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REAL LIFE MOOT COURT: The University of Idaho Legal Aid Clinic Appellate Component Benefits Students, Clients, and Court

By Maureen E. Laflin
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Consistent with a national trend, the University of Idaho College of Law offers students increasing opportunities in clinical education. Students in their third year at the College of Law can receive eight credits for completing two semesters of service in the College's Legal Aid Clinic. The clinic teaches lawyering skills and substantive law through faculty-supervised student representation of persons who could not otherwise secure legal counsel. Each student is assigned to one of the clinic's three components. Students in the general component represent persons from the local community in civil and misdemeanor criminal matters. In the Indian component, students serve as public defenders in criminal cases before the Nez Perce and Coeur d'Alene Indian Tribal Courts. Students in the appellate component represent pro se or under-represented individuals in federal and state appellate cases.

Recently, the College of Law received a three-year grant from the United States Department of Education to continue and expand the appellate component. Through the new Native American Appellate Project, clinic students, working under my supervision and that of Professor Dennis Colson, who teaches the College of Law's course on American Indian Law, represent Native Americans who have had difficulty obtaining representation at the appellate level.

This expansion in the appellate component enhances the substantive value of the clinical experience at Idaho while serving a serious unmet legal need in the state. In these respects, it marks not a change but a continuation of the valuable tradition we are establishing in providing quality representation while giving our students "real life" appellate experience.

The history of the appellate component reflects this emerging tradition. Clinical appellate practice began at the College of Law in 1990, when the college

received a grant developed by Clinic Director Kenneth S. Gallant and former Clinic faculty member Joan Fisher to expand its clinical offerings to include a federal litigation and appellate component. Under that grant, the Clinic assumed the representation of several death row inmates in federal habeas corpus and other post-conviction proceedings. The death penalty work was successful in that it served as a catalyst for the private Bar to pick up this aspect of the Clinic's work.

Over the past three years, appellate work has become an integral and critical component of clinical education at the College of Law. Our appellate cases currently come from several sources. The first are the federal pro se cases referred by the Ninth Circuit. This arrangement was initiated by the Ninth Circuit and administered by the court and the clinic. The Ninth Circuit preselects the cases and they are reviewed by the faculty supervisor to determine their appropriateness for the participating students. This procedure provides the necessary safeguards to ensure that the clients will be adequately represented and that the cases will contain substantial issues of educational value to the students.

This arrangement with the Ninth Circuit has proven to be very beneficial to students, clients, and the court. In addition to the Ninth Circuit cases, the Clinic receives appellate cases from public defender organizations, other organizations and attorneys, through word of mouth, and by way of appeals from our own general civil and criminal cases. These sources generate mainly state appellate cases. Also, students have argued two cases before the Idaho Supreme Court and several before the state court of appeals and various district courts. The court has verbally complimented many of our students and has praised the performance of three students in footnotes to published opinions. In *Smith v. Noona*, 992 F.2d 987, 987 (9th Cir. 1993), the Court wrote, "Smith was well represented on appeal by Ms. Michelle M. Evans, a law student from the University of Idaho College of Law." And in *Mendoza v. Blodgett*, 960 F.2d 1425, 1433 n.7 (9th Cir.

1992), the Court similarly commented, "The plaintiff-appellant/cross-appellee was well represented in this appeal by Kristin Bjorkman and Thomas G. Myrum, legal interns at the university of Idaho College of Law." The appellee in *Mendoza* subsequently filed a Petition for Certiorari with the United States Supreme Court. Two of our students drafted a Brief in Opposition and a Cross Petition. The Supreme Court denied certiorari. *Mendoza v. Blodgett*, 61 U.S.L.W. 3479 (Jan. 11, 1993).

Clinical appellate work offers students enormous educational value. In the appellate component of our clinic, students work intensively on one or two complex cases, sometimes working individually, otherwise in pairs, depending on the complexity of the case and the abilities of the students. This procedure requires the students to develop in-depth understandings of a few areas of substantive law and the public policy issues surrounding them.

The nature of this appellate work further teaches important skills students do not otherwise acquire in law school. They must prepare briefs often from voluminous records containing multiple potential issues, many of them hidden. Then they must present oral argument in a real courtroom before real judges, knowing that the interest of real people are at stake. This is far different from the training law students receive in simulated appellate advocacy courses or in moot court, where the records are brief and the general outline of the issues to be raised is usually fairly clear.

Students in our appellate component learn from and use the resources of the law school and of the university as a whole. Several have sought technical assistance from the University's psychology, english, philosophy, and medical faculties, for example. Clinical faculty members train students in the procedures of the appropriate courts and ensure their competence in the relevant substantive areas of law. The students frequently consult other members of the law faculty as they develop their appellate arguments. Prior to presenting oral argument, students give a minimum of three mock arguments before a variety of faculty members. In addition, they must schedule at least one mock argument before their peers. These usually take place during the weekly clinic meetings, ensuring full participation from all clinic students.

The goal of the appellate component of the clinic is to provide students with experience in sophisticated appellate practice while providing quality legal representation. We at the University of Idaho College of Law are thrilled that our most recent grant proposal has been approved, allowing us to continue the appellate component of the clinic and to expand it to include the representation of individual Native Americans at the appellate level.



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