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University of Idaho College of Law Clinical Program

Maureen Laflin

University of Idaho College of Law, mlaflin@uidaho.edu

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University of Idaho College of Law Clinical Program

by Maureen E. Laflin

Two new clinics provide new opportunities for UI law students. This past year the College of Law expanded its clinical offerings to include a Tax Clinic funded by a grant from the Internal Revenue Service and a Pro Se Clinic which is run in conjunction with the Latah County Courthouse Assistance Project. The College now offers five in-house clinics as well as an externship program.

Clinical education at the University of Idaho College of Law combines actual client representation, simulation, extern placement, and classroom instruction. Clinical courses are defined as those courses which concentrate on the study of the practice of law and the interrelationship of doctrine and process rather than pure doctrine. One of our main goals is the integration of the clinical and the doctrinal. This piece will focus on our five in-house clinics.

I. Second Year Clinical Offerings

In their second year of study, students can elect to take Lawyering Process, a two credit hour simulation pre-trial course, and Pro Se Clinic, a one credit live client clinic operated cooperatively with the Courthouse Assistance Project.

A. Simulation-Based Course

Lawyering Process, a pre-requisite to participation in the Legal Aid Clinic, teaches client representation skills through a series of simulations in a classroom setting. This course concentrates on pre-trial lawyering tasks including interviewing, counseling, negotiation, discovery, pleading, and client relations. There is also a heavy emphasis throughout on ethics and how to deal with the demands the legal profession places on its practitioners. Specific classes are devoted to topics such as stress management and alternative dispute resolution. Most of the students are in their second year.

B. Pro Se Clinic

In January 1999, the College of Law received a grant from the Idaho Supreme Court to coordinate and manage a state-wide Courthouse Assistance Project designed to provide assistance to self-represented individuals. Visiting Associate Professor Patrick Costello coordinates this project for the College of Law. As part of its mandate, the Courthouse Assistance Project selected ten counties to serve as pilot projects to help determine how to best serve the needs of pro se litigants. Latah County is one of the counties participating in the pilot project.

Last fall the Legal Aid Clinic and the statewide Court Assistance Project joined forces and created the Pro Se Clinic at the College of Law. This cooperative effort allows predominately second and a few third year law students to staff the Court Assistance Office at the Latah County Courthouse. Students assist self-represented litigants, two-thirds of whom are involved

in family cases, including divorce, domestic violence and custody proceedings. Other matters include small claims (10%), landlord/tenant (10%) name change (8%) and collection cases (4%). The students interview clients, determine eligibility for free or reduced-cost legal services, assist the clients in applying for legal services, direct the pro se litigants where to find appropriate legal research materials in the county, public, or law school libraries, or how to access free legal research sites on the Internet, assist litigants in selecting the appropriate standard court forms to use, and help them through the basic procedural steps for their court cases. The students also help the people identify issues (such as complex community property problems, child custody disputes, or domestic violence issues) that should most appropriately be handled by an attorney. In those instances, the students refer the parties to resources such as the Legal Aid Clinic, Idaho Volunteer Lawyers Program, the Legal Resource Line operated by the Idaho Law Foundation, Idaho Legal Aid Services and its domestic violence hotline, the state bar's Lawyer Referral Service, or to local attorneys participating in a Modest Means Panel. Fifteen law students have participated in the Pro Se Clinic thus far. Gary Peterson, a second year student, had this to say at the conclusion of his internship in the Pro Se Clinic:

"[I]n a small way, providing the assistance does improve access to justice. It reflects well on the individuals involved and on the legal profession, and it most likely does have a streamlining effect for judges, and attorneys with self-representing opposing parties."

The grant from the Idaho Supreme Court expands the educational opportunities for our students, assists self-represented persons, and creates a new and stronger link between the College of Law and the Idaho Supreme Court.

II. Third Year Clinical Program

Our in-house clinics are the hallmark of our clinical program. Third year students with limited licenses from the Idaho Supreme Court represent clients in a variety of different courts under the supervision of clinical faculty. All four of our third year in-house Clinics ("Legal Aid Clinic") currently operate on a two semester basis. During the fall and spring, all four Clinics are offered. During the summer, fewer students participate in the Legal Aid Clinic; therefore, we operate a scaled down clinical program, handling the carry-over cases from the spring and a few new cases.

