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"The Justice Mission of Law School Clinics: A Cross-National Perspective"

Synopsis

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This session will examine the justice mission of law school clinics by drawing on the experience of three countries: Argentina, India, and the United States. There will be three parts to the program: 1) an overview of legal education and public interest advocacy in each country; 2) an assessment of the past, present, and future role of clinical legal education in each country, with particular reference to any public interest or justice mission for law school clinics; and 3) a comparative and normative discussion on the role of clinical programs in meeting national social needs and expanding lawyers' sense of public professional obligation.

This synopsis is intended to provide some background and to offer a brief preview of the session.

Part I: Overview of Legal Education and Public Interest Advocacy

Legal Education in Argentina is framed by the nature of Argentina's legal culture. Within Argentina's civil law tradition, the legitimacy of power derives from the consent of the people which translates into a hierarchical division of labor among the three branches of government. Congress is at the top, due to its closeness to the current popular will, the executive carries out the will of the people, as expressed by their representatives, and the judiciary simply applies the law, properly understood as expressing the people's will, when there are conflicts. As a result, the law is not to be adjudicated; to know the law is to know the code, by heart, if possible. Consistent with this model, law schools do not have full-time law professors or extensive law libraries, nor do they provide students opportunities to learn

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through discussion of ideas or principles. Students are simply taught the codes; they read the codes and the professor's handbook; they learn the law, no more and no less.

Public interest advocacy in Argentina is tied in a similar way to local political history. During Argentina's pre-1983 dictatorship, the judiciary, with a few notable exceptions, was either aligned with or frightened of the military, and therefore was not the forum to approach for relief; the law was not a very useful tool to change the course of the Argentine nightmare. With democracy, the focus has been to put pressure on the legislature to enact new laws. The judiciary is still regarded by many as an accomplice to the old order and change is not expected to come from the bench. Moreover, the profession has failed to take up the cause of law reform. During dictatorship, the few courageous members of the bar who dared represent the disappeared became themselves disappeared; they were seen almost as outcasts by most of their colleagues. The net result is that public interest advocacy through law is barely existing in Argentina; a public interest commitment is alien to its dogmatic legal tradition and outside the current culture of the profession.

Legal educators in India have sought to balance the contributions of traditional pre-Independence, British-influenced legal education with those from more recent reforms developed locally or imported from other countries, particularly the United States. The infrastructure of legal education in India is large and diverse; students may study law at a university law faculty, where most professors teach full time and the orientation tends to be more academic, or at a university affiliated law college, where the orientation is more practical and most faculty teach part time. Although most instruction is carried out in a traditional lecture format, clinical legal education has made some inroads in India, but not yet on a widespread scale. India is in the process of implementing new reforms in the structure of legal education whereby an optional undergraduate five-year law program, with mandatory skills training in the fifth year, may emerge as the national standard. Entry into the profession is not difficult in India, but success is difficult to achieve, especially in the first few years of practice. Many students study law only to obtain the advanced degree; indeed, one of the motivations behind the five-year undergraduate law course is to strengthen the professional orientation of legal education. The content of the standard law school curriculum is influenced to a significant degree by the traditionally active role the legal profession plays in shaping India's constitutional democracy. Students are introduced to a wide range of subject matter with a significant number of courses focusing on legal process, such as constitutional and administrative law, and on new areas of legal study, such as environmental law. Professional ethics is a required course at most law schools; pleading, drafting, and moot court is required at all schools.

Public interest advocacy in India has a long and vibrant tradition dating from before Independence, which was marred briefly in recent history during the period of the Emergency in the mid-1970s. Lawyers can argue for law reform from a broad range of compelling authority, including the Indian Constitution and international law, as well as modern common law developments and progressive legislation. Moreover, High Courts at the state level and

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the Supreme Court of India have taken dramatic steps to alleviate the considerable obstacles to pursuing prompt and efficient litigation for public interest cases by sanctioning special procedures for so-called public interest litigation. Consistent with this public interest dimension of law and the legal profession, the Government of India, together with the national and state bar councils, has supported the creation of various structures for providing legal aid services for indigent members of society. However, implementation of legal aid schemes has been a disappointment in practice, and the current structure for delivery of legal aid is presently undergoing major revisions and reform in an effort to narrow the gap between India's impressive theoretical commitment to public interest advocacy and the reality of its limited existence in the field.

