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Washington University Journal of Law & Policy

Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship

Introduction

Karen L. Tokarz*

In celebration of the thirtieth anniversary of the School of Law's Clinical Education Program, the Washington University Clinical Education Program and Center for Interdisciplinary Studies will host a national conference at the School of Law on March 13-15, 2003 on *Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship*. This conference builds on earlier work by the AALS Section on Clinical Education Committees on Interdisciplinary Clinical Education and Ethics and Professionalism. The conference project includes this pre-conference volume of the *Journal of Law and Policy* dedicated to interdisciplinary teaching, practice, and scholarship, and related ethical and social justice concerns. Following the conference, the *Journal* will publish another volume containing conference presentations and post-conference reports.

This volume features several individuals who will participate in the March conference: Jane Aiken, Professor of Law, Washington University; Kim Diana Connolly, Assistant Professor of Law,

* Professor of Law and Director of Clinical Education, Washington University School of Law. The author wishes to thank Jeffrey Schwartz, Managing Editor, and Steve Tountas, Editor-in-Chief, Washington University School of Law *Journal of Law and Policy*, and Kate France, Clinical Program Coordinator, Washington University School of Law, for their assistance with this project.

University of South Carolina; Rebecca Dresser, Daniel Noyes Kirby Professor of Law and Professor of Ethics in Medicine, Washington University; Michael Jenuwine, Clinical Associate Professor of Law, Indiana University-Bloomington; Daniel Ray, Assistant Professor, Eastern Michigan University; Dina Schlossberg, Clinical Supervisor and Lecturer, University of Pennsylvania School of Law; Abbe Smith, Associate Professor of Law, Georgetown University; Nina Tarr, Professor of Law, University of Illinois, currently Visiting Professor of Law, Washington University; and Stephen Wizner, William O. Douglas Clinical Professor of Law, Yale University. In their Articles, the authors highlight how interdisciplinary teaching, practice, and scholarship promote collaboration, communication, cultural awareness, ethical understanding, and justice.

Professionals across a wide range of fields have increasingly recognized the benefits of interdisciplinary teaching, practice, and scholarship. Educational institutions, especially law schools, have responded by developing clinical courses and other types of courses in a variety of subject areas, using a range of interdisciplinary approaches. Yet, there has been little focused discussion concerning the goals of these collaborative enterprises, how best to structure these efforts to achieve their intended objectives, and the potential impact on each discipline's ethical obligations.

The working conference, as well as the pre and post-conference volumes of the *Journal*, will address the following issues: What do we mean by "interdisciplinary" and "multidisciplinary," and is there a meaningful difference? How does one go about discerning the goals of collaborations between disciplines? What can we learn from reports from the field as to what are the best practices, different models, and likely problems? In what ways does the clinical teaching model, with its goals of educating students, providing services to the community, and advancing justice, serve as a model? How does one go about designing and developing an interdisciplinary program or class? What are the common ethical issues that arise in interdisciplinary education and practice, and what are some guidelines for resolving them? What are some of the challenges to interdisciplinary teaching, practice, and scholarship?

The intent of the project is to explore these issues in the context of law school interdisciplinary collaborations, which include clinical

courses, non-clinical programs, and classroom courses with a justice focus. The project hopes to draw from community projects and other disciplines for ideas and model programs. The goals of this project are three-fold: raise awareness of issues; inspire thoughtful discussion and debate; and produce published papers, guidelines, model syllabi, and course materials.

KIM DIANA CONNOLLY—ELUCIDATING THE ELEPHANT:
INTERDISCIPLINARY LAW SCHOOL CLASSES

Kim Diana Connolly, Assistant Professor of Law and Director, Environmental Law Clinic at the University of South Carolina School of Law, provides in her Article an introduction to interdisciplinary teaching and learning in legal education. Though there is some debate about the value of such teaching and learning in legal education, Connolly argues that it is responsive to the diverse background and training of law students, and critical to the education and preparation of capable, effective practitioners.

Connolly identifies a number of the barriers to, and benefits of, interdisciplinary legal teaching. Potential barriers, she suggests, can include cost, time required for coordination of teaching, prerequisite expertise needed on the part of students, and insufficient time to explore subjects with true depth. Connolly also cites physical separation of law school faculty and students from faculty and students in other disciplines, “marginalization of faculty,” and differences in ethical norms across professions as additional difficulties with interdisciplinary teaching. Connolly, however, also highlights profound benefits of such courses: development of analytic skills and practical skills; an ability to work collaboratively; an ability to meet multiple client needs simultaneously; highlights an appreciation for the limitations of legal knowledge; and student enjoyment.

