

From Classroom to Courtroom: A Doctrinal Teacher Supervises Pro Bono Bankruptcy Cases

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I am a doctrinal law professor specializing in business law (tax, bankruptcy, corporate, and commercial law). Four years ago I started a program at Syracuse University to offer interested students the opportunity to represent indigent individuals in pro bono bankruptcy cases under my supervision. I have had between 40 and 60 student volunteers each year, and have represented an average of 20 bankruptcy clients each year. In the past, the course has not been offered as a clinic—the students and I have received no credit or compensation for participating in the program, there has been no set schedule of classes or course work accompanying the program (other than my three hour training class), and I have received no funding for the program.

In this article, I discuss how my program has worked, and reflect on the benefits and burdens of the program to me, to the students, and to the community. I also discuss my decision to modify the program in 2012 to work in conjunction with the law school's clinic, while continuing a large pro bono aspect to the program. I also explain why law schools should actively encourage their faculty—especially their doctrinal faculty—to engage in some form of pro bono service.

I. Alienation from the Means of Production—the Growing Gap between the Professoriate and the Practice of Law

All three major studies of legal education have bemoaned the strained relationship between the practicing bar and the law professoriate. The main focus of the ABA's MacCrate Report, published in 1982, was to address what they called the "gap," both in terms of perception and reality, between a law school education and the requirements for the practice of law.¹

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1. American Bar Assn., Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum (Robert MacCrate, ed., 1992). It begins by stating: "At its birth this Task Force acquired a name that projects a distorted image of a legal education community separated from the 'profession' by a 'gap' that requires narrowing," and concludes that the gap is one of perception because law schools and the practicing bar have "different missions to perform, and they function

The Carnegie Report argued “for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice” to develop “a more capacious, yet more integrated, legal education.”² The study, unfortunately written in heavy sociological prose, argues that law schools should make curricular and evaluative changes to better educate students for the practice of law. With respect to pro bono work, the study recognized a 2005 book by Professor Deborah Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions*, which argues that publication of pro bono statistics by law schools and law firms would give the work greater recognition and value, and encourage greater participation. Rhode’s study noted that one-fifth of students surveyed reported negatively on their pro bono experiences “frequently noting a lack of faculty supervision or interest in this connection.”³

Finally, shortly after the release of the Carnegie Report, the Clinical Legal Education Association issued the so-called “Best Practices” report.⁴ The study recommends, as one might expect from a report written by that group, more focus on experiential learning by incorporating context based learning throughout the curriculum, and by integrating judges and practitioners into the program of study.

While all of these reports seek to address the growing gap between the academy and the profession with broadly and carefully worded practice statements, none directly blames faculty hiring standards and faculty incentives as the main cause of the gap between the practice community and the academy. I believe that the gap is growing, not shrinking, and is caused primarily by the growing separation between doctrinal and experiential faculty, a result of faculty hiring and promotion standards. Of course, my views reflect my background, which is unusual in the law professoriate, and becoming increasingly so. I practiced law for 17 years before becoming a law professor. Most of my contemporary or junior colleagues entered the professoriate after only one to three years of practice at a large law firm where they worked somewhat anonymously as junior members of large teams. Many of them earned advanced degrees in non-legal liberal arts fields, and went to law school with the goal of becoming a professor rather than a practicing lawyer. While some faculty members more senior to me have maintained a strong relationship with the bar, generally through continuing legal education

in different experiential worlds with different cultures.” The task force’s report focused on the “skills and values” needed for the practice of law, but made no concrete suggestions for narrowing the “gap,” or with the benefit of hindsight slowing the rate at which the gap was widening, other than to suggest that the law school accreditation process consider whether the law school is delivering to students the “skills” and “values” identified in the report.

2. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law 12* (Jossey-Bass 2007) [hereinafter Carnegie Report].
3. *Id.*, at 139.
4. *Best Practices for Legal Education: A Vision and a Road Map* (CLEA 1987).

training or work on bar association committees, few if any of the hires after me (outside of the clinic) have sought a continuing relationship with the practicing bar.

Law schools have responded to the studies critical of the growing gap between the professoriate and the practice of law primarily by expanding clinical offerings and attempting to raise the status of clinical teachers by granting the emoluments of professorship status—title, promotion and tenure. I feel that my doctrinal colleagues are happy to hire substitutes, in the form of clinical professors, to address the gap, rather than involving themselves in some form of regular practice and interaction with the practicing bar. The growing gap within the law professoriate is most evident by clinical professors decrying the teaching of textbook doctrinal law, and better credentialed doctrinal professors dismissing their clinical colleagues as mere practitioners.

