

Virginia Law Schools Offer Clinical Placement Programs

by Renae Reed Patrick

A GREAT RECESSION can be a catalyst for change. Spheres that previously seemed immune to seismic shifts and influences that seemed to be merely gestating are suddenly transforming.

The legal profession is one sector that faces extraordinary challenges. Changes are kaleidoscopic, they come so fast, deep, and broad.

At the national level, we are witnessing large across-the-board increases in demand for services from legal aid societies. Due to the unsettled times, there are like increases in the numbers of pro se litigants clamoring for access to the justice system. At least one state's court system, coping with sizeable budget deficits and staffing cuts, has replaced law clerk hires with subsidized associates who were deferred from major firms. Professional notices indicate increases in lawyers moving into solo practice. Interest on Lawyer Trust Accounts revenues, which previously provided a funding floor for legal services for the poor, deflated precipitously as the housing balloon burst.

Even before the downturn, educators called for more clinical training of law students. They wish to see teaching of legal knowledge, skills, and values that point toward professionalism. See, for example, the Carnegie Foundation's 2007 report, *Educating Lawyers: Preparation for the Profession of Law*, and *Best Practices for Legal Education: A Vision and a Road Map* (Stuckey et al., with a forward by Robert MacCrate, 2007).

Now, for many reasons—including fallout from the international financial crisis—the legal profession appears to be heeding these calls. News stories tout the practical value of clinical legal education, externships, and other moves to ensure that newly minted lawyers are better prepared to engage competently in

a dynamic world and compete better for placements or self-generated business.

Cold statistics mesh functionally with a heartfelt message delivered by Clarence M. Dunnaville Jr. to the Virginia State Bar's Special Committee on Access to Legal Services. Hopefully, his remarks to the committee in spring 2009 have set a precedent, making it easier for others to engage in similar future conversations. The night before he talked to the committee, Mr. Dunnaville was presented with the bar's prestigious Lewis F. Powell Jr. Pro Bono Award. His remarks that night paid homage to the late U.S. associate justice's vision and courage in opposing massive resistance to court-ordered desegregation before Powell was ever appointed to the bench, while he served as a citizen lawyer leading the Richmond School Board.

As the 2009 Powell Award recipient, Dunnaville was commended for his more recent contributions as appointed counsel working on civil *Gideon* issues and for his lifetime of advocacy in the arena of civil rights. The latter included an ongoing commitment as a private citizen to perpetuate the legacy of the late civil rights lawyer Oliver White Hill Sr.

Fully engaged professionally in his seventies, and using the Hill House project in Roanoke as a model, Dunnaville urged the committee to be more proactive in fostering structured opportunities for intergenerational collaboration. With access to justice the goal, he feels that faculty-supervised interactions between law students and seasoned members of the bar have the potential to benefit many low-income clients across Virginia. In the style of a visionary and advocate, he challenges us to involve the law schools directly in our efforts to promote access to justice. His article in this issue of *Virginia Lawyer* is a product of that summons.

Hill House—the example selected by Dunnaville—is an affiliate of the Washington and Lee University School of Law. Among other stakeholders, the program's partners include Blue Ridge Legal Services, where I am employed as supervising attorney.

To inform you about existing clinical programs in Virginia, we provide the following information. We hope you will consider these law school initiatives or those evolving at your own alma mater for personal philanthropic contributions or your volunteer time. Consider how the programs also might function as opportunities for networking or consultation, as we all cope with the challenges ahead.

These are summaries of the many clinical opportunities offered to students in Virginia's law schools. These clinical programs eliminate the gap between the classroom and the courtroom and offer students the opportunity to integrate legal theory with practical experience, to assume the role of lawyer and work directly with clients, to enhance substantive knowledge of specialized areas of the law, to explore professional responsibility issues, to gain a better understanding of legal institutions, and to gain public service experience. All of the work performed by the students is supervised by a professor and, in many situations, another practicing attorney.

UNIVERSITY OF RICHMOND SCHOOL OF LAW

The Children's Law Center comprises the Delinquency Clinic, the Disability Law Clinic, the Juvenile Law and Policy Clinic, and the Family Law Clinic.

The **Delinquency Clinic** is litigation-oriented. It focuses on the needs of at-risk children and adolescents. Clinic students advocate on behalf of children appearing before area juvenile courts, often as defense counsel for youth accused of delinquency offenses and

occasionally as guardians ad litem in cases involving abuse and neglect or custody issues.

The **Disability Law Clinic** represents youth with mental or cognitive disabilities, children and parents seeking special education and community-based services, and youth with mental disabilities who are incarcerated or institutionalized. Clinic students may be appointed guardians ad litem for children with mental health needs in the justice system.

In the **Juvenile Law and Policy Clinic**, students work on legislative, research, and advocacy projects to effect systemic change in current legal and policy issues that affect children in the delinquency, educational, or child welfare systems in Virginia and the Mid-Atlantic region.

Through the **Jeanette Lippman Family Law Clinic**, students provide legal assistance to families and children in the city of Richmond in areas of abuse and neglect, divorce, custody, child in need of supervision or services, public benefits, housing, and domestic violence. The Family Law Clinic is also a multidisciplinary collaboration with Virginia Commonwealth University. Graduate students and faculty from VCU'S School of Social Work and Department of Psychology help the legal team provide holistic service and referrals to clients.

The **Clinical Placement Program** is divided into five sections:

- Civil — places students with government and public interest agencies.
- Criminal — defense and prosecutorial placements.
- Judicial — placements with state and federal judges at trial and appellate levels.
- Litigation — includes civil, criminal, and judicial placements.
- In-house counsel — places students with counsel for both national and international corporations.

UR's new **Intellectual Property and Transactional Law Clinic** offers students

opportunities to represent for-profit and nonprofit organizations, artists, authors, and inventors from a variety of backgrounds in business formation and rights acquisitions.

The **Institute for Actual Innocence** selects and redresses Virginia cases in which there is credible evidence that a convicted person may be innocent.