In our Legal Aid Clinic, we seek to satisfy the twin goals of providing students with meaningful real-life experience while providing quality legal representation to under-represented populations. One important way of ensuring quality representation is to combine simulated and real client experiences. Thus all clinic students must take Lawyering Process in their second year and Trial Advocacy in their third year.

A. Simulation Based Course

This intensive week long course begins one week before regular fall courses and is a co-requisite for all clinic students. This is a learn-by-doing simulation course which prepares students to try real cases. The training follows the National Institute of Trial Advocacy (NITA) format of demonstration, discussion, performance, critique and video review. The week-long training culminates in a mock trial, pulling together all the major trial skills taught during the week. Trial Advocacy begins the week before other courses start in the fall, and is structured so that first year law students act as jurors and witnesses in the mock trial. This exposes the first year students to the trial process even before they have had their first law school class.

UI clinical faculty and other experienced attorney teams teach the course. The diversity in trainers provides the students with different styles and models of litigation techniques and introduces our third year students to members of the practicing bar. Thus Trial Advocacy teaches valuable trial skills, allows the practicing bar to share their expertise with our students, and creates a great learning environment for students and trainers. Over the years, we have had some of Idaho's best join our team including Merlyn Clark, Newal Squyres, Teresa Hampton, Candy Dale, Bob Alexander, Fred Hoopes, Susan Weeks, Tom Moss and Kathleen Elliott. Several judges have come on Friday and served as judges for the mock trials including Judge Dick St. Clair, Judge Pat Costello and Judge Jay Hanson. This year Judge Duff McKee will join our training staff for the entire week.

At the end of the course, students watch their videotaped trials and write a self-critique. One student wrote in his self-evaluation that:

"I have to say that in the first few days of it I was a bit depressed that something that looked so easy from the outside was indeed so difficult. I lost a bit of my confidence to do this stuff, but as the week continued, I gained my confidence back, and now feel great about the experience I have gained. The trial was a great deal of pressure, as I'm certain anyone who went through it would say, but through this baptismal fire we all emerge at least a little bit better at being trial lawyers. I myself have wanted to be one since I was in my early teens, and now I am only more determined to do that with my legal career."

B. Third Year In-House Clinical Program - Legal Aid Clinic

The Legal Aid Clinic consists essentially of a law office operating within the College of Law. This two semester course allows third year students, who have obtained limited licenses from the Idaho Supreme Court, to represent clients under the supervision of UI clinical faculty. Students represent indigent persons from the local community in family, civil and criminal misdemeanor matters, serve as public defenders in criminal cases before the Nez Perce Tribal Court, represent pro se or under-represented individuals in federal and state appellate cases and handle tax matters for low income taxpayers from the Northwest in controversies with the Internal Revenue Service. Students generally select one of the clinics; however, students in one clinic may work with students in another clinical offering if this does not create a conflict of interest.

The Clinic concentrates on teaching lawyering skills and substantive law primarily through the representation of actual clients who could not otherwise afford legal representation. Our emphasis is always on using the case as a teaching tool and producing the highest quality legal product. Ordinarily, a student preparing for trial or writing a major brief will be assigned fewer cases. Our primary mission is education, and thus students generally prepare thoroughly a small number of cases rather than serve all potential clients. We quickly limit caseload and in-take when the optimum number of teaching cases is reached.

Students hold regular office hours and are assigned appointments based upon their caseload. They also participate in a weekly seminar devoted to substantive issues, specific lawyering skills, and case rounds where students report on their cases.

Although clinical education is expensive, we are committed to our in-house clinics because they give students the opportunity to put theory into practice, develop litigation

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Regular Fall Terms for 2000

Boise.....September 5
November 6 and 8
December 1, 4, 6, 8 and 11
Idaho FallsSeptember 11 and 12
Pocatello.....September 13 and 14
Coeur d'AleneOctober 2, 3 and 4
Lewiston.....October 5 and 6
Twin FallsNovember 1, 2 and 3

By Order of the Court
Frederick C. Lyon, Clerk

NOTE: The above is the official notice of setting of the year 2000 Fall Terms of the Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE Court Of Appeals Of Idaho