Legal Education in the United States has been essentially static for most of the past one hundred years, except for the rise of the clinical legal education movement beginning in the mid-1960s. The dominant center of the current law school curriculum rests heavily on standard substantive courses taught in classroom settings through examination of appellate court opinions using the so-called "Socratic" question-and-answer technique. National accreditation standards require that all students take a course on professional responsibility. Although virtually all American law schools boast some form of clinical program with at least some scattered "clinical" courses in the curriculum, clinical training is required at only a small minority of schools. Law students are taught "to think like a lawyer" and are prepared to find and argue legal precedent as it may best suit their clients' interests. Clinicians continue to push for a greater commitment to instruction in skills and values. For the most part, however, legal educators and law students are satisfied with the current state of affairs; law school applications are down slightly from historic highs, but law schools are full and the vast majority of law students graduate and enter into the profession.

Public interest law practice in the United States is presently under strong attack on two fronts. Congress is taking an aggressively anti-legal services stance by imposing drastic funding reductions on the federal Legal Services Corporation and by engaging in persistent efforts to impose crippling restrictions on the type of cases, and even the types of advocacy, that are permissible in federally funded legal services programs. Although there has been a long and distinguished history of public interest advocacy in the United States by individual lawyers and by various privately funded public interest organizations, and those commitments remain today as an important source for public interest work, federally funded legal services programs now make up the essential core of public interest practice. It is likely, therefore, that these cut-backs will have their intended effect of removing poverty-related reform from much of the public legal agenda. At the same time, the federal courts, led by the Supreme Court of the United States, have gradually narrowed access for many types of public interest cases so that legal relief, even when a lawyer is available to pursue the relief, often is not available. Nonetheless, public interest advocates can still be effective in the United States; it remains to be seen how deep the present assault will go and how lasting it will be.

Part II: State of Clinical Legal Education

There is very little clinical legal education in Argentina. Free legal services are offered at law schools, but these programs are limited to providing assistance in simple, routine cases. The instructional content is also limited: to show the students what the paper work is about. Moreover, it is unlikely that clinical legal education will play a more substantial role in either skills training or public interest advocacy in Argentina without changes in the legal and political culture that serve to restrict both legal education and the public service dimension of law practice. Such change may not come about through continuation of the status quo; the challenge for clinical education in Argentina, therefore, is to help bring fundamental change in the national legal tradition. To consolidate democracy, Argentina must learn to have an open, rational, nondiscriminatory way of public discussion. A public interest oriented approach to clinical legal education could assist in achieving that goal.

Clinical legal education has had its proponents in India for more than thirty years, many of whom were influenced by developments in the United States. The value of clinical training, both in terms of teaching skills and raising the level of public interest advocacy by the profession, has been debated by prominent legal academics, key members of the judiciary, and various government commissions. The judiciary and the bar, through state and national bar councils, have given the clinical movement strong moral support and, through government-supported agencies, some financial support as well. Clinical programs are often seen as an important supplement to the efforts of the bar at providing legal services to the community. The reality, however, is that implementation of clinical programs has been inconsistent, with only a small minority of law schools – ranging from some of the leading academic law schools to a few local law colleges – leading the way. For those schools with active clinical programs, the main focus has been on legal aid and public interest advocacy. Many law school based legal aid projects provide only limited services. At the same time, a number of important recent reforms in legal services delivery in India, such as community based informal alternative dispute resolution forums (known as "legal aid camps" or *lok adalats*) and expedited procedures for public interest litigation, have come about with substantial support from law school clinics. There is now greater interest in adding a "practical training" component to the law school curriculum, which for the most part grew out of the clinical education movement. The challenge in India is to spread clinical legal education more widely and to gain greater acceptance as an important component of the law school curriculum without compromising its critical public interest focus.

Clinical legal education in the United States is reaching middle age, and the clinical movement can take great pride in its remarkable curricular successes since voluntary, student-run legal aid offices first appeared at American law schools in substantial numbers in the early 1960s. Although the growth line has not been consistently positive, as seen presently with substantial cut-backs looming due to loss of federal funding for law school clinical programs, clinical programs are at least part of the key to the future of legal education in the United States. Much of its claim for the future rests on the widespread acceptance, particularly among

leaders of the bench and the organized bar, of the need for a more competent and ethical practicing bar and in clinical education's central role in improving professional training in skills and values. The challenge for clinical education in the United States, particularly in these days of hostile opposition to lawyer access for the poor, will be to turn a greater part of its focus to issues of public professional responsibility, and to turn its likely windfall of support and responsibility for skills training toward more consistent implementation of public service oriented clinical practice.

Part III: The Justice Mission From a Cross-National Perspective

The remainder of the session will address the opportunities that clinical programs in different parts of the world have to focus student attention on problems of law and social justice, and their responsibility to do so. The panelists and other participants in the session will be asked to focus on specific questions relevant to these issues, such as: Can clinical programs be the vehicle for directing law school resources for these purposes? Should law schools seek faculty and students who are most likely to address national social issues, including the public role of the legal profession? Can a social justice agenda be integrated successfully into a skills and professionalism clinical curriculum?