UNIVERSITY OF VIRGINIA SCHOOL OF LAW

The Law School's Pro Bono Program encourages all students to provide at least twenty-five hours of free legal work annually. The following projects offer them an array of experiences:

The Mortimer Caplin Public Service Center — The law school's chief program for public service programming and outreach. Students work with prosecutors, public defenders, legal service organizations, and nationally known public interest organizations.

Child Health Advocacy Project — Student volunteers are trained to do legal intake and case follow-up with families of patients seen at the U.Va. Children's Hospital or its affiliated clinics.

Hunton & Williams Pro Bono Partnership — Students volunteer under the supervision of attorneys from the firm's Richmond office to represent indigent clients in the areas of domestic violence, family, immigration, and asylum law.

Immigrant Jail Outreach Project — Students volunteer under the supervision of attorneys from the Capital Area Immigrants' Rights Coalition in Washington, D.C., to conduct know-your-rights presentations and other work at the regional jail in Hampton Roads, which has a large population of immigrant detainees.

Legal Outreach Project — Students volunteer weekly to do client intake for the Legal Aid Justice Center at area soup kitchens, homeless shelters, and low-income housing projects.

Piedmont Court Appointed Special Advocates — Student volunteers are trained and supervised to serve as advo-

cates for children who have been abused or neglected.

Pro Bono No-Fault Divorce Project — Students volunteer to assist with the filing of no-fault divorces for indigent clients under the supervision of attorneys from the Central Virginia Legal Aid Society.

U.Va. Law Veterans Medical Disability Appeals Pro Bono Program — Student pro bono volunteers are teamed with supervising attorneys to represent veterans before the U.S. Court of Appeals for Veterans Claims. The program emphasizes veterans whose disability claims have been rejected by the U.S. Department of Veterans Affairs.

Advocacy for the Elderly Clinic — Students represent elderly clients in negotiations, administrative hearings, and court proceedings on basic wills and powers of attorney, guardianships, consumer issues, Medicaid and Medicare benefits, nursing home regulation and quality of long-term care, elder abuse and neglect, and advance medical directives.

Capital Post-Conviction Clinic — The Virginia Capital Representation Resource Center conducts a clinic centered on the representation of those sentenced to death in Virginia and issues relevant to such cases.

Employment Law Clinic — Students work on employment cases in cooperation with the Legal Aid Justice Center and local attorneys. Cases include wrongful discharge actions, unemployment compensation claims, employment discrimination charges, and other employment-related claims.

Housing Law Clinic — Offered in conjunction with the Legal Aid Justice Center, this represents clients in housing-related cases involving eviction, rent escrow, grievance hearings, avoidance of illegal or unfair lease provisions, and abatement of substandard building conditions.

Mental Health Law Clinic — Students represent mentally ill or mentally disabled clients in negotiations, administrative hearings, and court proceedings on matters such as Social Security; Medicaid and disability bene-

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fits claims; disability discrimination claims; access to housing; advance directives for medical care; and access to mental health or rehabilitative services.

Prosecution Clinic— Students work with prosecutors and are exposed to all aspects of prosecution.

WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW

Every third-year student is required to take one clinic, externship, or other similar course. A year-long professionalism course taught by W&L School of Law Dean Rodney A. Smolla requires students to accumulate at least sixty hours of law-related service during their final year of law school.

Programs include:

- Through the **W&L Community Law Center** at the Oliver Hill House in the City of Roanoke, students handle estate planning for elderly Virginians, visas for immigrant victims of family violence and violent crimes, restoring civil rights to ex-felons, and other types of legal problems considered on a case-by-case basis.
- **Low-Income Taxpayer Clinic** students provide free legal representation in controversies with the Internal Revenue Service, including audit representation, appeals, nonfilers, collection issues, innocent spouse relief, and representation before the U.S. Tax Court.
- **VC3.org** is a comprehensive capital defense resource guide maintained by Clinical Professor David I. Bruck and the Virginia Capital Case Clearinghouse at W&L, where students assist with legal research, drafting motions and legal memoranda, interviewing potential witnesses, reviewing, and summarizing records.
- **Public Prosecutors Program** students are placed with the U.S. Attorney's Office for the Western District of Virginia on projects that include legal research and writing assignments, participation in witness interviews, meetings with law enforcement

personnel, trial preparation, and participation in a trial.

- **General Externship Program** students may pursue placements that serve the public interest and are not covered by the clinical course offerings. Examples include clerking for a general district or juvenile and domestic relations judge and working with general counsel for a not-for-profit organization.
- The **Criminal Justice Clinic** focuses on defense in general district and circuit court of indigent clients facing criminal charges of assault, driving while intoxicated, shoplifting, and marijuana possession.
- The **Community Legal Practice Center** provides free legal services to qualified residents of the Rockbridge County area. It serves victims of domestic violence and community residents older than sixty who have limited financial resources.
- The **Black Lung Clinic** assists coal miners and their survivors who are pursuing federal black lung benefits for the years the miners worked for the coal companies. W&L's clinic has a success rate roughly five times the national average in cases in which its students appear.

Other programs include transnational practicum programs in Serbia, Liberia, Iraq, and Cambodia.

COLLEGE OF WILLIAM AND MARY SCHOOL OF LAW

Students in the **Legal Aid Clinic** work in the Williamsburg office of the Legal Aid Society of Eastern Virginia to provide legal services to indigent people.

In the **Federal Tax Practice Clinic**, students assist in the representation of low-income Virginia taxpayers before the IRS, U.S. Tax Court, and U.S. District Court.

Domestic Violence Clinic students help victims obtain protective orders and with legal issues accompany such violence.

The **Appellate Litigation Clinic** focuses on legal research and writing in

preparation of petitions and briefs on behalf of pro se, court-appointed, and public defender clients.

Special Education Advocacy Clinic students assist children with special needs and their families in special education matters.

The **Veterans' Benefits Clinic** offers students the opportunity to aid military veterans in the filing, adjudication, and appeal of disability claims with the Veterans Administration. Students work with psychology students at Virginia Commonwealth University in Richmond to refer clients for assessment, counseling, and therapy.

