC'S SUBSTANTIVE WORK

California is home to the largest low-income population of any state. One in three California workers earns low wages.⁵ Nearly one in six Californians does not have enough resources to meet basic needs.⁶ Immigrants and people of color are overrepresented in the ranks of the poor. Almost 36 percent of undocumented immigrants live in poverty.⁷ Latinos make up 51.6 percent of the poor in California.⁸ Increasingly, workers are joining the ranks of the poor, as roughly 80 percent of poor Californians live in families with one working adult.⁹

While low-wage workers are represented in each industry, the highest concentration of low-wage workers is found in retail, restaurant, and home health and domestic service work.¹⁰ Women, especially immigrants

⁵ UC Berkeley Labor Center, *Low-Wage Work in California Data Explorer*, UC BERKELEY LABOR CENTER (May 12, 2022), <https://laborcenter.berkeley.edu/low-wage-work-in-california-data-explorer>.

⁶ Sarah Bohn et al., *Poverty in California Fact Sheet*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (July 2021), <https://www.ppic.org/publication/poverty-in-california>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

and women of color, are concentrated in these jobs.¹¹ Low-wage industries also have rampant wage violations. Nearly 20 percent of low-wage workers were not paid the minimum wage.¹² Much of the Clinic's docket has focused on helping low-wage workers recover their earned wages. Since 2000, the Clinic has recovered over \$10 million dollars for workers. Besides the significant monetary recoveries, the Clinic has significantly expanded workplace rights for all California workers.

Garment Worker Advocacy

California has long held the distinction of being the garment sweatshop capital of the nation. Garment manufacturers, who sell and distribute finished garments, contract out their in-house production work to sewing contractors. These contractors staff their factories with unskilled and cheap labor, often immigrant, non-English-speaking women. WERC and other legal and community organizations in the 1990s and 2000s worked tirelessly to broaden liability to reach manufacturers, who have historically been shielded from liability for noncompliance with wage and hour laws. For several years, WERC was part of a coalition working on a legislative solution that resulted in the passage of AB 633, the garment accountability bill that imposed liability on manufacturers. The Clinic was a key player in the implementation of AB 633, drafting and commenting on regulations and, in collaboration with other community groups, published a comprehensive report on the implementation of AB 633. Thanks to the Clinic and the statewide coalition's advocacy, California has one of the toughest and broadest joint liability laws in the garment industry.

The Clinic was at the forefront of litigation in Northern California on behalf of garment workers. In the spring of 2001, the Wins garment factories, the largest in the Bay Area, declared bankruptcy and closed their doors. Approximately three hundred garment workers, all monolingual Chinese immigrants, found themselves out of work. They were owed nearly \$1 million dollars in unpaid wages. It was the most egregious case of

¹¹ Kaitlyn Henderson, *The Crisis of Low Wages in the U.S.: Who Makes Less than \$15 in 2022?*, OXFAM (Mar. 21, 2022), at <https://www.oxfamamerica.org/explore/research-publications/the-crisis-of-low-wages-in-the-us>.

¹² David Cooper & Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, ECONOMIC POLICY INSTITUTE (May 10, 2017).

sweatshop abuse in Northern California. The Clinic represented the workers and, first and foremost, the Clinic recognized that the garment workers needed immediate relief. California has a state fund set up for garment workers who have unpaid wage claims, but the fund did not have enough money to satisfy these workers' claims. So, with the help of community and other legal organizations, the Clinic successfully lobbied the California Legislature to earmark additional funds to satisfy the workers' claims.

The Clinic also intervened in the California Labor Commissioner's lawsuit against the Wins garment companies and the individual owners. The litigation lasted more than seven years and involved complex legal theories, competing federal and state regulatory agencies, and monolingual clients. The litigation culminated in a four-month bench trial in San Francisco Superior Court, with the Clinic and the students playing a central role in preparing the workers to testify. The law students got first-hand experience in cross-cultural lawyering, spending many weekend hours with interpreters and workers as they overcame their fear of facing their former employer. The workers' testimony was crucial in securing a tentative decision in their favor. The trial court found the owners of the factory personally liable to the workers for \$1.4 million in unpaid wages and penalties. Unfortunately, the victory was short-lived, as the California Supreme Court issued a decision in a similar case that drastically limited personal corporate liability.¹³ That decision denied the workers a judgment in their favor. The Clinic appealed the decision but ultimately did not prevail against the employers. Fortunately, the workers recovered most of their wages through the state garment fund. Today, thanks to low-wage worker advocates, personal corporate liability is enshrined in the Labor Code,¹⁴ precisely to avoid the type of injustice faced by the Wins workers.

The Clinic also cooperated with the U.S. Department of Justice in pursuing criminal charges against the owners of the factories, which led to convictions and to the sentencing of the owners on federal criminal charges. Throughout this period, the students met with the workers to keep them informed of the litigation and joined the workers in solidarity when they engaged in community action to raise awareness of their issue. While

¹³ Reynolds v. Bement, 36 Cal. 4th 1075 (2005).

¹⁴ Cal. Lab. Code § 558.1 (Jan. 1, 2016).

the state court refused to hold the owners civilly liable, the federal criminal indictments validated the workers' struggle to bring justice to their case. "During the *Wins* trial, a marriage fell apart, a member of our trial team was diagnosed with cancer, and another member found out she was pregnant. But despite it all, the Clinic never lost its focus on the workers' struggles," said Attorney Pam Kong, Clinic student ('02) and 2003–2004 WERC graduate fellow and member of the *Wins* trial team.

Domestic Worker Advocacy

With the move of most of the garment industry out of the Bay Area, the Clinic redirected its resources to assist another group of vulnerable workers — domestic workers.