Following her discussion of the development of an interdisciplinary course, Connolly recounts a case study from the University of South Carolina School of Law to highlight some of the crucial aspects to consider in interdisciplinary teaching. She concludes with a call for enhanced interdisciplinary resources,

increased opportunity to engage in such learning experiences, and an expansion of the field.

JANE AIKEN AND STEPHEN WIZNER—LAW AS SOCIAL WORK

Using examples of the justice-seeking, courageous, heroic lawyer so often portrayed in film, in their Article, Jane Aiken, Professor of Law and Director of the Civil Justice Clinic at Washington University School of Law, and Stephen Wizner, William O. Douglas Clinical Professor of Law at Yale Law School, argue that legal education and the legal profession would benefit from incorporating certain aspects of the “social work” model into law teaching, learning, and practice. Although members of the legal community working for low-income clients sometimes respond defensively when described as “social workers,” Aiken and Wizner believe the social work model offers a set of guidelines for moral action on behalf of underrepresented and unheard client populations that has much to contribute to the practice of law. Such benefits arise, they assert, because social work is guided by a desire to challenge social injustices; operates in a holistic and comprehensive manner, addressing the needs of the individuals, families and communities affected by social injustice; and approaches clients in a social context, considering all aspects of their lives.

Aiken and Wizner suggest that law teachers who embrace aspects of “social work” in their teaching and clinical practice can generate a greater engagement on the part of law students and faculty. While they believe typical law school courses aim to soften passionate feelings and teach students to separate the facts from their emotions, Aiken and Wizner believe social work courses operate differently by teaching students to foster feelings of emotion, act passionately in their field, and devote themselves to the moral issues at hand.

Aiken and Wizner carefully acknowledge that there are fundamental differences between the practice of law and that of social work. Notwithstanding, they argue that individuals engaged in the practice of law might do so more effectively if they integrate certain aspects of social work into their professional actions. The authors suggest that individuals who are able to carefully hybridize law and social work can develop critical abilities to confront the

breadth of issues that clients encounter, to struggle with social injustices in a way that is proactive and effective, to appreciate and better understand issues of diversity, and to work to empower clients through their interactions. As a consequence, they conclude, such an individual understands that her legal practice does not take place in a vacuum but, rather, within the context of a community of individuals and organizations. Further, she sees herself as a member of a larger team of professionals working toward social justice, and not as a sole actor isolated from other social institutions.

ABBE SMITH—THE DIFFERENCE IN CRIMINAL DEFENSE AND THE
DIFFERENCE IT MAKES

Abbe Smith, Associate Professor of Law and Associate Director of the Criminal Justice Clinic and E. Barrett Prettyman Fellowship Program at Georgetown University Law Center, examines in her Article the ways in which criminal defense differs from civil, and then examines the implications that these differences have for legal ethics. In Smith's view, the criminal defense lawyer is expected to advocate for her client ardently and confidently. For her, rules of "zeal and confidentiality trump most other rules." Smith argues that while criminal defense attorneys must honor the boundaries of legal ethics, they must push them wherever necessary and appropriate. Yet, Smith expresses concern that this passionate advocacy is not the norm with criminal defense lawyers. Constrained by structural obstacles such as a lack of resources and time, she perceives that defense lawyers cannot and/or do not represent their clients with the ardor that she believes is necessary. Because criminal defense lawyers are required to perform their jobs with few resources and minimal time, she believes a zealous and passionate defense becomes even more critical. In order to overcome the structural challenges of criminal defense, the lawyer must intensely devote herself to the client, and as such, defense lawyers must be permitted to engage in a passionately adversarial practice on behalf of their clients. Though criminal defense lawyers may operate through a more adversarial model, Smith argues that this does not necessitate that a different ethical standard be applied to their practices. She asserts that the difference in criminal defense is a difference in practice, but not in

ethics. According to Smith, criminal defense lawyers may practice law in a more extremely adversarial manner, demanding justice and fairness, but this fact should not allow them to violate the ethical code that guides them.

