

# Washington University Journal of Law & Policy

## Introduction: New Directions in Clinical Legal Education—Law for the People

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The articles in this special volume of the *Washington University Journal of Law & Policy* represent a range of approaches for teaching and practicing law, but they have one thing in common. In each instance, the authors promote a vision of legal education and the practice of law that stresses access to justice for individuals and communities traditionally unrepresented or underrepresented by the legal profession. For those contributors writing about law school teaching, their emphasis on access to justice seeks to prepare law students to become ethical, effective lawyers who will strive to promote justice and fairness through the practice of law.<sup>1</sup> For those

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\* Professor of Law and Director of the Criminal Justice Clinic, Washington University in St. Louis School of Law. This volume would not have been possible without the hard work and dedication of the editors of the *Washington University Journal of Law & Policy*, including the work of Caldwell Collins, 2008–09 Editor-in-Chief; Elizabeth Schlesinger, 2007–08 Editor-in-Chief; Katherine Greiner, 2008–09 Managing Editor; and Lauren Taub, 2007–08 Managing Editor. This is the first of what Washington University School of Law expects to be several special volumes devoted to new directions in clinical legal education resulting from Scholarship Roundtables that the law school will host periodically. I also thank Sue McGraugh and Nina Tarr who participated as commentators at the first Scholarship Roundtable.

1. The legal profession recognizes that to provide ethical, effective representation to clients a lawyer must possess fundamental lawyering skills and professional values, including a commitment to justice. A special report of the American Bar Association (“ABA”), known as the “MacCrate Report,” described this commitment to justice as consisting of three parts: “Promoting Justice, Fairness, and Morality in One’s Own Daily Practice,” “Contributing to the

writing about specific practice areas or types of law practice, they outline more effective strategies for serving clients and providing them with access to justice. Together, these articles reflect the authors' shared commitment to give meaning to the lawyer's ethical obligation to bear "special responsibility for the quality of justice."<sup>2</sup>

Participating as a commentator in the Scholarship Roundtable sponsored by the *Journal* and the Clinical Education Program at Washington University, where the authors of these articles discussed their theses, I was struck by a sense of reverse déjà vu. I recalled a collection of essays published nearly forty years ago in *Law Against the People*.<sup>3</sup> The authors of those essays questioned both law schools' efforts to teach law students about justice and legal institutions' capacities to administer equal justice.

The focus of the essays in *Law Against the People* was understandable given the landscape of the late 1960s and early 1970s in the United States. There was widespread social unrest over the systematic discrimination and state-sanctioned violence against African Americans and other persons of color, and women were denied equal opportunities in education, employment, and political life. Those working for equality and justice through non-violent protests often faced attack dogs, police batons, and fire hoses. The government engaged in domestic spying and disinformation campaigns aimed at trying to discredit those working for justice, such as Martin Luther King, Jr.

Writing about the unequal justice afforded to persons of color and those protesting for equality and against repressive government policies in that era, a Presidential Commission stated "it must be emphasized that the courts—and other branches of government—have themselves contributed to the decline of legal authority."<sup>4</sup> The

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Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them," and "Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice." SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 213 (1992).

2. MODEL RULES OF PROF'L CONDUCT, pmbl. § 1 (1983).

3. LAW AGAINST THE PEOPLE: ESSAYS TO DEMYSTIFY LAW, ORDER AND THE COURTS (Robert Lefcourt ed., 1971) [hereinafter LAW AGAINST THE PEOPLE].

4. JEROME H. SKOLNICK, THE POLITICS OF PROTEST 318 (1969) (a Report by the Task

Presidential Commission emphasized that a chief problem was bias in the courts and that by using prohibitive bail to effectuate preventative detention “the courts contribute to the ‘breakdown of law’ and to the establishment of an ‘order’ based on force without justice.”<sup>5</sup>

The law and legal profession also were not welcoming to women in the 1960s and early 1970s. Fifteen states excused women from jury duty solely due to their gender,<sup>6</sup> and some laws disfavored women and benefited men, such as a husband’s right to the defense of “passion shooting” for killing his wife or wife’s lover while a woman killing her husband or husband’s lover would simply be charged with homicide and denied such a defense.<sup>7</sup> Law firms of that era also thought that women were not capable of practicing law, and the dean of Harvard Law School announced that an enrollment of five percent women was “about optimum” for law schools.<sup>8</sup>

Against the backdrop of discrimination that barred both access to law schools and to the courts for persons of color, women, and the poor, the authors contributing to *Law Against the People* sought to demystify the law and recommended changes to legal education, the practice of law, and legal institutions to make access to justice a reality rather than just a slogan. Chief among the recommendations aimed at legal education were calls to admit more persons of color and women to law schools,<sup>9</sup> to focus on justice issues and not solely legal doctrine,<sup>10</sup> and to offer clinical courses that instruct students in how to use legal theory to solve problems and assist poor communities.<sup>11</sup> Fortunately, many of those recommendations have

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Force on Violent Aspects of Protest and Confrontation of the National Commission on the Causes and Prevention of Violence).