Domestic workers play a vital role in our society, caring for our homes and loved ones and freeing us to participate in the workforce. In California, more than 300,000 domestic workers serve as housecleaners, nannies, and caregivers in private homes.¹⁵ The majority of domestic workers are immigrant women who work to support their own families as primary breadwinners. Nearly two million households in California rely on domestic workers.¹⁶ Domestic workers historically have toiled in obscurity. Until recently, they were categorically exempted from most employment laws and fundamental wage and hour protections.¹⁷ Domestic workers have built a national, grassroots, worker-led movement for dignity and justice by addressing the systemic exclusion of domestic workers from basic wage and hour laws.

Domestic workers face unique challenges. Domestic work remains a low-wage and largely under-regulated industry. Domestic workers usually work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation and unable to advocate

¹⁵ UCLA LABOR CENTER, PROFILE OF DOMESTIC WORKERS IN CALIFORNIA 3 (2020), <https://www.labor.ucla.edu/wp-content/uploads/2020/12/Profile-of-Domestic-Workers-in-California.pdf>.

¹⁶ UCLA LABOR CENTER, PROFILE, PRACTICES AND NEEDS OF CALIFORNIA'S DOMESTIC WORK EMPLOYERS 3 (May 2016), https://www.labor.ucla.edu/wp-content/uploads/2018/06/UCLA_domesticworkers_report_final.pdf.

¹⁷ Hina Shah & Marci Seville, *Domestic Worker Organizing: Building a Contemporary Movement for Dignity and Power*, 75 ALBANY L. REV. 413, 424 (2012), <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1481&context=pubs>.

collectively for better working conditions. Four in ten employers pay low wages, defined as two-thirds of the median full-time wage in California. One in six domestic-work employers fail to pay minimum wage.

For over a decade, the Clinic has played a critical and significant role in the fight to expand and enforce legal rights for domestic workers in California. The Clinic represents domestic workers in individual and group cases before the California wage and hour enforcement agency, the Division of Labor Standards Enforcement (referred as the “Labor Commissioner”) and in court litigation. The cases are either referred to the Clinic by grassroots, community organizations such as *Mujeres Unidas y Activas* and *Filipino Advocates for Justice* or through the Clinic’s hotline. The Clinic supports the community organizing campaigns, in conjunction with the legal cases. Through this direct representation, the Clinic identifies critical gaps in legal protection as well as areas that need further legal advocacy.

Because the Clinic had built an expertise in litigating domestic worker cases, the California Domestic Workers Coalition (“Coalition”) asked the Clinic to serve as its legal counsel for its legislative advocacy campaign. The Coalition is a statewide umbrella organization of grassroots immigrant-rights organizations. They mounted a nearly six-year battle to expand overtime protections to certain domestic workers who were excluded from this basic protection. The Clinic played a critical role as legal counsel to the Coalition in its efforts to remove the exclusion. The Clinic faculty and students helped decipher the existing complex regulatory coverage for domestic workers, dug into the history of why a large majority of domestic workers were excluded from basic labor laws, and translated the wishes of the Coalition into legislative language. Throughout the campaigns, the Clinic provided guidance and counseling as the Coalition made strategic decisions. WERC students and faculty helped train and educate the members of the Coalition (many of them worker leaders) to understand the law and the impact of legislative compromises on existing rights so that they could make informed decisions.

In 2013, after several failed attempts, the Coalition succeeded in passing the greatest expansion of overtime protection in California since the 1970s. The bill extended overtime to nannies and caregivers who spent a significant amount of time caring for children, older adults and people with disabilities. The bill was set to sunset in three years and in 2016, the

Coalition, with the Clinic's legal support, made the overtime protections permanent through SB 1016.

After these legislative victories, the Clinic collaborated with the Coalition in developing Know Your Rights materials, which are critical to outreach and to educate domestic workers. The Clinic also supported domestic worker employers in understanding their obligations under the new law. Finally, the Clinic met with regulators at the Labor Commissioner to make sure the new overtime bill was properly enforced.

Another critical aspect of the Clinic's domestic worker advocacy was weighing in on a significant case before the California Supreme Court that would directly impact domestic workers. Home care agencies had for years been shortchanging domestic workers who worked 24-hour shifts by not paying for up to 8 hours of work time because the employees could theoretically sleep during that time. On behalf of low-wage worker advocates, the Clinic submitted a friend-of-the-court brief in *Mendiola v. CPS Security Solutions, Inc.*,¹⁸ a case that concerned sleep time for security guards. The brief focused on the legislative history of California's wage protections as well the realities of low-wage workers on 24-hour shifts. The Clinic argued before the California Supreme Court on this important issue and the Court unanimously agreed that workers must be paid at least the minimum wage for all hours worked, including so-called sleep time.

After the *Mendiola* decision, on three occasions, home care agencies introduced bills to exempt domestic workers from sleep-time compensation. Each time, the Clinic director testified before the Legislature about the dangers of the bill and helped prepare worker leaders to testify before the Legislature.

The Clinic is an ongoing resource for worker centers and legal service providers in making sense of the complex California regulatory scheme governing domestic workers so that they can effectively organize and represent domestic workers..

Residential Care Advocacy

Concurrently with domestic worker advocacy, the Clinic focuses on caregivers who work in small residential care facilities. Despite doing work

¹⁸ 60 Cal. 4th 833 (2015).

similar to domestic workers, caregivers in facilities are governed by a completely different set of legal rules. While these caregivers are protected under labor laws, compliance remains elusive for them. There are rampant wage and hour violations, including paying flat rates that do not meet minimum wage and overtime obligations. This is particularly concerning given the industry will experience unprecedented growth as Americans live longer and cope with chronic health conditions.