Students also participate in externships with public defenders and prosecutors, federal and state executive and legislative agencies, judges and courts, nonprofit organizations, law firms and in-house counsel, local government attorneys, and the General Assembly.

GEORGE MASON UNIVERSITY SCHOOL OF LAW

The **Clinic for Legal Assistance for Servicemembers** provides student representation in civil litigation, adjudication, and negotiation of cases that involve consumer protection, administrative law, bankruptcy, family law, landlord-tenant, contract, military law, and entitlement matters.

The **Domestic Relations Legal Clinic** offers students the opportunity to assist pro se litigants in obtaining uncontested divorces and all manner of domestic relations issues and cases.

Immigration Legal Clinic students work on a variety of projects, including legal research and drafting orders to appeals pertaining to immigration law issues.

The **Law and Mental Illness Clinic** allows students to gain experience in the judicial, legislative, academic, and advocacy aspects of laws that address the treatment of individuals with severe mental illness.

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Through enrollment in the **Legal Clinic**, students have the opportunity to work in the Fairfax County Circuit Court judges' chambers, the Office of the Public Defender, the Office of the Commonwealth's Attorney, or a private attorney's office.

In a legal clinic for **Practical Preparation of GMU Patents Applications**, students write applications that will be filed for inventors affiliated with George Mason University.

The **Regulatory Clinic** allows students to engage in the federal regulatory process, analyze an active regulation, and file public comments from a public-interest perspective with a federal agency.

Externships have been undertaken in the executive office of the U.S. President, the U.S. Court of Federal Claims, the National Center for Missing and Exploited Children, the Alexandria Commonwealth Attorney's Office, the U.S. Patent and Trademark Office, and the U.S. Department of Justice.

REGENT UNIVERSITY SCHOOL OF LAW

Legal Clinic students serve low-income clients and handle landlord-tenant, consumer, selected domestic relations, and administrative matters.

Judicial and governmental externships students engage in legal research and writing under the immediate supervision of an on-site attorney or judge.

LIBERTY UNIVERSITY SCHOOL OF LAW

Students take **lawyering skills** courses in all six semesters of law school.

Work with the **Liberty University counsel** provides students an opportunity to participate in constitutional cases of significant national importance.

The Liberty Center for Law and Policy, a partnership between Liberty counsel and Liberty University School of Law, provides students the opportunity to work with legislators and policy organizations on the state and national level.

The law school's clinical and externship programs include working with one of the nation's top Internet child pornography task forces, which prosecutes child pornographers and pedophiles.

Externships include working for state and federal courts and prosecutors, state and national legislators and policymakers, government agencies, and business and public interest law firms.

APPALACHIAN SCHOOL OF LAW

The **Externship Program** gives all students an opportunity to learn about the legal system firsthand by shadowing a practicing attorney in a public interest setting for six weeks.

The externship, which is mandatory for all students, is placed between students' first and second years of law school.

A New Role For Law Schools and the Bar

by Clarence M. Dunnville Jr.

THE NEED TO MAKE LEGAL SERVICES available to all citizens regardless of economic status is one of the greatest challenges facing the nation. In *Documenting the Justice Gap in America*, the national Legal Services Corporation reports that one million cases a year must be rejected by LSC grantees because of insufficient program resources, and those cases represent “only a fraction of the level of unmet need.”¹ To help close this massive gap, law schools need to change the way lawyers are trained. The mission of law schools should include responsibility for establishing clinical programs that provide direct legal assistance to needy clients and that produce graduates who are inculcated with zeal to make equal justice under the law a reality for all, regardless of economic status.

The Clinical Legal Education Association, in its 2007 publication *Best Practices for Legal Education*², states that “the legal profession, due in part to the shortcomings of legal education, is failing to meet its obligation to provide access to justice.”³ Many legal scholars agree.⁴

The inability of poverty-stricken persons, who now exceed 13 percent of the United States population, to obtain legal counsel has a huge impact on the lives of many citizens who lose fundamental rights and even their children. They are unable to navigate the legal system without legal representation.

Recent Virginia Supreme Court Cases

In *Mitchell v. O'Brien*⁵ which came before the Supreme Court of Virginia in early 2009, the appeal arose from an adoption proceeding instituted by the O'Briens. The child whom the O'Briens sought to adopt was the daughter of Mitchell, aged twenty-one. The mother of the child had placed the child for adoption without notifying Mitchell. Mitchell desired to parent the child.

Although he was not properly served, he appeared in the proceedings and opposed the adoption. He asserted that he was indigent and repeatedly requested the appointment of counsel. The Fairfax County Juvenile and Domestic Relations and Circuit courts refused the appointment of counsel. After trial, the circuit court terminated his parental rights and granted the petition for adoption. The Virginia Court of Appeals affirmed, and Mitchell appealed to the Supreme Court of Virginia.

For the Supreme Court appeal, Mitchell was represented by court-appointed counsel. The Virginia Trial Lawyers Association appeared as amicus curiae. It was argued that the Constitution of Virginia requires the appointment of counsel. Some states have provided for the appointment of counsel in civil cases involving fundamental rights of indigent persons, and the Virginia Supreme Court was urged to follow those states' examples.⁶

The Supreme Court, by order entered February 13, 2009, affirmed the

requested and denied in the trial court. *Brazell* involved the termination of a mother's parental rights. The mother was a victim of domestic violence. A psychologist for the Social Services Department determined her IQ score was in the borderline to low-average range and she had cognitive and emotional disorganization and a superficial and disorganized pattern of taking in information and responding. Her children had been taken by the department, which was seeking to terminate all parental rights and place the children for adoption. The trial court denied the mother's request for counsel and refused to grant a continuance to allow her to seek counsel. She was forced to proceed to trial without an attorney. Because of her lack of skills, she was unable to subpoena favorable witnesses, adequately present evidence that was helpful to her, or properly cross-examine the department's witnesses. The mother, unaware of trial procedural requirements, did not object to introduction of improper evidence introduced against her, or make a

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decision of the Court of Appeals. The Supreme Court ruled that the Court of Appeals did not err in denying court-appointed counsel and was not authorized by statute or constitutionally required to appoint counsel.