Chief Judge
Darrel R. Perry

Judges
Karen L. Lansing
Alan M. Schwartzman

Regular Fall Terms for 2000

BoiseAugust 14, 16, 21 and 23
November 20, 21, 28, 29
December 12, 14 and 15
North IdahoSeptember 18- 22
Eastern IdahoOctober 16-20

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skills, and acquire insights which would not be otherwise available in the law school's curriculum. A live client clinic has many advantages over both classroom teaching and simulations. Students apply legal skills and knowledge they have obtained in core classes and from independent research to real cases — where the facts are not always clear, the law is not predigested, real people must be interacted with, and ethical questions arise. It is difficult to examine certain issues except in the context of a real case. As one student wrote in the evaluation, "I was more conscious of my work because I knew it affected a real live person." The fact that this educational experience is pursued through the representation of actual clients places participating students within the ethical constraints applicable to all attorneys.

This year the Legal Aid Clinic offers students the choice of four in-house clinical programs.

1. Tax Clinic

Students in the Tax Clinic represent low-income taxpayers from Idaho and surrounding states in controversies with the Internal Revenue Service. The Tax Clinic also hopes to operate programs to inform persons for whom English is a second language of their federal tax rights and responsibilities. We are the only Tax Clinic west of Colorado and north of California.

The Tax Clinic was developed in response to the IRS Restructuring and Reform Act of 1998, in which Congress authorized the Internal Revenue Service, subject to availability of appropriated funds, to make matching fund grants to qualified organizations (such as law schools) for the development, continuation, or expansion of qualified low-income taxpayer clinics. The first year, the IRS funded 34 groups, 16 of which were law schools. Of the 34 grantees, 24 operated existing tax clinic programs and ten, including the UI, were newly formed clinics.

The primary focus of the Tax Clinic is the representation of taxpayers involved in controversies with the Internal Revenue Service. To date, Tax Clinic students have assisted individuals and non-profit organizations in a wide range of disputes, ranging from initial notices and problems receiving refunds, to appeals, to offers-in-compromise. Though most of the Tax Clinic's clients are Idahoans, the Clinic also has handled cases from Oregon, Utah and even India. Some of the issues dealt with by Tax Clinic students have included alimony/child support characterization, hobby losses, dependency status, and the interpretation of foreign tax treaties. It is important to note, though, that the Tax Clinic is not involved in the preparation of tax returns. Also, because it is primarily concerned with the resolution of federal tax controversies, the Tax Clinic is limited in its ability to handle state tax matters.

Many of the cases handled by the Tax Clinic have involved the representation of individuals before the United States Tax Court. Last November, Tax Clinic students represented several clients before the Tax Court in Salt Lake City, and this semester, Tax Clinic students have the opportunity to appear before the Tax Court in Cheyenne, Las Vegas and Reno. Summer Semester students have been assigned to handle the Tax Court calendar scheduled for Seattle in June.

Another major focus of the Tax Clinic is the operation of programs to inform persons, for whom English is a second language, of their federal tax rights and responsibilities. Though the Tax Clinic has represented several individuals for whom English was a second language, it is looking for more ways to expand its outreach in this area, and would welcome suggestions from members of the Bar.

2. General Practice Of Law Clinic

Students in our General Clinic represent clients who could not otherwise afford a lawyer in a wide variety of cases, both litigation and non-litigation. These include criminal misdemeanors, domestic relations (including divorce, child custody and support, adoption and domestic violence protection), consumer matters, landlord-tenant, small business and non-profit start-ups and wills (including probate after the death of a testator). At the request of the federal district court, we have agreed recently to represent an inmate in a § 1983 civil rights action scheduled for trial in Fall 2000.

This practice resembles that in which the majority of Idaho lawyers participate. Most cases are small enough that they can be easily completed in the time that a student is involved in the Clinic program. A few are more complex and have resulted in student participation in trials lasting a week or more.

3. Tribal Clinic

Students in this Clinic travel to the Nez Perce Indian Reservation and serve as public defenders in criminal cases. The jurisdiction of tribal courts is limited by federal statute to crimes punishable by one year or less of imprisonment, the equivalent of misdemeanors in most state and federal courts. The law applied, however, is Tribal law.

This Clinic is aimed at students who desire intensive experience preparing and trying criminal cases. It further provides a first-hand experience in comparative law, sensitizing students to ways of legal thinking not prevalent in state and federal court.