In collaboration with community-based campaigns to reform residential care facilities, the Clinic represents workers before the Labor Commissioner and in court. In some cases, the Clinic represents the entire workforce at a facility. These cases often arise out of organizing campaigns spearheaded by community groups, especially Filipino Advocates for Justice in Oakland and the Filipino Community Center in San Francisco.

Recognizing that the problems were intractable to solve one case at a time, the Clinic brought together a statewide coalition of legal service providers, worker centers, unions, community-based nonprofit organizations and consumer advocates — the Coalition for a Fair and Equitable Caregiving Industry. The first task of the coalition was to create a comprehensive policy paper, documenting the extent of wage and hour problems in the residential care facility sector. The Clinic took on the researching and writing of the report. Law students spearheaded the research, which resulted in the report, “Understaffed and Overworked: Poor Working Conditions and Quality of Care in Residential Care Facilities for the Elderly” (June 2017).¹⁹ The report explores how the structural and exploitative nature of working conditions in Residential Care Facilities for the Elderly (“RCFE”) in California contributes to poor quality of care and life outcomes for residents. The report found that abuse, neglect and overall poor quality of care and life for residents in RCFEs are results of structural systemic problems. The report also led to a three-part investigative series by Reveal, the Center for Investigative Reporting, that was featured in the *New York Times*, *Washington Post* and *PBS News Hour*. The Labor Commissioner invited the Clinic director to train its investigators on issues in residential care facilities. The training was part of the strategic enforcement efforts in the residential care industry.

¹⁹ <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1789&context=pubs>.

Gender Discrimination and Harassment

The Clinic has also been at the forefront of challenging gender discrimination and harassment. Women workers face myriad forms of discriminatory and harassing conduct at the workplace. Forty-two percent of women workers have faced gender discrimination in the workplace, including earning less than their male counterparts doing the same job, not getting the same opportunities, and rude or dismissive remarks based on their gender.²⁰ Sexual harassment, a form of discrimination, is even more rampant, with one in five women experiencing it at work.²¹ The Clinic represents both cisgender and transgender women workers in their discrimination/harassment claims.

The Clinic was part of one of the first large sexual harassment cases in the agricultural industry, joining California Rural Legal Assistance in representing an immigrant farm worker. The client was subjected to quid pro quo sexual harassment (required sexual favors as a condition of employment and the receipt of job benefits). The Equal Employment Opportunity Commission, after investigating the client's matter, sued the largest lettuce grower/distributor in the United States. The case resulted in a \$1.85 million settlement and substantial injunctive relief.

Recognizing the entrenched discrimination that still exists for women who work in nontraditional occupations such as electrical and construction work, the Clinic along with Equal Rights Advocates represented six female electricians, most of whom are women of color, in a lawsuit against an East Bay electrical contractor. The women were all laid off on the same day from the same job, while less-experienced male employees were retained. After successfully defeating the defendants' motion for summary judgment, the Clinic negotiated a successful settlement with monetary relief and training to address discrimination and harassment issues.

²⁰ Kim Parker & Cary Funk, *Gender Discrimination comes in many forms for today's working women*, PEW RESEARCH CENTER (Dec. 14, 2017), <https://www.pewresearch.org/fact-tank/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women>.

²¹ Hailey Lee, *One-fifth of American adults have experienced sexual harassment at work*, CNBC survey says, CNBC (Dec. 19, 2017), <https://www.cnbc.com/2017/12/19/one-fifth-of-american-adults-have-been-sexually-harassed-at-work.html>.

Over the years, the Clinic has recovered millions of dollars in discrimination and sexual harassment lawsuits on behalf of vulnerable women workers, including factory workers, entry-level sales clerk and domestic workers. These cases were often the first of their kind to expose the abuse in these industries.

TRANSFORMATIVE LEARNING

The Clinic has made a difference in each student's life and, in some cases, has changed the very trajectory of that student's career. Clinic students learn first-hand the tools that will make them excellent and thoughtful practitioners. Because of their experience representing low-wage women workers, clinic students have gone on to pursue public interest careers especially in labor and employment law. Edna Garcia Earley ('98), currently assistant chief counsel at the Labor Commissioner, credits her success as a trial and appellate attorney to the "practical skills training [she] received as a student and Graduate Law Fellow at WERC under the direction of the clinic professors and supervising attorneys." This is echoed by many other Clinic alumni. Yaromil Velez Ralph ('07), a native Spanish speaker who grew up in Puerto Rico, is a field attorney with the National Labor Relations Board. She says, "Without a doubt, the most enriching experience of my legal education was the year and a half I spent as a clinic student and then a teaching assistant with the Women's Employment Rights Clinic. The breadth of cases and the interaction with clients equipped me with tools I use everyday in my job. My clinic experience was one of the primary reasons my employer hired me for my position." Julie Cummings ('16), a veteran of the U.S. Army, credits her experience at the Clinic for "helping [her] become a better version of [herself] in the legal profession."

In addition to gaining practical legal skills, the Clinic's community lawyering model has shaped the careers of many of our alumni. Chriselle Raguero ('15) was born in the Philippines and immigrated to the United States when she was in high school. In law school, she interned at various legal non-profits serving the Asian-American community, was a Clinic student, and was incredibly engaged in the school and local community. After law school, she went overseas to work for international human rights organizations in Thailand focusing on asylum, refugee and trafficking issues. She currently

is the executive director of the Filipino Community Development Center in San Francisco, an organization focused on preventing the displacement of the Filipino community in San Francisco neighborhoods through affordable housing advocacy. Chriselle reflected on her time at the Clinic:

While I am not in a traditional “lawyer” role, my work is rooted in movement and community lawyering, which I first experienced through the Clinic. The Clinic taught me how to have a collaborative relationship with my clients and the community. One memory that stands out for me was when a client, who reminded me of my uncle, asked me to decide how to proceed with his case. My professor advised me that our role as attorneys is not to make the decision for the clients, but to help them understand their options so that they are empowered to make the best decision for themselves. I’ve carried that advice with me throughout my legal career.