*Brazell v. Fairfax County Department of Social Services*⁷ was another 2009 case before the Virginia Supreme Court in which appointment of counsel was

motion to strike at the end of the department's case.

The department, which was required by law to prevail by clear and convincing evidence, argued that the defendant's parental rights should be terminated because she had not complied with its requirements that she obtain stable housing and employment and that she improve her parental skills, which the

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department claimed were inhibited by her mental condition. The department further urged that the children should not be returned to the mother because of the likelihood that her companion would again inflict violence on her, which would be harmful to the children. At the end of the trial, the judge appeared to have doubts that the department had sustained its substantial burden, as the following colloquy suggests:

The Court: You just told me that a few minutes ago, and that stable housing has been acquired within a period of twelve months. If that were the stand-alone condition, should her children be taken away?

Ms. Townes: It's not the stand-alone condition.

The Court: OK, let's go to the next one.

Ms. Townes: The other one is employment. She was instructed and court-ordered, and one of the major goals was to obtain stable employment.

The Court: Does she not have stable employment at this time?

Ms. Townes: Again according to her, yes.⁸

The mother appeared to have substantially met the department's requirement that she obtain housing and employment. Moreover, the department's own expert witness testified that she had made substantial improvements towards improving her parental skills, and stated in his trial testimony that she should be given more time to address her cognitive

issues so that he could thoroughly assess her progress. Significantly, there was evidence available in the files that the companion who had previously inflicted the domestic violence was barred by court order from having any contact with the mother, and had no contact with her for more than a year prior to the trial. This evidence was not presented, and the department argued strenuously in its closing argument that domestic violence was likely to occur. The Fairfax County Circuit Court terminated the mother's parental rights and approved the adoption of her children.

The Court of Appeals affirmed the trial court⁹, holding that the respondent was required to be held to the same trial procedural requirements as if she had been represented by counsel, and because she had not objected at trial to the introduction of improper evidence, or made a motion to strike, she was precluded by Virginia Supreme Court Rule 5A:18 from challenging the insufficiency of the evidence on appeal.

In the petition for appeal to the Supreme Court, it was argued that the mother should have been appointed trial counsel or, in view of the grave, drastic, and irreversible efforts of a judgment terminating her parental rights, been granted a continuance to seek counsel. The Virginia Supreme Court denied the petition for appeal, holding that there were no constitutional or procedural issues that warranted the appeal.¹⁰

Both the *Mitchell* and *Brazell* cases involved termination of parental rights, which are fundamental rights under Virginia and federal law. In both cases, the parties sought legal representation but were denied counsel at the trial level and forced by the trial courts to proceed without counsel.

The record reflected that Mitchell was never properly served, although he learned of the proceedings and actively participated. The Virginia Supreme Court has held that a court acquires no jurisdiction until process is served in the manner provided by statute and that a judgment entered by a court that lacks jurisdiction is void.¹¹ Therefore, judgment terminating Mitchell's parental rights could very well have been determined void if counsel had represented Mitchell and had raised the lack of proper service in a timely manner.

In *Brazell*, as stated above, hearsay and improper evidence were introduced. Also, the respondent was unable to subpoena her witnesses or present her case and effectively cross-examine. Counsel would have made the proper objections and a motion to strike so that, even if the respondent were unsuccessful at the trial level, she would not have been precluded from raising the insufficiency of the evidence on appeal.

The above cases are examples of how the fundamental rights of poor people are lost because of the inability to retain legal counsel.

Neither the indigent twenty-one-year-old Mitchell nor *Brazell*, with her impairments, had the skills to defend themselves and preclude termination of their parental rights. The likelihood of receiving justice in both cases was simply theoretical and illusory. Trial counsel was absolutely necessary to obtain a just result.

Termination of parental rights is only one type of case involving important legal rights wherein it should be required as a matter of right that attorneys be appointed for indigent persons.

Other types include, but are not limited to, child custody, immigration, and cases involving shelter, basic human needs, and life necessities.

Constitutional Standards

In 1963, the U.S. Supreme Court ruled that any person hauled into court who is too poor to pay a lawyer cannot be assured a fair trial unless legal counsel is provided. *Gideon v. Wainwright*¹²

However, in *Lassiter v. DSS*¹³, decided nearly twenty years after *Gideon*, the Court held that a constitutional right to counsel is presumed only when, if the party loses, he may be deprived of his physical liberty. If the case does not involve this possibility, due process requires the appointment of counsel only if a three-part balancing test dictates such an appointment. Thus, indigent defendants in civil cases have no automatic federal constitutional right to counsel unless their physical liberty is at stake if they lose. There is no “civil *Gideon*.”

Need for a “Civil *Gideon*”

In the *Mitchell* case, the Virginia Supreme Court cited *Lassiter* in its ruling that the trial court was not constitutionally required to appoint counsel to represent Mitchell.

The federal and state constitutional requirements for legal counsel to be provided to indigent persons has been the subject of litigation for half a century. Today there is a significant move nationally within the organized bar to require legal counsel at no cost to the indigent in matters of basic human needs, including cases seeking termination of legal rights. As stated above, several states have held that trial courts are required by state constitutions to appoint counsel in civil cases involving fundamental rights. However, as shown above, Virginia has not followed this position.

Justice Earl Johnson Jr. of the California Supreme Court has written in the American Bar Association’s *Judges’ Journal* that justice for the indigent, if based on mere charity or good luck is just “theoretical and illusory,” and without counsel it is difficult for judges to fulfill their essential purpose—to make correct and just rulings.¹⁴ This was the case in both *Mitchell* and *Brazell*.