5. *Id.* at 316.

6. Ann M. Garfinkle, Carol Lefcourt & Diane B. Schulder, *Women’s Servitude Under Law*, in *LAW AGAINST THE PEOPLE*, *supra* note 3, at 105, 107.

7. *Id.* at 108.

8. David N. Rockwell, *The Education of the Capitalist Lawyer: The Law School*, in *LAW AGAINST THE PEOPLE*, *supra* note 3, at 90, 101.

9. See Rockwell, *supra* note 8, at 101–02; *The Rutgers Report: The White Law School and the Black Liberation Struggle*, in *LAW AGAINST THE PEOPLE*, *supra* note 3, at 232, 233–36 [hereinafter *The Rutgers Report*].

10. See Arthur Kinoy, *The Role of the Radical Lawyer and Teacher of Law*, in *LAW AGAINST THE PEOPLE*, *supra* note 3, at 276, 278–80; Rockwell, *supra* note 8, at 96–98; *The Rutgers Report*, *supra* note 9, at 242–43.

11. See *The Rutgers Report*, *supra* note 9, at 239–40.

taken place, but access to justice for all still remains an unfulfilled goal.

In much the same way that the contributors to *Law Against the People* sought to outline proposals for changes and improvements in legal education and the practice of law, the authors in this volume, which I think of as “Law for the People,” make a series of recommendations for further experimentation in and improvement of legal education and the practice of law. Their contributions represent new directions for law teaching and the practice of law to serve clients better—advocating law *for* the people.

The authors explore a number of different issues that I view roughly organized around three main themes. There are articles that focus on innovative approaches to legal education in the United States; others focus on clinical teaching as a global movement and lessons drawn from transnational teaching experiences; and others focus on particular areas of practice, demonstrating the bridge that clinical programs play between legal theory taught in law schools and law in practice.

Three authors write about innovative approaches to legal education in the United States by examining different exercises in doctrinal and clinical courses to facilitate a better appreciation for justice issues and effective lawyering. Emily Hughes advocates taking first-year criminal law students to court to encourage students to consider how power and privilege operate within the criminal justice system.<sup>12</sup> Hughes contends that taking students to court can be a disorienting moment that prompts students to consider and question how criminal law functions in practice.<sup>13</sup> She notes that, inevitably, this approach incorporates the teaching of justice and not just doctrinal legal principles into the first-year criminal law course. By going to court as part of their studies, students see that the defendants are more than names in cases, but rather are real people, clients of

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12. Emily Hughes, *Taking First-Year Students to Court: Disorienting Moments as Catalysts for Change*, 28 WASH. U. J.L. & POL'Y 11 (2008).

13. Emily Hughes adopts Fran Quigley's definition that a disorienting moment is a time “when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner's prior understanding . . . of how the world works.” Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 51 (1995).

lawyers. By going to court with faculty, students come to appreciate that understanding the operation of law involves learning about the practice of law in real terms and not just abstract principles. Hughes implicitly challenges all law professors to consider how they can structure experiences in their courses to raise the legal profession's obligation to clients and to pursuing justice.

Antoinette Sedillo López analyzes the need for faculty to focus on teaching cultural competence in their clinical courses as an integral part of preparing students to provide effective legal representation.<sup>14</sup> Sedillo López identifies how clinical faculty can identify teaching goals aimed at developing cultural competence, and she explains how case supervision sessions with students are opportunities to pursue those teaching goals. She demonstrates how cultural awareness and intercultural communication are key to effective client representation, and why clinical faculty should teach these important lawyering skills. Sedillo López amply makes the case for why clinical faculty should pursue cultural competence as a teaching goal.

Spencer Rand explores how to teach students in clinical courses to appreciate the importance of clients' self-image in making case decisions.<sup>15</sup> Rand discusses how the law employs narratives for various legal matters, such as the negative connotation associated with "welfare" contrasted with the neutral or possibly positive narrative for "Social Security." He explains that these narratives are often ingrained in clients and may affect clients' choices because of the impact of such labels on clients' self-image. Using public benefits law and cases to illustrate his thesis, Rand sets out a model for helping students to understand the narratives of various legal proceedings and how to work with clients to recognize that the labels from the prevailing narratives may be affecting their case decisions. Rand illustrates another important aspect of how to teach client-centered lawyering.

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14. Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37 (2008).

15. Spencer Rand, *Creating My Client's Image: Is Case Theory Value Neutral in Public Benefits Cases?*, 28 WASH. U. J.L. & POL'Y 69 (2008).

Shifting the inquiry beyond law teaching in the United States, three of the contributors explore access to justice and clinical teaching in a global environment. Frank Bloch takes up the question of clinical legal education's commitment to access to justice from a global perspective.<sup>16</sup> Bloch contends that the emerging global clinical movement can increase both the amount and quality of law school-based access to justice. He argues that the global clinical movement should consciously see its role in providing resources and leadership to address access-to-justice issues around the world. Bloch explains that clinical legal education has become a global movement because of its global reach, its clinical base, and its status as a movement. He argues that each aspect needs to support and reinforce the others, and he analyzes how this is occurring. Bloch suggests an approach to mobilize the global clinical movement to improve access to justice by drawing upon the experience of the Global Alliance for Justice Education ("GAJE").