Rocío Alejandra Ávila (’04) was born and raised in San Francisco’s Mission District. Her parents immigrated from Zacatecas, Mexico. Drawing on a rich legacy of activism and resistance from her community, Rocío became a community organizer and eventually an immigrant and workers’ rights leader due in part to seeing first-hand her parents’ struggles as low-wage workers. At the Clinic, Rocío brought an understanding of how to integrate community organizing with legal strategies. Rocío was not only a Clinic student but came back twice to work as a graduate fellow and was integral to the Clinic’s domestic worker advocacy. Rocío equally credits WERC for the training and mentorship she received. She says:

There are not enough words to describe how WERC shaped both my personal and professional life. The opportunity to be trained, mentored and inspired by lawyers/professors who were committed to both social justice issues and the law, as well as invested in cultivating my vocation and professional skills was life changing. This was and continues to be especially important in my life since I am a first-generation child of immigrants and woman of color who, before being a clinical student at WERC, had no access to lawyers or mentors in the law.

She is currently the policy director at the National Domestic Workers Alliance, where she advances and raises standards for domestic workers

nationwide. Rocío's close work with the Clinic's clients using a community-lawyering model has led to transformative change for her. She reflected, "While for the workers and for me, the Movement has been a profound life changing experience nourished by our commitment to social and economic justice. From the 'Mujeres' (Women), I've learned that community-centered organizing is an act of love for humanity and with it we can achieve the unthinkable."²²

Katherine Smith ('12) is a trailblazing employment lawyer at Levy Vinick Burrell Hyams LLP, the women-owned plaintiffs' employment firm in Oakland. The Clinic helped connect Katherine to her firm. She said:

WERC was instrumental in my trajectory. I enrolled in the clinic because I was considering pursuing employment law. By the end of the semester, I was committed to the field. From both the clinical work and course work, I came to see employment law as a way to work toward meaningful change in individual lives, but also combat some systemic societal problems.

Katherine did outstanding work in the clinic and, upon the Clinic faculty's recommendation, she became Levy Vinick's first fellow, a distinction awarded to talented new lawyers committed to representing workers. Katherine's deep commitment to social justice and her zealous advocacy representing workers in harassment, discrimination, retaliation, wage theft, and whistleblower lawsuits has landed her repeatedly on the *Northern California Super Lawyers* list.

Dana Oviedo ('21), a recent graduate, has started his own practice focusing on representing individuals impacted by the War on Drugs, focusing on civil rights, criminal law, family law, small business, and cannabis law. He was motivated to create a different type of law firm, based on the community lawyering model of the Clinic. Dana reflected:

The Women's Employment Clinic opened my eyes to activist lawyering and the idea that you can work for change on the macro level on state and federal policy down to the individual level of

²² Rocío Alejandra Avila (posted by Chaumtoli Huq, ed.), *Domestic Workers Movement: "Transformational Social Change" One Worker at a Time*, LAW @ THE MARGINS (Sept. 3, 2014), <https://lawatthemargins.com/perspectives-domestic-workers-movement-transformational-social-change-one-worker-at-a-time>.

helping a person solve their legal issue. In my practice, I follow this same ethos of policy reform at the state capital and helping real people who are impacted daily by War on Drugs and the criminal justice system. I know that my experience at WERC showed me that I could make a difference even if it was just one client at a time.

Students also found personal transformation at the Clinic. They forged close bonds with their fellow clinical law students and got individualized mentoring from the clinical faculty. For many first-generation law students, having a trusted person who helped them navigate the intricacies of the legal profession was invaluable. The Clinic helped Schyler Cothias ('19), currently an attorney in New York, find "the courage and confidence to stand up for others and fight against the odds." Josue R. Aparicio ('17), an associate at Hanson Bridgett LLP, similarly credits the Clinic for giving him the confidence "to walk into any courtroom knowing that I am capable of competing against any attorney regardless of experience level. Any litigator, no matter how inexperienced, is capable of obtaining positive results through preparation, due diligence and hard work."

The Clinic's supportive community, especially for many first-generation law students, gave them a safe space to be themselves. Rocío found law school "extremely challenging and isolating" but found in the Clinic "an invaluable community" that supported her. She acknowledged that the Clinic experience "helped my self-esteem and allowed me to feel empowered and better prepared to take the bar exam."

Finally, the Clinic reaffirmed for many students of color the importance of joining the legal profession. Josue, a first-generation American and native Spanish speaker, whose parents immigrated from Nicaragua, pursued a legal education because his family encouraged him to become a role model for the Latinx community. He said, "The Clinic showed the importance of working toward diversifying the legal profession. Many of our clients at the Clinic were immigrants that spoke little to no English. They needed lawyers/law students like us that spoke Spanish, came from immigrant or low-income backgrounds and/or empathized with their situation."

TRIBAL LEGAL DEVELOPMENT CLINIC:

UCLA School of Law

LAUREN VAN SCHILFGAARDE* & PATRICIA SEKAQUAPTEWA**

Tribes possess inherent sovereignty, which includes the authority to self-govern through distinct tribal legal systems.¹ They are extra-constitutional, in which the U.S. Constitution's provisions, including the Bill of Rights, have no force over tribes.² Yet the federal government can

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Lauren van Schilfgaarde is the San Manuel Band of Mission Indians Director of the Tribal Legal Development Clinic at the UCLA School of Law.

** Patricia Sekaquaptewa, former instructor at the Tribal Legal Development Clinic, is Affiliated Assistant Professor in the Department of Native Studies and Rural Development at the University of Alaska, Fairbanks, and Associate Justice of the Hopi Appellate Court in Arizona.