Justice Lewis F. Powell Jr. stated:

Equal justice under law is not merely a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. ... [I]t is fundamental

that justice should be the same in substance and availability without regard to economic status.¹⁵

Unfortunately, justice is not the same for the rich and the poor. In the *Mitchell* and *Brazell* cases it is doubtful that the defendants’ parental rights would have been terminated if they had been able to afford competent legal counsel to represent them in the proceedings in the lower courts. Trial counsel makes a huge difference and should be available to all, regardless of economic status.

In 2005, the ABA formed an access to justice task force to study and recommend whether a resolution should be introduced to support the concept that counsel be required as a matter of right at public expense to low-income persons in certain adversarial proceedings where basic human needs are at stake. In August 2006, the ABA House of Delegates unanimously passed a resolution urging that counsel be required for indigents in civil proceedings that involve shelter, sustenance, safety, health, and child custody, based upon the recommendation of the task force.¹⁶

The *Judges’ Journal* has devoted two recent editions to the need for access to justice for the poor. In its Summer 2008 and Fall 2008 editions the journal provides a comprehensive look at current access-to-justice trends. The articles conclude that programs across the nation have brought new energy, vision, coordi-

Other bar associations have adopted similar resolutions.

It is my view that the Virginia State Bar Special Committee on Access to Justice should consider recommending that Virginia adopt a “civil *Gideon*” resolution that requires counsel to be appointed as a matter of right in cases involving important rights where basic human needs, parental rights, child custody, and other important fundamental rights are at stake.

Legal Services Corporation

More than three decades ago, Congress established the Legal Services Corporation, a private nonprofit corporation funded by Congress to financially support legal representation for poor people in civil cases. This representation usually is limited to persons whose family income is less than 125 percent of the poverty line, or about \$27,500 for a family of four. Legal services organizations help many indigent persons, but they clearly are unable to meet all the need because of poor funding and the limited type of cases they can handle. Studies by the ABA, state and local bar associations, universities, government agencies, and others estimate that, at most, 20 percent of indigent persons who require legal services in areas of basic human needs are able to obtain such services. One million cases a year must be rejected by legal services organizations because of inadequate resources.

The majority of poor and near-poor people have no meaningful access to legal services

nation, and focus to maximizing the limited resources that are available for legal services for the indigent. In April 2009, the Philadelphia Bar Association adopted a resolution providing for counsel to be appointed in cases involving shelter, basic human needs, child custody, and termination of parental rights.

The majority of poor and near-poor people have no meaningful access to legal services, and it appears unlikely that Congress and private donors will provide adequate resources to solve this great challenge to deliver quality cost-effective legal services to the poor. A new approach is required. In addition to the current legal services programs and pro

bono commitments, there is a need for substantial additional resources to be tapped and for creative solutions to be explored.

Use of Law Students to Help the Indigent

Virginia's law schools are a significant and untapped resource available to help meet the need for legal representation of Virginia's indigent. In Virginia, it is esti-

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mated that there are in excess of three thousand persons attending law school, approximately one thousand of whom are third-year students. Students could be marshaled to assist poor people who need legal representation if law school clinical programs were in place. Use of law students would not solve the access to justice problem, but it could make a huge difference.

Law students are available in every part of Virginia. They are energetic and creative, and most are dedicated to the rule of law and social justice. Use of law students to serve a fundamental need of our society — to provide access to justice by the poor — would greatly benefit the students by providing training and would help fill the void in resources to provide legal services.

A New Way to Prepare Students

If poor people in need of legal services are to realize the benefit of the untapped resource of law students, law schools must change the way they educate students. The schools and the bar must institute programs that support and assist the implementation of such changes.

For at least two decades, the training of law students has been debated within the profession.¹⁷ The transformation of

students into lawyers is a substantial undertaking. In earlier times this was accomplished by the apprentice method. Under the practice of training apprentices through service to established lawyers, aspiring lawyers developed fundamental knowledge and skills through on-the-job tutelage by senior practitioners.

Over the past century, the education of lawyers has moved almost exclusively to law schools. Academic instruction in classrooms is the method by which vir-

tually all lawyers are now taught. It has been a concern for years that classroom teaching does not train aspiring lawyers to become lawyers. Law schools neither train students to become lawyers nor supply them with the information and rules they will need to apply to the practice of law. The primary goal of law school is to teach students to “think like lawyers”; that is, to analyze problems and issues and formulate solutions.¹⁸ Law faculties generally adhere to the view that the point of good professional training is to develop analytical and critical skills.¹⁹ They are not concerned with training in the practical skills.

This academic training comes at considerable expense to law firms and legal organizations that hire law school graduates. Practitioners usually must dedicate several years to develop practical skills not taught in school.

Professor Graham C. Lilly of the University of Virginia School of Law wrote fifteen years ago that “law schools are not well suited, by either their university setting or through their faculties of academic lawyers, to impart professional skills.”²⁰ This has been the view of many legal scholars for decades. Practical experience working with clients would be good for law students and good for

the profession. By changing how lawyers are trained and directing students to provide services to the poor, law schools could help fulfill the need for legal services for the poor, and at the same time provide far better training for aspiring lawyers.

Carnegie Foundation Study

In 2007, the Carnegie Foundation for the Advancement of Teaching published a study on the preparation for the profession of law.²¹ The study involved extensive field research that included observations and interviews with faculty, students, and administrators at a variety of law schools.

As the Carnegie Foundation study relates, the challenge of professional preparation for the law is to link the teaching of legal educators with the needs of practitioners and members of the public. The basic requirement of the profession is to serve the public.

The Carnegie Foundation study dissects the preparation of lawyers into three components: legal analysis, training for practice, and development of professional identity, including ethics and relationships with clients. Legal analysis developed at law schools is a prior condition for practice. Practice training, in contrast to legal analysis, is the development of skills required to practice the profession. Practical skills are “developed through modeling, habituation, experiment, and reflection,” the study relates.

The study recognizes that legal analysis can be taught in classroom settings to many students at once, but that development of practical skills requires individual attention. It suggests that the third element of the framework, professionalism that includes social responsibility and ethics, also should be developed by individual attention.²² The authors conclude that professionalism needs to become more explicit and better diffused throughout legal preparation, and they urge that movement in this direction be strengthened.²³ The study laments that courses on lawyering skills are typically elective, optional for

the students,²⁴ and that law school curriculums generally require no training beyond classroom legal analysis courses.