4. Appellate Clinic

Since 1990, the Clinic has handled appellate cases. Our appellate cases currently come from two sources. The first are federal *pro se* cases referred by the Ninth Circuit. In addition, the Clinic receives appellate cases from public defender organizations, attorneys, individuals in Idaho, or by initiating an appeal from our general civil and criminal cases. These sources generate predominately state appellate cases.

The Appellate Clinic allows interested students to work intensively on one or two complex cases, requiring in-depth understanding of an area of law and the public policy issues surrounding it. Students handling appellate cases work individually or in pairs, depending on the complexity of the case and the abilities of the students. The nature of the appellate cases is such that, with appropriate screening and assignment, students generally are able to take at least one case to oral argument and completion during their two semesters in Clinic.

The Ninth Circuit has frequently recognized the quality of legal representation provided by students in the Appellate Clinic. Last summer in *Frost v. Agnos*, 152 F.3d 1124, 1127 (9th Cir. 1998), the court wrote in a footnote, "We commend pro bono counsel for their outstanding performance at oral argument and

for their fine legal work on this case." Reversing the district court's dismissal of a prisoner's civil rights claim in *Vignolo v. Miller*, 120 F.3d 1075 (1997), the court noted that the appellant was "well represented" by Appellate Clinic interns Chantelle Nash and Amy Rebholtz. Likewise, two 1997 memorandum decisions, *Curnow v. WSP Medical Staff*, 110 F.3d 67, 1997 WL 154054, and *Whitfield v. Fresno County Detention Facility*, 110 F.3d 72, 1997 WL 135818, recommended the representation provided by interns Stephen Noel, John Klukdsal, and Courtnie Tucker.

Our Graduates

The 1992 MacCrate Report acknowledged that different law schools turn out students for different types of practice. Most of our graduates go into the public sector, small firms, or solo practice. 1998 placement statistics show that of those who graduated from the University of Idaho College of Law:

- 41.5% private practice
- 27% judicial clerkships
- 16% government
- 7.8% business and industry
- 2.6% public interest organization
- 1.3% academic

Of those that went into private practice, we know the following:

- 3.1% solo practice
- 65.6% 2-10 person firm
- 6.3% 11-25 person firm
- 25% firm size unknown

Thus our graduates need to acquire some sense of how to practice before graduation. Graduates cannot rely exclusively upon their employer to train them and slowly acclimate them to client representation.

For many of our students, participation in the in-house clinics is the first opportunity to practice law. The habits of a lifetime begin here. The goals for our in-house clinics are:

- to help students develop the fundamental lawyering skills articulated in the MacCrate Report. One student wrote: "My clinical experience has met my expectations and beyond. I have been challenged over the last semester by quick deadlines, unfamiliar areas of the law and

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traveling adventures. Working with clients has also led me into uncharted territories and helped me learn how to work with others and patience."

- to teach ethical lawyering, emphasize fundamental lawyering values, and help students develop a professional self-awareness;
- to provide a means by which students can learn from experience both through doing and observing. One student answered the question, "why take clinic?," with the following comment: "In order to have the 'hands on' experience. The best way to learn law is to do it."
- to expose students to the plight of low income persons and to underscore the obligations of each lawyer to ensure adequate representation for everyone;
- to provide opportunities for collaborative learning; most of law school learning is intensely individual; students like working with fellow classmates instead of always competing with them—"I liked working on complex problems with other students and faculty advisor."
- to teach the importance of self-reflection and develop methods of self-critiquing.

Our goal is to create a comprehensive program which compliments the curriculum, pushes our students to explore their limits, and gives them an opportunity to dream and to define their life as a member of the legal profession. As one student wrote, "I liked my interaction with practicing attorneys and judges. It helped me feel more as an equal rather than as a 'less than.' The interaction helped dispel my belief that I am stepping into a profession where my intellect and abilities will never match up." Clinic provides a developmental laboratory. It also can help students determine what area(s) of law to pursue — "I know now that I don't want to be a trial lawyer;" "I did not expect to like criminal defense work, but it has been great." Clinic helps link theory and practice.

Maureen E. Laflin, Director of Clinical Programs,
University of Idaho College of Law • Moscow, Idaho 83844-2322
(208)885-6541 • (208)885-4628 FAX • mflaflin@uidaho.edu