¹ See *Worcester v. Georgia*, 31 U.S. (6. Pet.) 515, 559 (1832) (recognizing tribes as "distinct, independent political communities") and *United States v. Wheeler*, 435 U.S. 313, 323–324 (1978) (upholding tribal powers of self-governance as the exercise of inherent sovereign powers, as opposed to delegated powers).

² Jordan Gross, *Incorporation By Any Other Name? Comparing Congress' Federalization of Tribal Court Criminal Procedure with the Supreme Court's Regulation of State Courts*, 109 KENTUCKY L.J. 299, 301 (2021), https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1201&context=faculty_lawreviews.

exert plenary authority over tribes, which has produced a variety of both harmful and supportive policies toward tribal self-government.³ Federal Indian law, the body of federal law regarding tribal-U.S. relations, is a core component of U.S. law and as old as the country itself. Yet, federal Indian law is a marginalized, if not completely neglected component of legal education.⁴ Tribal law, the bodies of law developed by any of the 574 federally recognized tribes, fares even worse.⁵

As tribes resiliently continue to self-govern, including through efforts aimed at the forced assimilation and destruction of tribes, their legal needs have grown exponentially. But because the legal academy has failed to sufficiently recognize and incorporate both federal Indian law and tribal law into the mainstream curriculum, there is a dearth of legal competency to serve these needs. The complexity and growing proliferation of Indian law cases across tribal, state, and federal dockets demand an elevated competency threshold for the entirety of the legal profession.⁶ Legal curriculum regarding Indian law can and must include exposure to actual tribes, their legal systems, and the diverse ways in which tribes interact with the law. The experiential education model offers a unique opportunity to facilitate these competency obligations to and about tribes and federal Indian law, while also enhancing law students' lawyering and comparative analytical skills.

The UCLA School of Law's Tribal Legal Development Clinic is designed to introduce students to the complexities of tribal law, federal Indian law, and the considerations of group, government, and cross-cultural representation. The Tribal Legal Development Clinic connects law students with tribal governments and organizations to engage in non-litigation, legal

³ See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.01 (Nell Jessup Newton, et al., eds., 2012).

⁴ Gloria Valencia-Weber, *Indian Law on State Bar Exams: A Situational Report*, THE FEDERAL LAWYER 26 (March/April 2007), <https://www.fedbar.org/wp-content/uploads/2007/03/focuson-valenciaweber-0307-pdf-1.pdf>.

⁵ Elizabeth A. Reese, *The Other American Law*, 73 STAN. L. REV. 555 (2021), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Reese-73-Stan.-L.-Rev.-555.pdf>.

⁶ See, e.g., *Oklahoma v. Castro-Huerta*, No. 21-429, slip op. at 12 (June 29, 2022) (Gorsuch, J., dissenting) ("Today the Court rules for Oklahoma . . . without any sense of this history recounted above and unattached to any colorable legal authority. Truly, a more ahistorical and mistaken statement of Indian law would be hard to fathom."), https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf.

development projects on behalf of the tribal client, using both classroom teaching and experiential learning methods. Law students work with law faculty on campus and travel to tribal communities and reservations. The Clinic engages in policy research and legislative drafting on a broad spectrum of subjects. Clinic clients have come from all parts of Indian country. Though, in part because UCLA is a public university in a state with a shameful history of tribal justice, the Clinic has a special responsibility to tribes in California.⁷ The Tribal Legal Development Clinic has additionally worked with non-federally recognized tribes and nonprofit organizations affiliated with either tribes or tribal issues. This article overviews the history, approach, and impact of the Tribal Legal Development Clinic.

HISTORICAL BACKGROUND

In 1996, California voters approved Proposition 209, which amended the state constitution to effectively ban the consideration of race or ethnicity in admissions decisions to the University of California.⁸ American Indian enrollment in the nine campuses of the University of California plummeted dramatically.⁹ Until 2008, when the UC Board of Admissions and Relations with Schools issued a policy clarification that political membership in a federally recognized tribe could be considered in admissions decisions,¹⁰ the UCLA School of Law and the UCLA American Indian

⁷ See, e.g., BENJAMIN MADLEY, *AN AMERICAN GENOCIDE: THE UNITED STATES AND THE CALIFORNIA INDIAN CATASTROPHE, 1846–1873*, Yale University Press (2017).

⁸ CAL. CONST. art. 1, § 31(a) (“The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”).

⁹ Cruz Reynoso & William C. Kidder, *Tribal Membership and State Law Affirmative Action Bans: Can Membership in a Federally Recognized American Indian Tribe Be a Plus Factor in Admissions at Public Universities in California and Washington?*, 1 CHICANA/O LATINA/O L. REV. 27, 30 (2008) (noting that, between 1995 and 2005, American Indian freshman enrollment at UC Berkeley, UCLA, and UC Davis declined by 74 percent), <https://escholarship.org/uc/item/9461z6cr>.

¹⁰ “Position Statement on Admissions Selection Criterion 13 and Membership in a Federally Recognized American Indian Tribe” (Board of Admissions and Relations with Schools — University of California, February 8, 2013), https://senate.universityof-california.edu/_files/reports/MTB2Sakaki_Tribal_Affiliation_final.pdf.

Studies Center were the only programs within the UC system to recognize tribal membership as an admissions factor.¹¹ Still, the wake of Prop 209 caused robust and complex harms.¹²

In response, Professor Carole E. Goldberg, founder and then director of the UCLA School of Law's Native Nations Law and Policy Center and celebrated legal scholar in federal Indian law,¹³ established the Tribal Legal Development Clinic. Professor Goldberg reflected that, particularly in the wake of Prop 209, it was essential for students to have direct experience working with a tribal community. From the beginning, she hoped the Clinic would help develop skills in two areas that continue to be underrepresented in legal education — cross-cultural representation and legislative drafting. The latter is not really taught in any major law school, and Professor Goldberg was hard pressed to find any published teaching materials on the subject.¹⁴ There is also very little written about representing tribal clients.¹⁵ The Tribal Legal Development Clinic is one of the first law school clinics to center on federal Indian law and tribal law and remains one of the few Indian law clinics in the country.¹⁶

¹¹ Reynoso & Kidder, *supra* note 9 at 32.