Currently, preparation for practice is left entirely to student initiative and future employers. Further, as the Carnegie study points out, most law school faculty are academicians drawn from a small number of leading institutions, and this limited pool has ensured substantial uniformity in career paths and outlook—especially in matters of faculty promotion and curriculum.²⁵ The uniformity results in little diversity of experience in faculty prospective among law schools that have advanced their status by copying the gold standard academic approach set for legal education.²⁶ In the schools visited by the foundation team, faculty consistently said that clinical programs were not a good use of resources, and faculty members were resistant to the importance of clinical pedagogical practices.²⁷ The study emphasizes that law schools today provide only the beginning stage of students' professional competence.

As every lawyer knows, the first-year law school curriculum is mostly standardized. Law schools impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals. Soon after their arrival at school, law students begin to think like lawyers, sift through cases, and understand the application of legal rules. This process takes place through the "case-dialogue" teaching method. The Carnegie Foundation study discerned that connecting this training with actual practice situations generally remains outside the method.

The study finds that, unlike other professional education—most notably medicine—legal education pays relatively little attention to direct training and professional practices. This is so even though the ABA Section on Legal Education and Admission to the Bar Standard 302 provides that each student receive substantial instruction on "professional skills generally regarded as nec-

essary for effective and responsible participation in the legal profession."

Another limitation found by the study is the failure generally to tie in the legal analysis focus with effectively developing the ethical and social dimensions of the profession. It was concluded by the Carnegie Foundation study that the shortcomings of limited focus on practice and lack of attention to professional responsibility are unintended consequences of the case dialogue method.²⁸

The Carnegie Foundation study group endorsed a new and different proposal for legal education: to link the three aspects of legal training—learning to think like a lawyer and legal doctrine and analysis, with the practical and the ethical-social and client relations element. Each aspect would contribute to the strengths of the other, "crossing boundaries to infuse each other."²⁹ Under the Carnegie Foundation proposal, the third year of law school would be devoted primarily to the practical and client-relations aspects of legal training.

If all eight law schools in Virginia³⁰ adopt the Carnegie Foundation's recommendation and all third-year students are required to participate in clinical programs to develop practical skills,

receive, or what the focus of training should be. I recommend that each law school require that all students complete a minimum of one full semester of clinical work devoted to the indigent, as a requirement for a law degree. This should not be a twelve- or fifteen-hour-per-week program. Full work week attendance should be required, as if employed full-time.

As shown above, meeting the needs of the economically disadvantaged for legal services is a compelling challenge. Law schools generally have not adopted the mission of promoting social justice. My suggested approach to involve law students would shift to those responsible for educating lawyers an important role: making equal justice under law the same for all, regardless of economic status.

Law schools, as the primary source of legal training, should have a duty to inculcate in their students an obligation to provide legal services to the poor and to establish programs to foster this goal. This is consistent with ABA Section on Legal Education and Admission to the Bar Standard 302 (b), which mandates that "a law school shall offer substantial opportunities for: (2) student participation in pro-bono activities." Professor

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approximately one thousand students distributed throughout the state will be engaged in clinical programs each year. Third-year students can obtain practice certificates and actually represent parties in court proceedings under the supervision of a licensed attorney. Between eight hundred and one thousand certificates are granted in Virginia each year.

The Carnegie Foundation does not address the types of clinical programs law schools should establish, the types of practical training law students should

Stephen Wizner of Yale Law School observed in an article published more than ten years ago that law schools most seek to attract and admit applicants who are idealistic and committed to social justice, and law school faculty must teach and nurture the professional obligation of promoting legal assistance for the poor.³¹

The argument that law schools should lead the quest for equal access to justice has been made by a number of legal scholars. Professor Robert Hornstein,

in a 2008 article³² in the *William Mitchell Law Review*, cites articles by legal scholars who lament that law schools are educating students for technical proficiency but failing to inculcate in them a proper sense of their social and public responsibilities as members of the legal profession. The scholars urged that law schools, and particularly law professors, have a moral responsibility to instill in their students the professional responsibility of providing legal services for the poor.³³ Professors Jeanne Charn of Harvard Law School and Jeffrey Selbin of the University of California at Berkeley wrote recently that law school clinics are in a unique position to contribute to the unfinished agendas of legal services through clinical education.³⁴

I believe that law students should be instructed early that lawyers are responsible for providing legal services to the indigent. The lesson should continue throughout law school, and third-year students should be required to complete a minimum of one semester of clinical programs devoted to social justice.

If law schools required their students to complete a semester of clinical programs, many more energetic young individuals would be providing legal services to the poor. This would benefit both the legal profession and society. The legal profession would benefit through faster and improved training of lawyers, and society would benefit because there would be an influx of prospective lawyers to work on pro bono and legal services projects. With third-year practice certificates, law students could be appointed to represent indigent defendants. In *Mitchell*, law students could have represented Mitchell in the juvenile and domestic relations court and perhaps enabled Mitchell to retain his parental rights. In *Brazell*, law students could have assisted and advised Brazell early in her encounter with the Department of Social Services. If they were unable to resolve her problems on an administrative level, they could have assisted her in preparing her case for trial and they could have participated in

With proper supervision, law students in many cases can be more effective than practitioners.

the trial. With proper supervision, law students in many cases can be more effective than practitioners.

It is recognized that bread-and-butter clinical programs with future employers—such as internships with law firms, prosecutors, and government agencies—are important. They should also be continued and perhaps expanded if law schools adopt the Carnegie Foundation's recommended approach to training prospective lawyers.

A requirement that all law students be compelled to complete one semester of providing legal services for the indigent would be a monumental step toward access to justice for all, irrespective of economic status. The clinical programs should include both civil and criminal clinics.