GENE GRIFFIN, CURTIS HEASTON, MICHAEL J. JENUWINE, AND
DIANE J. WALSH—MENTAL HEALTH ASSESSMENT OF MINORS IN
THE JUVENILE JUSTICE SYSTEM

The Illinois Cook County Juvenile Justice Committee on Mental Health Assessment includes the Hon. Curtis Heaston, Presiding Judge, Cook County Juvenile Court, Juvenile Justice Division for the Circuit Court of Cook County; Michael J. Jenuwine, Clinical Associate Professor of Law and the Associate Director of the Child Advocacy Clinic, Indiana University School of Law – Bloomington; Diane W. Walsh, Department Legal Officer, Office of the Presiding Judge of the Cook County Juvenile Court; and Gene Griffin, Chief of Juvenile Forensic Services for the Illinois Department of Human Services, Office of Mental Health. In their report, the committee advocates a more holistic system of delivery for assessment and treatment to address the mental health needs of juveniles in the justice system today. Their recommendations provide a comprehensive model for treatment of mental health problems in youth and adolescents in the juvenile justice system.

The committee researchers reviewed the assessment instruments in use in the Cook County Juvenile Justice system and concluded that the design of the assessment process is more critical than the specific instrument being used. The committee determined that the design of an appropriate assessment process must consider the following issues: what to assess, how to assess, how to use the assessment, and where to refer an individual needing assistance.

The committee suggests the implementation of a three-tiered mental health assessment model. This model, they believe, would ensure that as juveniles move through the justice system, they receive attention for any mental health problems that are demonstrated. The committee researchers stress not only the division of the assessment process into the components above, but also the need to maintain an assessment process that is voluntary to the degree possible, actively

includes families, and works to de-stigmatize the term “mental illness.” The committee also advocates that court systems offer training to all participants in the assessment process, from the courtroom to the detention center. The committee concludes their report with a discussion of the implications of the study, pointing to the importance of interdisciplinary legal practice that incorporates the perspectives and expertise of non-legal professionals.

NINA W. TARR—CIVIL ORDERS FOR PROTECTION: FREEDOM OR
ENTRAPMENT?

Nina W. Tarr, Professor of Law and Director of Clinical Education at the University of Illinois College of Law, currently Visiting Professor at Washington University School of Law, discusses in her Article the stigmatization and entrapment that so often follows battered women as a result of state-enacted mechanisms for stopping domestic violence. She notes, from her experience in clinical teaching and practice, that Civil Orders of Protection in cases of domestic abuse were initially intended to stop domestic abuse by helping women escape the isolation and entrapment that their batterers impose upon them, and instead empower them to act on their own. Tarr argues that, in practice, however, such Orders frequently serve to further entrap women and isolate them from society. Additionally, she asserts that as legal professionals and the State push women to seek Orders of Protection, some women are prevented from experiencing personal empowerment. She suggests that by attempting to respond to all instances of domestic abuse in the same way, the legal system has failed to acknowledge the diversity and individuality of women in such abusive situations.

Tarr summarizes the sorts of legal resources available to battered women prior to the development of Civil Orders of Protection and then discusses changes that occurred in the legal system. She discusses the psychological benefits of Civil Orders of Protection, followed by an in-depth analysis of the unanticipated results of obtaining such Orders. Among the most negative consequences of Civil Orders of Protection, she argues, are psychological costs, risks regarding child custody, feelings of helplessness and dependence, and challenges with employment. Ultimately, Tarr concludes that the very

mechanisms implemented to protect battered women and to instill in them feelings of empowerment, actually serve to deny these women the opportunity to both act independently and experience a sense of agency.

DINA SCHLOSSBERG—AN EXAMINATION OF TRANSACTIONAL LAW
CLINICS AND INTERDISCIPLINARY EDUCATION

Dina Schlossberg, supervisor in the Small Business Clinic at the University of Pennsylvania Law School, suggests that interdisciplinary teaching and learning would enhance clinical legal education. Because collaborative practice is a regular part of the transactional attorney's practice, she argues, the inclusion of interdisciplinary teaching and learning would benefit clinical students and future lawyers who engage in such practice. She does not disparage the current design of live-client clinical programs or advocate for a complete overhaul of the clinical paradigm. Rather, she seeks to encourage a careful examination of the goals and principles of clinical teaching and learning to ascertain how, and in which instances, interdisciplinary teaching would be most beneficial.