¹² Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209*, 137 Q.J. ECON. 115 (2022), <https://zacharybleemer.com/wp-content/uploads/Papers/QJE%20Affirmative%20Action.pdf>.

¹³ See, e.g., Joshua Rich, *Seeds of success: Through her students, law professor sows change in Indian country*, UCLA NEWSROOM (Nov. 18, 2018) (noting she was one of the first female faculty members at the UCLA School of Law in 1972 and her receipt of the 2013 Lawrence R. Baca Lifetime Achieve Award, the highest honor bestowed by the Indian law section of the Federal Bar Association, among her many accolades), <https://newsroom.ucla.edu/stories/seeds-of-success-through-her-students-goldberg-sows-change-in-indian-country>.

¹⁴ But see JUSTIN B. RICHLAND & SARAH DEER, INTRODUCTION TO TRIBAL LEGAL STUDIES, 3D ED. (Rowman & Littlefield, 2015) (which now serves as the primary textbook of the Tribal Legal Development Clinic).

¹⁵ Since then, some notable exceptions now include Carole Goldberg, *Members Only? Designing Citizenship Requirements for Indian Nations*, 50 U. KAN. L. REV. 437 (2002) and Kristen A. Carpenter & Eli Wald, *Lawyering for Groups: The Case of American Indian Tribal Attorneys*, 81 FORDHAM L. REV. 3085 (2013), <https://scholar.law.colorado.edu/articles/95>.

¹⁶ A list (though not exhaustive) of notable Indian law clinics includes the Tribal Justice Clinic at the University of Arizona James E. Rogers College of Law, the Indian Legal Clinic at Arizona State University Sandra Day O'Connor College of Law, the American Indian Law Clinic at the University of Colorado Law School, the Tribal Judicial Support Clinic at Kansas University School of Law, the Indian Law Clinic at Michigan

In 2001, Professor Goldberg recruited Pat Sekaquaptewa (Hopi) and her Hopi Tribal Court Project from the University of California Berkeley School of Law. Professor Sekaquaptewa, a 1995 Berkeley Law graduate, started the Hopi Appellate Court Clerkship in 1993 following a summer visit home from law school — and a summer clerkship with the Hopi Tribal Courts — to the Hopi Reservation in Arizona. Like many tribes, the Hopi Courts lacked the personnel and the legal resources to consistently manage appeals from the Hopi Trial Court. At the end of the summer, Hopi Appellate Court Chief Justice Emory Sekaquaptewa (her uncle), suggested that she return to Berkeley Law and recruit her fellow students to assist in resolving the backlog of appeals. According to Professor Sekaquaptewa,

After spending the summer with those files, I realized the significance and magnitude of the many questions of first impression bearing on the shaping of the Hopi tribal government. I also recognized a need to find a way to balance the recognition of, and the integration of, custom and tradition with contemporary Hopi and Tewa peoples' growing expectations of individual rights and other western norms and values.

After six years of running the clerkship at Berkeley Law, Professor Sekaquaptewa moved the project to the UCLA School of Law and incorporated it within the broader Tribal Legal Development Clinic. The Tribal Legal Development Clinic has since oscillated between incorporating tribal appellate clerking within its docket and offering a Tribal Appellate Court Clinic as a stand-alone course.

The Tribal Legal Development Clinic is housed within the UCLA School of Law's experiential program, which features a comprehensive selection of clinics, practicums, simulation courses, and externships. Since the foundational work of Professor Goldberg and Professor Sekaquaptewa, the Tribal Legal Development Clinic has functioned under the leadership of an array of instrumental adjunct faculty, including Clifford Lyle

State University College of Law, the Indian Child Welfare Clinic at the University of Minnesota Law School, the Margery Hunter Brown Indian Law Clinic at the University of Montana Alexander Blewett III School of Law, the Southwest Indian Law Clinic at the University of New Mexico School of Law, the Tribal Environmental Law Project at the University of North Dakota School of Law, and the Tribal Court Clinic: Criminal Defense and Family Advocacy at the University of Washington School of Law.



CLINIC STUDENTS SERVED AS JUDICIAL CLERKS AT THE HO-CHUNK NATION SUPREME COURT, BLACK RIVER FALLS, WISC., 2019 (L.-R.): BEN RATHOLON (THEN LLM); SIMONE CHUNG (THEN 2L); ASSOCIATE JUSTICE DAVID J. W. KLAUSER, CHIEF JUSTICE TODD R. MATHA, AND ASSOCIATE JUSTICE TRICIA A. ZUNKER (UCLA LAW 2006); LAUREN VAN SCHILFGAARDE, SAN MANUEL BAND OF MISSION INDIANS DIRECTOR, TRIBAL LEGAL DEVELOPMENT CLINIC, UCLA SCHOOL OF LAW; HOLLIE CHE (THEN 2L); ALEX BOOKOUT (THEN 3L).

Photo courtesy UCLA Tribal Legal Development Clinic.

Marshall, former chairman of the Hoopa Valley Tribe; William Wood, associate professor of law at Southwestern Law School; and James Kawahara of Kawahara Law. In 2019, the San Manuel Band of Mission Indians significantly impacted the trajectory of the Tribal Legal Development Clinic through a five-year \$1.3 million gift that facilitated the hiring of a full-time director. With this gift, the Tribal Legal Development Clinic was transformed from being offered once a year into a full-time clinic, offered both fall and spring semesters, as well as during the summer, in which law clerks are hired full-time. Lauren van Schilfgaarde was hired as the Clinic's first full-time director and served from 2019–2022.