If all law schools moved to the Carnegie Foundation's model and adopted clinical programs that focus on social justice problems, there would in all likelihood be a shortage of clinical faculty available to provide leadership and supervision of the many students who would be participating. ABA Standard 304-3 requires that clinical courses be under the direct supervision of a member of the law school faculty. To hire enough faculty members to supervise the students would be expensive.

Law schools can economically meet the increased need for clinical program leadership in several ways: Although the courses must be supervised by a clinical faculty member, law school alumni can supervise and lead individual students. Alumni can advise students in practical aspects of law practice. Many law firms require their lawyers to discontinue their active case loads when they reach retirement age. Those lawyers, who include

some of the most distinguished in the nation, may be utilized by law schools for clinical training. Virginia has an Emeritus Rule that allows attorneys to retire from active practice and continue to serve as lawyers for legal services organizations. The Virginia State Bar's Access to Justice Committee has requested the Supreme Court of Virginia to modify the rule to explicitly allow emeritus-status attorneys to work with law school clinical programs that provide pro bono services. This would add experienced lawyers to serve the needs of the indigent for legal services. Local bar associations should play a key role by helping to design the programs and staffing them through their committees. In addition, the Virginia Bar Association and specialty bars such as the Virginia Trial Lawyers Association can provide support.

Even with the use of alumni, retired lawyers, emeritus-status lawyers, and bar associations, additional clinical faculty will be needed to supervise the programs. Law schools will have to raise funds to support the added faculty.

Proposed Federal Legislation

U.S. Senator Thomas R. Harkin of Iowa has introduced the Civil Access to Justice Act of 2009. That proposed legislation provides for the federal commitment of additional resources to legal services organizations to fund civil legal services. It would increase the authorized funding level for the Legal Services Corporation from \$390 million to \$750 million. It would lift many restrictions currently placed on LSC-funded attorneys and would lift all restrictions on nonfederal funds except those related to abortion. Most importantly for law schools, the bill includes a provision that would authorize a grant program from the U.S. Department of Education to expand law school clinical programs.

If enacted, the Civil Access to Justice Act would provide up to \$250,000 to each law school. It would permit the funds to be used for planning, training of faculty, salary for additional faculty members, travel and per diem for faculty and students, student stipends, equip-

ment, and library resources. The bill specifically provides that the funds may be used for programs that involve practicing lawyers in the process of training law students to perform as lawyers.

The Harkin bill provides that the cases and situations handled may encompass judicial, administrative, executive, or legislative proceedings, including the full range of preparation for such proceedings, factual investigation, empirical research or legal analysis, and transactional matters.

The bill's provisions for federal commitment to law school clinical programs are significant. They recognize the importance of clinical programs in training lawyers, and they provide financial support for the initiation or expansion of such programs. The bill has wide support in the profession. It is supported by the ABA, the Brennan Center for Justice, the National Legal Aid and Defender Association, and the National Organization of Legal Service Workers.

Virginia Should Take the Lead

The need to change how lawyers are trained is established in the Carnegie Foundation study and supported by a number of legal scholars. The challenge is to train lawyers to fulfill a need for society to provide equal justice under law. As stated above, this very significant undertaking can be accomplished by requiring that all law students participate in clinical programs that provide legal services for the indigent.

Changing the law school curricula as recommended by the Carnegie Foundation study and using law students to provide access to justice for the indigent as suggested in this article would put Virginia in a position of national leadership in the quest for social justice. Virginia's law students at the same time would be able to develop legal skills and improve their marketability by participating in the clinical programs. They could gain an understanding of the justice system, the meaning of professionalism, and how to interact with clients, and they would graduate with a social consciousness to do their part during

their careers to make equal justice under law a reality in our society.

To reach this goal, law schools will need to develop the mechanisms to implement the changes. This is a substantial undertaking that requires thinking outside the box.

A cadre of volunteer attorneys must be trained to work with the students. It is suggested that the Virginia State Bar approve continuing legal education courses specifically designed for attorneys working with law schools in clinical programs. These courses could be developed by the law schools with input from the VSB Mandatory CLE Board and local bar associations. Such courses will need to focus on the intake and processing of cases; the resources that will be provided by law schools; respective roles of the attorneys, the students, and the clinical professors in charge of the programs; and a profile of anticipated clients and unique substantive areas of law.

There will also be a need for each law school to determine the practice areas that it will focus on. Legal services for the poor are needed in many areas: domestic relations, including custody, termination of parental rights, and domestic violence; shelter, such as evictions, foreclosures, and homelessness; problems with governmental agencies;

It is suggested that the Virginia State Bar approve continuing legal education courses specifically designed for attorneys working with law schools in clinical programs.

immigration issues; problems faced by the disabled, members of the military, and their families; transactional matters; and many, many others. In the field of criminal law, clinical programs relating to juvenile offenders, capital offense programs, and innocence projects can make a significant contribution to the quest for social justice.

Law schools will be required to develop and staff their clinical programs. The Virginia State Bar should provide guidance and support. Legal services organizations, local bar associations, law firms, and individual practitioners will need to be involved. Nonprofit organizations, community organizations, the courts, prosecutors, and some government entities should also provide support. The entire legal community should join in programs that will greatly improve legal services for the poor. The suggestions herein are not a panacea, but would help develop, sustain, and instill in the next generation of lawyers a zeal to make equal justice under law a reality for all, regardless of economic status.

There would still be a need for all lawyers to provide pro bono services for the poor. The legal services organizations are unable to handle the huge number of cases and the addition of law students would help, but would not in my opinion close the massive gap.

Existing Clinical Programs in Virginia

Clinical programs have existed in different forms in Virginia law schools for years. For a comprehensive list of links to the programs see Virginia Law Schools Offer Clinical Placement Programs by

Renaë Reed Patrick on page 20. This article describes two.

The Washington and Lee University School of Law is following the recommendation of the Carnegie study to inculcate in students the professional responsibility to provide pro bono services for the poor. The class that entered this fall will be required in their third

Virginia should require that counsel be provided to the indigent in civil proceedings involving basic human needs or fundamental rights ...

year to devote substantial time to clinical work involving pro bono services.

