



Externships as a Vehicle for Teaching Access to Justice

by

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As a relatively new externship instructor, I spend a lot of time thinking about externships – what they mean for our students, what they add to the clinical curriculum and law school curriculum more broadly, and how best to conceptualize and make the most of these courses that constitute one of the most prevalent forms of experiential legal education.

Thanks to the work of experienced externship instructors and scholars, there are now a number of resources and articles exploring externships' promise in promoting student learning with regard to lawyering skills and professional development. I have relied on many of these resources in planning my externship classes, and I will continue to draw on them as I work to ensure that I am helping students take full advantage of the skill development and professional identity formation opportunities the externship experience presents.

I have become increasingly convinced, though, that externships can serve other important pedagogical purposes as well. In particular, I think externship courses hold unique potential as vehicles for student learning about inequalities in the distribution of legal services in our society, or the access to justice gap.

The access to justice gap has increasingly commanded the attention of policymakers, scholars, and the bar. The growing concentration of lawyer-resources available to wealthy corpo-

rate and individual clients, coupled with the inability of ordinary people to access assistance for their legal needs, should be a matter of grave concern to everyone in the legal community. But, beyond general platitudes, the topic rarely comes up in the law school curriculum. The result is that students often enter the profession without an understanding of the distortions in the market for their professional services or the effect that those distortions have on our justice system.¹

Externships are uniquely positioned to fill that curricular gap. Through their site work, students in externship courses are participant-observers in the legal system – not just in the courts, but in the agencies and offices through which legal services and resources are organized and distributed to the public. No other course in the curriculum affords students the opportunity to immerse themselves in the institutions of the profession while requiring them to reflect and analyze their experiences and observations in those institutions. Because they provide a unique curricular window into the real-world operation of the legal system, externships can serve as fertile ground for students to identify and grapple with the implications of the skewed distribution of legal resources in our society and the inability of many ordinary people to access help for their legal problems.

In order to develop a deep, meaningful understanding of the access to justice gap, students must have the oppor-

tunity to examine our increasingly complex and fractured legal profession and engage in a critique of its organizations and institutions. There is a long history of externship instructors using the participant-observer framework to enable students to develop a critical understanding of the legal profession and the legal system. In a provocative and influential 1986 article, Robert Condlin argued for an “external cooperating law office” clinical model in which students’ work in external sites would provide fodder for faculty-guided development of a critical understanding of the profession and the practice.² In 1999, the faculty involved in the creation of American University Washington College of Law’s externship program described how they came to see the students’ site experiences as participant-observers in their practice settings as the “text” that would serve as the material for reflection and analysis in the externship classroom.³ They described one of the central pedagogical goals of the externship program as being to facilitate the students’ development of “system knowledge: that is, the inquiry into how systems work, what their advantages and disadvantages are, who they serve and disserve, and how they might be changed.”⁴

More recently, Professor Jessica Steinberg has advocated for integrating court observation projects into the

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clinical curriculum as a means of educating students about the access to justice gap and engaging them in systemic critique of legal roles and institutions, among other pedagogical objectives.⁵ While Steinberg focused on the promise of court-watching work in in-house clinics, many of her observations about the pedagogical possibilities of these experiences are also applicable to externships, where students can observe the legal system in action and then engage in a faculty-guided analysis of their observations with regard to access-to-justice and other institutional fairness issues.

Below are some questions to encourage student engagement in reflection and analysis that may help them understand the access to justice gap in particular contexts and develop broader conceptions about how unequal access to legal resources affects ordinary people's experiences of legal problems and the justice system. These questions could be used as prompts for journal entries, presented for class-wide discussion, or incorporated into classroom exercises or presentations.

Judicial and Administrative Externships

Students externing in courts at any level, or in administrative agencies in which individual claims are adjudicated, have the opportunity to gather concrete and practical information about how the presence and quality of legal representation can affect the ad-

judication of an individual's claim.

Questions that can serve to unearth and clarify access to justice-related issues for students externing in these settings include:

- What portion of litigants coming before your court/agency are unrepresented? Are there particular kinds of cases or matters in which litigants are more likely to appear without counsel? Do you know why that might be?
- Are there kinds of cases in your court/agency in which one side is generally represented, and the other side is not? What kinds of cases do those tend to be? What do you think accounts for this pattern?
- To what extent do unrepresented litigants appear to understand the law governing their claims? To what extent do they understand the procedures through which their claims are adjudicated? To what extent are they able to put forward facts to support their arguments?
- How do the adjudicative actors (judges, administrators) in your site view unrepresented litigants? What procedures – formal or informal – does the court or agency have in place to address the unique features of proceedings involving unrepresented litigants?
- For litigants who are represented, what are the fee arrangements with their attorneys and does the

nature of those arrangements seem to affect the litigation strategy or process at all?