THE CURRICULUM

Like most clinics, the Tribal Legal Development Clinic curriculum is multi-faceted. The seminar portion of the Clinic is designed to impart

substantive law, predominately tribal law and federal Indian law. Students are expected to recognize and understand that there is a third sovereign in the U.S. system — tribal governments with sovereign powers that pre-exist the formation of the United States and that persist today, with over 570 tribes formally recognized by the U.S. government. Students must recognize and understand the legal foundations and limitations of tribal sovereignty under U.S. law, particularly as they inform the subject matter of their project. Today, tribes are engaged in nation-building from the bottom up, in response to a historical federally controlled top-down construction of tribal government and its laws. As a consequence, tribal legal system development can mirror the early states' legal system development but must also respond to contemporary demands. Tribal law can include variations of a tribal constitution, code, case law, resolutions, and unwritten custom and tradition. Crafting substantive tribal law requires keen appreciation for the binding nature of existing tribal law, the historical context of the tribe, the contemporary state and federal legal frameworks impacting the tribe, and the extent to which other tribal, state, federal, and/or international laws are persuasive influences on the tribe. Students must recognize and understand that the foundations of tribal law stem from each tribe's unwritten customs and traditions as modified by their contemporary tribal constitutions, statutes, and common law.

The Clinic additionally strives to teach students how to work with tribes, including the complexity of interactions with tribal leaders, judges, agencies, and communities. The Clinic is designed to build specific legal skills that include legal research, memo drafting, client interviewing, crafting legislation, and clerking on appeals. Particularly with tribes as clients, students must navigate a group as a client. Do they represent the in-house counsel, tribal leadership, the tribal government, or the tribe itself? The student must develop skills in working with these various entities, including soliciting input for the (re)drafting of legislation. Critically, in conducting this work, the Clinic seeks to build the student's professional self-awareness — as a non-tribal member and also as a legal professional working in Native communities that are engaged in nation-building efforts within a different culture, with different world views and languages, and with different colonial histories and experiences. What type of lawyer does the student strive to be? What duties are encompassed in that role? How do they define success?

CLINIC PROJECTS

Over the course of the Clinic's two decades of work, hundreds of tribes and tribal organizations from across the country have worked with the Tribal Legal Development Clinic. Tribes submit requests for assistance on various nation-building projects that, once accepted, are assigned to law students. Clinic projects have included reformed constitutions, new statutes, rules, and protocols, the development of tribal courts and alternative dispute resolution processes, and the development of the tribal common law. The Clinic works closely with tribal attorneys, administrators, and leadership to carry out legal projects. UCLA faculty supervise the work on these projects and provide instruction in tribal law, federal Indian law, and in other areas of law implicated in a specific project.

Many tribes lack law-trained judges, law clerks, or in-house counsel. For tribes that do have staff attorneys, the in-house counsel tends to be under-resourced and over-worked. Few tribes have resources dedicated to drafting law. The Tribal Legal Development Clinic is designed to facilitate the organic nation-building efforts of tribal clients in a productive way that serves both the tribe and the students. The breadth of projects is just shy of remarkable. But so too is the work in which tribes are engaged every day. Lawyering in Indian country has always required malleability and eagerness, and so the Clinic strives to approach potential projects with the same zeal that will be demanded of these future attorneys. Purely as an illustration, and with the confidentiality of Clinic clients in mind, we offer this bullet list of example projects:

Child Welfare

- Establish tribal social services and foster care departments
- Research the interaction of state child welfare laws and the Indian Child Welfare Act
- Draft rules of court regarding Tribal Customary Adoption
- Research the inadvertent impacts of artificial reproductive technology and tribal membership provisions
- Research the impact of federal funding pressures on tribal child welfare laws

Cultural Resource Protection

- Draft cultural resource protection code
- Establish tribal institutional review boards for human subjects and cultural property protections
- Assist in the negotiation and drafting of inter-governmental agreement protecting sacred sites
- Publish *The Need for Confidentiality within Tribal Cultural Resource Protection*¹⁷
- Prepare template comments comparing the National Native American Graves Protection and Repatriation Act with state law
- Research state cultural resource protection laws
- Research the potential for cultural harvesting and access off tribal lands
- Publish, in partnership with the Pueblo Action Alliance, *Sacred Place Protections, Limitations, and Re-Imagination for Chaco Canyon*¹⁸

Economic Development

- Draft tribal trademark code
- Draft tribal corporations code

Environmental Protection

- Draft environmental code
- Research tribal authority to enforce environmental regulations on groundwater
- Draft cultural and endangered species code

Gender-Based Violence

- Draft domestic violence protection orders, stalking, and elder protection codes
- Implement the Violence Against Women Act's special domestic violence criminal jurisdiction into tribal code

Government-to-Government Interaction

- Draft sample consultation protocols
- Research the history of law enforcement relations in Public Law 280 jurisdictions in which there is concurrent state jurisdiction

¹⁷ <https://law.ucla.edu/academics/centers/native-nations-law-policy-center/native-nations-publications>.

¹⁸ https://drive.google.com/file/d/1a7o5rVAI6v0nSiEJKc3prlxxxCD_BrkU/view.

