

# TEACHING TO ENCOURAGE MORE TO DO

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On the first day of class this semester, a student observed that I had started practicing law the year that she was born. Those twenty-four years of practice, only three of which have been spent as a clinical teacher, guide my sense of how clinical education should be structured to help students become effective problem-solvers and to use those skills to fight for justice for those on the margins of society. The twenty-four years that separate me from my students have been characterized by the emergence of entirely new categories of marginalized people and dramatic changes in how our laws treat less privileged individuals.<sup>1</sup> The complex social problems that attorneys confront today arguably require greater exposure to, and experience with, the wide range of problem-solving strategies that can be used to address inequities. Clinical education plays an important role in preparing students to do this work.

The way I have chosen to address some of these complex issues in my legal career<sup>2</sup> necessarily influences my view on one dilemma posed by the Wizner/Aiken debate: should clinical education be about serving the largest number of clients through individual representation or tackling complex problems that others have avoided or abandoned, using strategies that result in the representation of fewer individual clients. While my feet are planted more firmly in the world

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1. Individuals with HIV/AIDS and persons with criminal justice histories have emerged as marginalized populations during the lifetime of the students in my clinic. Laws have become decidedly more punitive for individuals who rely on public assistance, immigrant populations, and those with drug problems.

2. Like Aiken, I am concerned that my approach to clinical teaching is more of a reflection of what I like to do and how I like to lawyer rather than the best learning process for students. I began my career as a trial attorney with the Civil Rights Division of the Justice Department conducting voting rights litigation. I challenged discriminatory electoral systems and state and congressional reapportionment plans that diminished voting power of minority communities. While my job was to serve the public interest, I did not represent individual clients. My next job was with a public interest law firm that focused on drug, HIV/AIDS and criminal justice issues and permitted me to use a range of problem-solving tools, including individual representation and class action litigation, legislative advocacy and coalition building, and education. My goal was to *benefit*, but not necessarily *represent*, the most individuals who were harmed by discriminatory practices or the lack of access to health services. Had I chosen to practice law in a setting in which I represented large numbers of individual clients, I might now agree that the Wizner approach prepares students better for helping underserved individuals.

of practice than academia, I question whether a medical school model of client immersion adequately prepares students to not only understand, but, more important, *want* to solve the complex problems of less privileged clients and communities. An approach that helps students witness, understand, and reflect upon the implications of laws and policies that keep people sick, unemployed and shut out of society seems far better suited for the complex problem-solving that I hope students will engage in after law school.

A second theme in the Wizner/Aiken debate—the evolving integration of clinical teachers in the academy—also has important and not necessarily negative implications for advancing the social justice mission of clinical education. Integration in the academy holds the promise of exposing more students to the value of social justice lawyering than could ever be reached if our message is limited to those who enroll in a clinic.<sup>3</sup> It also enables clinical teachers to mobilize student resources for the benefit of lawyers who work on social justice issues.

### I. DOING OR TEACHING ABOUT DOING: A MIDDLE GROUND

The Wizner/Aiken debate suggests that clinical educators must make a choice between either representing underserved clients or teaching how to use the law to help individuals who have been marginalized by our justice system. A middle ground would acknowledge that both approaches can, and must, co-exist in a law school clinical program if, over the long haul, less privileged individuals are to be afforded the same breadth of legal representation as privileged individuals. Clinical education needs to teach students how to work with clients to resolve a civil or criminal dispute as much as it needs to teach them about the political, social, racial, and economic factors that have resulted in a grossly unfair playing field, which may need to be reformed to truly address the client's legal problem. The latter can be and, indeed is, best explored in the context of a real client's life. But that robust education necessarily limits the time that will be spent representing other individuals, particularly if

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3. The beauty of the Cardin requirement is that all students at the University of Maryland must be exposed to the legal problems of people who are poor, socially disadvantaged or lack access to justice in the legal system. Those lessons can be reinforced in virtually all classes.

the goal is to not only understand the underlying issues, but to also engage in the law reform process.

Thus, a criminal clinic's singular focus on helping twenty clients avoid mandatory prison terms for dealing drugs will teach students how to use the law to keep their clients out of the criminal justice system. Yet, that representation does little to address the equally critical need to challenge the fundamental fairness of a legal system that spends public funds on incarceration rather than drug treatment or permits one's criminal record to bar future employment. The pursuit of social justice requires someone to do more than address the criminal problem that brought the client to the clinic office; the continuum of legal issues and potential responses must be appreciated.