In fall 2008, Washington and Lee established a pro bono program for indigent persons and senior citizens in Roanoke. The program is housed in the boyhood home of the late civil rights lawyer Oliver W. Hill Sr., in cooperation with the Roanoke Bar Association and the Oliver White Hill Foundation. The law students, with the help of the Roanoke bar, handled pro bono cases involving child custody, immigration, child abuse, victims of crimes, and habeas corpus, as well as other matters that affect the poor.

The Roanoke program has been very favorably received in the community. It is headed by Howard Highland, a Washington and Lee law graduate. A second W&L law graduate was added to the program recently to work with a growing number of students in the 2009–10 academic year.

The University of Richmond School of Law recently established a downtown Richmond clinical law center, which offers students the opportunity to serve the poor. The university's Jeanette Lipman Family Law Clinic represents indigent families in matters that include abuse and neglect, divorce, custody, public benefits, housing, and domestic violence. This clinic is a multidisciplinary collaboration with Virginia Commonwealth University. An Intellectual Property and Transactional Law Clinic offers University of Richmond law students opportunities to represent nonprofit organizations, artists, authors, and investors from a variety of backgrounds. The University of Richmond's Disability Law Clinic represents special-needs children and their

families who seek appropriate special education and community based services mandated by federal and state law. The Juvenile Law and Policy Clinic works with state legislators and other state officials, attorneys, and juvenile justice advocates to effect positive change in the laws and policies that impact children in the Virginia juvenile justice system. The University of Richmond also established a Delinquency Law Clinic, which represents youth charged with delinquency offenses that range from petit larceny and trespassing to burglary and possession of illegal drugs. Finally, the Institute for Actual Innocence works on selected Virginia cases in which there is credible evidence that a convicted person may in fact be innocent.

These are two examples that show Virginia law schools' commitment to training students in clinical settings. All eight Virginia schools have dedicated substantial resources to programs involving social justice, and many are closely involved with local bar associations.

Conclusion

Virginia should require that counsel be provided to the indigent in civil proceedings involving basic human needs or fundamental rights, including shelter, sustenance, safety, health, child care, and termination of parental rights. This may require that all members of the bar be compelled to provide pro bono services.

Most states have established specific annual pro bono service goals, but a number have not. Virginia recommends that attorneys devote 2 percent of their professional time to pro bono services. This may not be enough. It is recognized that the profession may be divided on the belief that pro bono work is some-

thing that all lawyers should do. Some members of the profession are not fully sympathetic to the cause.

I believe that all members of the legal community agree that it is highly desirable to provide better training for lawyers. My suggestion that law students aid in the cause is an economical approach that will train lawyers better and will benefit the profession and society.

Endnotes:

- 1 Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low Income Americans* 8 (2007).
- 2 Roy Stucky and others, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Association, 2007).
- 3 *Id.* at 24.
- 4 Stephen Wizner, *Is Learning to Think Like a Lawyer Enough?* 17 *Yale L. & Pol'y Rev.* 583, 591 (1998).
- 5 *Mitchell v. O'Brien*, Supreme Court of Virginia unpublished decision, February 13, 2009.
- 6 Alaska (In Re K. L.J.B 14 P. 2d 276 (1991). Connecticut) *Lavertine v. Nivaan*, 196 Conn; 403, 493 A. 2d 213 (1985); Florida (O.A.H. v. R.L.A., 712 So 2d 4 (Fla. App. 1988).
- 7 *Brazell v. Fairfax County Department of Social Services*, Supreme Court of Virginia unpublished decision, August 7, 2009.
- 8 *Brazell v. Fairfax County Department of Social Services*, Court of Appeals of Virginia, Record No. 1347-06-4 (Joint Appendix, vol. I, p. 530).
- 9 *Brazell v. Fairfax County Department of Social Services*, Court of Appeals of Virginia, Memorandum Opinion Per Curium, August 12, 2008, unpublished.
- 10 *Brazell v. Fairfax County Department of Social Services*, Supreme Court of Virginia, unpublished decision, Id.
- 11 *Slaughter v. Commonwealth*, 222 Va 787, 791, 284 S.E. 2d 824, 826 (1981).
- 12 *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).
- 13 *Lassiter v. DSS*, 452 U.S. 18 (1981).
- 14 Justice Earl Johnson, Jr., California Supreme Court -ABA Judges' Journal, Summer 2008.
- 15 Often quoted statement of Justice Powell.

- 16 American Bar Association resolution, August 8, 2006.
- 17 See: Graham C. Lilly, *Law Schools without Lawyers? Winds of Change in the Legal Profession*, 81 Virginia Law Review 1421 (1995); Harry T. Edwards, *The Growing Distinction Between Legal Education and the Legal Profession*. 91 Mich L. R. 34 (1992); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 Cal L. Rev. 1231 (1991).
- 18 Moliterno and Lederer, *An Introduction to Law: Law Study and the Lawyer's Role*, Carolina Academic Press 1991, p. 153.
- 19 Lilly, *id.* at p. 1422.
- 20 *Id.* at 1426.
- 21 William M. Sullivan, Anna Colby, Judith Welch Wagner, Lloyd and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, John Wiley and Sons (2007)
- 22 *Id.* at 14.
- 23 *Id.* at 87.
- 24 *Id.* at 87-88
- 25 *Id.* at 89-90.
- 26 *Id.* at 101.
- 27 *Id.* at 101.
- 28 *Id.* at 185-186.
- 29 *Id.* at 191.
- 30 Appalachian, George Mason, Liberty, Regent, University of Richmond, University of Virginia, Washington and Lee and William and Mary.
- 31 Wizner, *id.* at 585.
- 32 Robert Hornstein, *Teaching Law Students to Comfort the Troubled and Trouble the Comfortable: An Essay on the Place of Poverty Law in the Law School Curriculum.*
- 33 *Id.* See footnote 18.
- 34 Jeanne Charn and Jeff Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, New York Law School Clinical Research Institute, Research Paper Series No. 08/09 #3, <http://ssrn.com/abstract=1126444>.

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