In her Article, Schlossberg explores the introduction of interdisciplinary teaching and learning into a transactional legal clinic, taking into account the challenges that such a change would present. According to Schlossberg, the primary challenges can include insufficient departmental resources, administrative restraints, lack of available faculty, and contradictory cultural and professional norms between disciplines. On the other hand, she asserts that interdisciplinary clinical courses can produce benefits by exposing students to the collaborative work required in real-world transactional law practice and by teaching students team-driven problem-solving skills. She provides multiple examples of transactional law clinical programs in which interdisciplinary teaching and practice are currently pursued.

REBECCA DRESSER—PATIENT ADVOCATES IN RESEARCH: NEW
POSSIBILITIES, NEW PROBLEMS

Rebecca Dresser, Daniel Noyes Kirby Professor of Law and Professor of Ethics in Medicine at Washington University, addresses

the need to promote patient advocacy that is morally and ethically designed and executed. Bioethics scholars, Dresser argues, have a responsibility to address the perspectives of patient advocates because the science is founded on principles of public participation in the treatment process. She opens her discussion with a brief presentation of the history of patient advocacy as it emerged from HIV/AIDS activism and grew to encompass a broader set of social issues. According to Dresser, when patient advocates eventually began to participate in scientific programs, analyzing data, and conducting research, they had a profound influence on the way that biomedical research is conducted. Advocates not only challenge scientists and scholars, she suggests, but also contribute their own opinions about the research and funding processes.

Dresser identifies five major themes in patient advocacy: a) advocates focus on the benefits of biomedical research in a way that presumes that a cure or treatment will be developed; b) advocates measure the quality of research in terms of the ability to treat patients; c) advocates face challenges in defining their constituencies; d) advocates must address questions regarding fairness with respect to patients; and e) advocates and bioethicists are interested in including the values of the public in research development, but advocates often focus on the benefits of research, while bioethicists consider the potential negative outcomes. From these five themes of patient advocacy, Dresser derives three guiding ethical principles and three future challenges that are related to patient advocates. Her guiding principles are: work to both accurately and realistically represent the potential of research; consider the diversity of the constituency represented; and engage in efforts aimed at benefiting a wide community of people and not simply a limited portion of the patient community. The challenges that she anticipates are: advocates must decide if the HIV/AIDS advocacy model should be the paradigm for patient advocacy in general; advocates must strategize about how to instill ethical considerations into industry-sponsored medical research; and advocates must develop a position with regard to new scientific technologies such as stem cell research by developing an enhanced understanding of new scientific practices and procedures.

DANIEL R. RAY—REGULATING LEGAL ASSISTANT PRACTICE: A
PROPOSAL THAT OFFERS SOMETHING FOR EVERYONE

In his Article, Daniel R. Ray, Assistant Professor and Coordinator of the Legal Studies Program at Eastern Michigan University, proposes an expansion of the responsibilities of legal assistants to include a greater breadth of legal practices. He recommends a process in which an attorney would register her legal assistant, assuming the assistant met certain requisites, with the respective State Supreme Court. Registered legal assistants would then be allowed to perform a wide range of legal activities, while avoiding the unauthorized practice of law restrictions. This registration would last only as long as the registering attorney and the assistant work together, and would be entirely voluntary for both parties.

Ray argues that his proposal is simple, flexible, inexpensive to execute, and beneficial to the public. Under Ray's system, the registration process requires recommendations on behalf of the legal assistant and proof of an education requirement, and requires that both the attorney and the assistant sign the document, attesting to its accuracy. His proposal also outlines a list of specific criteria that should be used in determining the eligibility of paralegals for such a program. Included in this list are a minimum education requirement, a work experience requirement, and fulfillment of certain character and background checks.

Ray asserts that both attorneys and legal assistants would be able to perform their jobs more efficiently and productively if legal assistants were able to undertake a broader range of responsibilities with regard to legal practice. He argues that his proposed system protects the public by promoting the state's interest in quality legal services, allocating the accountability to the supervising attorney, and establishing both public protection and freedom of choice for the public. He does not argue that his proposal is guaranteed to succeed, but that it includes all of the necessary safeguards to make it worth an attempt.