The process of helping students uncover the full story necessarily requires time to teach about, and reflect on, how our social, economic, and political systems disadvantage our clients, as well as how those systems can be used to address their problems. This means that students must gain an awareness of our administrative and legislative systems and the role of coalitions, grass-roots organizing, and the media in shaping policy decisions in those forums. Like many lawyering skills that we rehearse with our students, the process of choosing among various forums and strategies to solve a problem is not taught on the job, but is indispensable to effective representation. Helping students become aware of the full range of lawyering strategies means that underserved, less privileged individuals will have a better shot at equity. This teaching becomes an integral part of, not a distraction from, the representation.

Apart from the utilitarian value, placing a client's legal problem in this broader context may also make the difference in a student's willingness to help underserved individuals. The individuals who are represented by my clinic—those with histories of drug dependence and criminal records—have been so demonized by our laws that it would be quite understandable for many students to simply walk away from their problems. I suspect the same is true for other client groups with whom students, at least on the surface, share little in common. Teaching about the complexity of a client's life—the genetic, social, familial, and environmental factors that contribute to the development of an addiction, our health care system's response to addiction, and our legal system's role in shaping the public's response to those with addictions—can offer a reason to care about people who might otherwise evoke little sympathy or respect. Such knowledge can also suggest a range of solutions to problems that might be

overlooked if we focus only on the legal problem that brings the individual to the clinic.

Clinical education is as much about creating a passion for fighting for social justice as it is about helping a client solve a discrete problem. There is no better way for students to find that passion than by working with a client. Sustaining that passion, however, may require a deeper understanding of the client's legal, economic and social context, which is nurtured by teaching.

## II. THE BENEFITS OF INTEGRATING CLINICAL EDUCATION INTO THE ACADEMY

Expanding access to justice remains a primary mission of clinical education. Yet to achieve that mission, it may be more appropriate to consider how legal education—not just clinical education—can make the most of its responsibility to expand access to justice. Boosting the number of individual client's who receive quality legal services by clinical faculty “doing” more and “talking about doing” less will respond to the dearth of legal representation for low and middle income individuals. But to fight deeply entrenched injustice, more attorneys must engage in that work. This requires social justice mentoring in a far more pervasive fashion than clinical education allows.

The clinical educator's role within an institution can have a direct effect on the academy's willingness to address social justice issues. The risk that the academy will leave this social justice work to the clinical education program seems to be far greater when clinicians have as their singular role the provision of legal services (however that is carried out). Clinicians can have far more influence on students and faculty by being integrated into the academy, albeit to the detriment of direct legal representation. Teaching stand-up classes that touch on the substance of one's clinical practice opens the door to a student audience that may not otherwise participate in a clinical experience. Teaching traditional core courses, including contracts and torts, with an eye toward social justice issues may also influence the way students think about these issues in the future. Integration also enhances collaboration among clinical and non-clinical faculty, providing opportunities to incorporate discussions of social justice issues in courses that might otherwise miss those opportunities. Non-clinical

faculty do not have to be invested in the “practice” of law to promote an understanding of how our laws disadvantage people.

Traditional courses can also be a vehicle for assisting in the delivery of legal services without engaging in full-blown client representation. Just as law school faculty often provide advice to law firms on issues that practitioners may not have the time or expertise to explore, they can assign research and writing projects to students that are taken from and directly benefit the practices of public interest practitioners. Seminar paper topics can be pulled from the many issues that public interest attorneys need to examine as they evaluate the merits of particular legal challenges. Clinical faculty can be the bridge between outside legal practitioners and the law school faculty and student body and contribute to client representation without doing all the legal work.

Clinical education has an important role in identifying solutions to systemic problems that burden individuals with less privilege. Clinical practices have evolved from those in which I participated, which focused exclusively on individual case representation, to those that address an individual’s problem from both an individual and system’s perspective. The incorporation of legislative and administrative advocacy, policy analysis, community organizing, and media advocacy in our clinical practices brings the same legal tools that have long benefited the privileged to the aid of unrepresented groups. To do so often requires representing fewer clients, but it need not be at the expense of either fighting for social justice or instilling a passion in young lawyers to take up that cause.