Ann Juergens and Angela McCaffrey explore how teaching law students in Moldova inspired them to recognize the need for legal educators in the United States to focus more on professional values and professional identity in the law school curriculum.<sup>17</sup> Based on their experiences of using roleplays with Moldovan law students, Juergens and McCaffrey outline how to incorporate roleplays in the first-year curriculum of law school to begin to integrate instruction in the values of the legal profession into the teaching of legal analysis and doctrine. They contend that such roleplays are a simple way to make strides toward integrating ethical approaches into students' thinking about how to solve legal problems for clients. They also demonstrate how roleplays could respond to the Carnegie Foundation for the Advancement of Teaching's call "to bridge the gap between analytical and practical knowledge, as well as the demand for more robust professional integrity."<sup>18</sup>

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16. Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL'Y 111 (2008).

17. Ann Juergens & Angela McCaffrey, *Roleplays as Rehearsals for "Doing the Right Thing"—Adding Practice in Professional Values to Moldovan and United States Legal Education*, 28 WASH. U. J.L. & POL'Y 141 (2008).

18. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 12 (2007).

Margaret Martin Barry, Martin Geer, Catherine Klein, and Ved Kumari also draw upon their experiences of using clinical teaching techniques in other countries to explore how student feedback and other evaluation processes may be used to incorporate justice education as a more explicit goal of legal education.<sup>19</sup> They utilize their experiences in structuring a workshop attended by faculty and students from several different countries to explore the different approaches for assessing skills and values related to justice education. They discuss how difficult it is to assess skills and values related to justice, and they echo an observation from *Best Practices for Legal Education* that although difficult to measure, law schools should not “stop trying to instill a commitment to seek justice in students.”<sup>20</sup>

The next group of contributions broadens the focus to explore the role of clinical legal education in providing access to justice to specific communities. Michael Perlin explores access to justice in the civil commitment area of the law and the obligation to recognize and accommodate the need for well-trained legal representation for those with mental disabilities.<sup>21</sup> He demonstrates that this is a pressing issue globally, and he contends that clinical legal education should play a constructive role in helping to train law students to be lawyers capable of providing the type of legal representation needed. He also observes that if more clinical programs focused on providing representation in civil commitment cases they would help to provide access to justice for those in need.

Bill Ong Hing analyzes how lawyers working through client-based legal resource centers can provide useful insights into structuring collaborative work among law school clinical programs, other legal services providers, and client communities.<sup>22</sup> Hing uses the work of the Immigrant Legal Resource Center (“ILRC”), which

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19. Margaret Martin Barry, Martin Geer, Catherine F. Klein & Ved Kumari, *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J.L. & POL’Y 195 (2008).

20. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* 253 (2007).

21. Michael L. Perlin, “*I Might Need a Good Lawyer, Could Be Your Funeral, My Trial*”: *Global Clinical Legal Education and the Right to Counsel in Civil Commitment Cases*, 28 WASH. U. J.L. & POL’Y 241 (2008).

22. Bill Ong Hing, *Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center*, 28 WASH. U. J.L. & POL’Y 265 (2008).

started out as a law school clinical program, as an example of how to work with clients collaboratively and to share legal knowledge with clients. He especially focuses on how the ILRC has worked with clients in civic participation projects as an example of social change or “rebellious” lawyering. Hing calls upon more clinical programs to engage in collaborative lawyering as an effective way to meet the challenges facing client communities.

Karen Tokarz, Susan Brooks, Brenda Blum, and Nancy Cook focus on the resurgence of interest in community lawyering, and address the challenges of translating community lawyering aspirations into the context of clinical teaching and learning.<sup>23</sup> They note that clinical faculty, identifying themselves as community lawyers, and their clinics engage in a range of different practice areas, but that all share the common goal of building partnerships with communities and community groups to identify and address client community issues. They note that community lawyering is an approach to the practice of law that requires building and sustaining relationships with client communities over time to address not only specific legal needs but broader economic, political, and social issues affecting client communities. These authors also examine how community lawyering approaches can benefit clinical law practice and teaching, and how community lawyering approaches necessarily involve students developing a wider range of skills than simply litigation.

In sum, the articles in this volume continue to advocate for a demystification of the law through improving law schools and the practice of law much like the essays in *Law Against the People*. The authors of the essays in that older book and the authors of these articles share a commitment to justice that spans two generations. It is a commitment to teach about justice, expose law students to issues about justice in their courses, and to use the practice of law to provide access to justice for clients traditionally denied a voice in legal proceedings and civic discourse. When that goal is fully met, the

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23. Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359 (2008).

words “Equal Justice Under Law” will be more than chiseled words above a court building.