International Law

- Publish, in partnership with the Native American Rights Fund and the University of Colorado Law School, *Project to Implement the United Nations Declaration on the Rights of Indigenous Peoples Tribal Implementation Toolkit*¹⁹
- Compare federal intellectual property protections for traditional knowledge with international protections under the World Intellectual Property Organization

Land Use

- Assist tribes in acquiring a trust-protected land base
- Research options for a tribal land conservancy
- Research comparing traditional land tenure principles with western property concepts and laws
- Research comparing traditional village burial practices with mainstream property rights

Taxation

- Research examining dual taxation in Indian country
- Draft taxation enforcement criteria

Tribal Code

- Integrate custom and tradition, recognition of duties and privileges of traditional authorities, and use of traditional processes in drafting/ revising tribal laws
- Conduct comprehensive review of a tribal code for internal consistency

Tribal Court and Dispute Resolution

- Research to establish tribal courts and subject-matter dockets, including its subject matter and personal jurisdiction, the selection of judges, and other core components
- Research to establish a tribal nonprofit offering alternative dispute resolution services (mediation and arbitration) for family and property disputes
- Research to establish a Family Healing to Wellness Court (a tribal drug court for dependency cases)

Voting

- Research voting protections for Native communities under state law

¹⁹ <https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf>.

OBSERVED OUTCOMES OF STUDENTS

Law students have stated that it was an eye-opening privilege to be a part of the founding and the development of tribal governments within the Tribal Legal Development Clinic. The experience, they said, helped them to better understand how their own state and federal governments evolved. They also expressed an appreciation for the insights and sensitivities that they developed as part of the cross-cultural experience. After having completed a term within the Tribal Legal Development Clinic, whether a semester or summer clerkship, students have developed or enhanced their professional legal skills. Critically, however, students have also expanded their cross-cultural capacity and appreciation, and thereby dramatically altered their approach to the law and their future clients. A student reflected, “This class demonstrates the best of all the areas it covers: critical race theory, applied legal work, and cross-area legal theory.”²⁰ Former student (now attorney) Simone Chung described her appreciation for the comparative legal perspective in noting:

I’ve never read anything like the court opinions written by the Supreme Court of the Navajo Nation, which explore pre-constitutional law and custom through implicit concepts in the Navajo language. In *Navajo Nation v. Rodriguez*,²¹ the Navajo Nation adopted Miranda rights, not because the U.S. Supreme Court precedent was persuasive, but because the Fundamental Law or Diné dictates that police officers should treat all tribe members with dignity and respect.²²

The Tribal Legal Development Clinic is part of the UCLA School of Law’s Native Nations Law and Policy Center, which aims to prepare the next generation of lawyers serving Indian country. And numerous former students of the Tribal Legal Development Clinic have done just that. After taking the Tribal Legal Development Clinic, former student (now attorney) Ethan Elkind worked with Professor Pat Sekaquaptewa to responded to the observed

²⁰ Anonymous Student Evaluation of the Tribal Legal Development Clinic, Fall 2021 (on file with author).

²¹ 5 AM. TRIBAL LAW 473 (2004).

²² Simone Chung, *First Gen in Focus: Students Share their Stories of Success*, 42 UCLA LAW MAGAZINE 12 (Fall 2019), <https://law.ucla.edu/news/first-gen-focus-students-share-their-stories-success>. Chung, class of 2021, is an associate at Skadden, Los Angeles.

burden that the poor and the elderly were disproportionately expected to inform the Hopi Tribe's customary law within Hopi Tribal Court without any institutional support. Ethan Elkind, with the Hopi judges, designed a formal community-based mediation program to work with Hopi and Tewa families in conflict to transform their disputes into working relationships outside of court. These families were able to talk through their valued customs and ways and how they mattered in their families, internalizing traditional values and ways, instead of being court-ordered to follow them.²³

A small sampling of former students includes:

Adam P. Bailey, partner at Hobbs, Straus, Dean & Walker (Sacramento)

R. Daniel Carter, partner at Conner & Winters, LLP (Tulsa)

Carson R. Cooper, acting general counsel at Seneca Nation of Indians (Buffalo)

Kori Cordero, associate general counsel, Yurok Tribe (Medford-Grants Pass)

Michele Fahley, deputy general counsel of the Pechanga Indian Reservation (Temecula)

Richard J. Frye, associate at Hobbs, Straus, Dean & Walker (Sacramento)

Madeline Soboleff Levy, general counsel for the Central Council of Tlingit & Haida Indian Tribes of Alaska (Juneau)

Caroline P. Mayhew, partner at Hobbs, Straus, Dean & Walker (Washington, D.C.)

Padraic McCoy of Ocotillo Law & Policy (Boulder)

Melody Meyers, Office of the Tribal Attorney, Yurok Tribe (Arcata)

Nicole Sieminski, executive director at the Tulalip Foundation (Marysville)

Christina Snider, tribal affairs secretary, Office of California Governor Gavin Newson (Sacramento)

Geneva E. B. Thompson, assistant secretary for tribal affairs, California Natural Resources Agency (Sacramento)

Heather Torres, program director, Tribal Law and Policy Institute (Los Angeles)

²³ Elkind, class of 2006, is director of the Climate Program at the Center for Law, Energy and the Environment at UC Berkeley Law and leads the Climate Change and Business Research Initiative on behalf of the UC Berkeley and UCLA Schools of Law.

CONCLUSION

The Tribal Legal Development Clinic is just one example of the possibility of leveraging the needs of Indian country, the needs of legal education, and the ever dynamic and stimulating nature of Indian law. The Clinic seeks to uplift federal Indian law and tribal law as core components of the legal academy and profession. It seeks to meaningfully connect with tribes and the Native community. It seeks to ensure that law students receive substantive training in legislative drafting, client engagement, comparative legal research, and professional responsibility. Yet, with 574 federally recognized tribes, and increasingly hostile attacks on tribal sovereignty, there is simply too much need for just one Clinic. Our hope is that all law schools recognize and incorporate Indian law into all classrooms, as well as stand-alone courses. Tribes have immense wisdom to offer the law, and it is incumbent upon us to ready our capacity to receive it.

★ ★ ★