Nonprofit and Advocacy Externships

Students externing in nonprofit legal aid settings – from legal services offices to impact or advocacy organizations – can observe how inequalities in the legal services delivery system affect ordinary people's interactions with the law even before their legal problems reach an adjudicative stage. Here are some questions that can help students think deeply about how resource limitations in the legal nonprofit sector relate to access to justice issues:

- How is your agency funded? What kind of restrictions come with this funding?
- How does your organization determine which clients it will provide limited services to, which clients it will provide extended services to, and which clients it will not serve at all?
- What happens to the legal problems of clients whom your agency is unable to assist?
- What factors affect the litigation strategy your office pursues on behalf of an individual client?
- At what point in the trajectory of the legal problem experienced by your clients do they turn to your office/agency? How do they find

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your agency?

How do your agency's attorneys handle cases involving unrepresented defendants?

Criminal Justice Externships

While many access-to-justice conversations focus on the civil sector, low-income people's experiences with the criminal justice system are heavily shaped by the legal representation they receive, which is in turn determined by the amount and distribution of public indigent defense funding. The following questions can help students externing in prosecutor and public defender's offices make sense of the allocation of indigent defense resources in their jurisdiction and analyze how that particular allocation affects the experiences of defendants:

- What percentage of the defendants in your jurisdiction are indigent and represented by appointed counsel?
- How does the state live up to its 6th Amendment obligations to indigent defendants in your jurisdiction – through a public defender's office, court appointments, or a mix?
- How is the public defender's office funded? Do you think it is adequately funded? How do funding constraints affect the representation clients receive?
- What is fee structure for appointed attorneys in misdemeanor cases? Felony cases?
- For externs in prosecutor's offices: how do attorneys in your of-

Other Externship Settings and General Externship Seminars

Even for students who are externing in other practice settings, such as corporate legal departments or non-adjudicative government agencies, the externship seminar can provide opportunities to learn and reflect broadly about the profession and the distribution of legal services to the public. I have introduced students to the Heinz Laumann studies of lawyers in Chicago, as well as the more recent After the JD studies, to make the point that a large and growing share of lawyers' services in the U.S. are consumed by corporate and governmental entities.⁶ I ask for a show of hands as to how many students have yet had the experience (in externships or summer internships) of representing a human being as a client versus the number of students who have represented corporate or organizational entities. I then encourage students to reflect on what the divide within the profession means for them and the career paths available to them.

I also ask students to review the preamble to the Model Rules of Professional Conduct and focus in particular on paragraph 6, which addresses lawyers' responsibilities as "public citizens." Paragraph 6 calls on law-

yers to "be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance." It also calls on lawyers to "devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel." I ask students to reflect on whether and how they observe attorneys in their externship sites living up to the exhortations in that paragraph, and to identify ways they may be able to carry out a "public citizen" role in their own careers.

None of these ideas are especially novel, and many experienced instructors may be incorporating them into their externship pedagogy as a matter of course. But at this moment of growing attention to deep inequalities in the distribution of legal resources and services in this country, it's important to recognize that externships offer a unique curricular opportunity to educate students explicitly and concretely about these inequalities.

Notes

1. Deborah Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 4 (May 2013).
2. Robert Condlin, *Tastes Great, Less Filling: The Law School Clinic and Politi-*

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cal Critique, 36 J. LEGAL EDUC. 45 (1986).
 3. Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403 (1999).
 4. *Id.* at 413.
 5. Jessica Steinberg, *Law School Clinics and the Untapped Potential of the Court Watch*, 6 IND. J. L. & SOC. EQUALITY 176 (2018).
 6. John P. Heinz and Edward Laumann, *THE SOCIAL STRUCTURE OF THE BAR*, UPDATED EDITION (1994); J. Heinz, R. Nelson, R. Sandefur and E. Laumann, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR*, (2005); *AFTER THE JD: THIRD RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS*.



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Good News : Moves, Honors & Promotions



Angela Cornell (Cornell) was awarded Cornell University's Graduate and Professional Student Assembly 2019 Faculty Award for excellence in graduate teaching, advising and mentorship.

K a t h r y n B a n k s (Washington Univ. St. Louis) won the St. Louis Bar Foundation's 2019 Spirit of Justice Award.



Binny Miller (American) recently received the 2019 A U W C L Innovation in Pedagogy Award.



K a r e n T o k a r z (Washington Univ. St. Louis) was inducted as a Distinguished Fellow in the International Academy of Mediators.



Darby Scott (Florida State) was elected Chair of the Tallahassee / Leon County Commission on the Status of Women and Girls.

Susan Bennett (American) recently received the 2019 A U W C L Outstanding Faculty Service Award.



Llezlie Green (American) has received tenure and a promotion to Professor of Law.



Anita Sinha (American) was appointed to the Executive Committee of the AALS Section on Clinical Education.