As long as faculty are rewarded primarily for increasingly theoretical and insular scholarship rather than for contributions made to students, the law school and the profession, it is difficult to imagine any narrowing of the gap between the academy and the profession, and between doctrinal and clinical faculty. In my view, the only way for law schools to narrow the gap is to incorporate incentives for doctrinal faculty to actively engage with the practice community on a regular basis. The current effort to narrow the gap by hiring substitutes to provide “skills” training—clinical and adjunct professors—serves only to widen the gap by creating a separate class of doctrinal faculty who adopt peculiar systems of faculty incentives unconnected with the needs of students and the profession to justify and reward their own activities. Law schools bear the responsibility to actively encourage faculty involvement with the practice community. Pro bono service offers an excellent way for faculty to engage with the legal profession, to involve students in both socially beneficial and educational opportunities, and maybe most of all to improve doctrinal teaching and scholarship by bringing real world experience to bear.

II. Starting a Pro Bono Program

I started teaching in 2001, and with each passing year felt further and further isolated from the practice of law. In 2007, the federal court system established a new bankruptcy court in Syracuse, and hired a new bankruptcy judge to run it. The judge wanted to encourage the bar to handle pro bono bankruptcy cases as a means of eliminating the heavy burden on the courts of dealing with pro se bankruptcy filers who lack the basic skills and knowledge to navigate their way through the increasingly complex bankruptcy system. The judge helped organize a meeting to train and encourage local practitioners to handle two pro bono bankruptcy cases per year.

As the doctrinal bankruptcy law professor at Syracuse, I was invited to the meeting and encouraged to consider how I and our students might be able to participate in these pro bono efforts. After several discussions with Jim Williams of Legal Services of Central New York, who had obtained a grant

from the state courts to coordinate the intake and referral of pro bono cases to volunteers, I agreed to supervise students and be responsible for handling an initial group of ten bankruptcy cases

Starting the process was more difficult than I imagined. First, I had to be admitted to the local district and bankruptcy courts, which involved filing papers, paying fees, and being sworn in by a federal Judge. Second, I had to learn and pass a test on using the court's electronic filing system, which had been implemented a couple of years earlier. When it was first implemented, all practicing attorneys had to be trained on the new system. There were regular training classes set up to teach the practicing bar and their staffs how to use the system. After the initial training was completed, however, the local lawyers were expected to train each other on the process. At a recent bar association meeting, I asked the debtor lawyers at the table how many of them physically file their own cases. They all chuckled because the filing process was quickly delegated to the paralegals in their offices. Without a staff of any kind, I had to learn the mechanical filing process myself, and have physically filed all of the cases myself. My first few cases generated "deficiency" notices that had to be corrected, as I learned how the clerk's office wanted filings to be handled.

I handled my first debtor case myself over the summer before the fall 2008 term, and from that developed a structure and questionnaire for the students to use to obtain the information that they will need to prepare the bankruptcy schedules. I also developed a three-hour training program that all student volunteers must attend, devoting about an hour to explaining how the bankruptcy process works, an hour explaining what information the students need to obtain and how to do so (especially, how to help the client obtain a free credit report), and an hour explaining how the bankruptcy form generation software works.

III. The Basic Bankruptcy Process

The most difficult part of handling consumer bankruptcy cases is obtaining from the clients all of the information required by the Bankruptcy Code. The clients generally have few if any financial records, and have often left the banking system entirely. The problem with them using cash is that it is much more difficult to track their income and expenses, and to recreate financial records after the fact. The easier clients have an unorganized pile of dunning letters from collectors and copies of legal actions commenced against them, often in unopened envelopes. The tougher clients have no records at all, and have lost track of their obligations. They don't know who their creditors are, how much they owe or what they purchased.

In the practice world, attorneys have paralegals who advise the clients of the information needed and fill out the schedules. The clients who can afford the small fee for a private attorney are generally better organized than the average legal aid client. Therefore, the students provide a lot more hand holding to the clients to obtain and develop the information needed to complete the schedules.

The students have much less experience than a paralegal in doing the job, however. This is generally the first case the students have ever worked on, and they generally know nothing about bankruptcy when they start. Maybe the most important thing the students learn is confidence in their own ability to solve problems. I am available to answer questions, and I review and revise the students' work before the case is filed.

After the case is filed, the court assigns a trustee to each case, the trustee requests additional information, we provide the additional information to the trustee, and the client, students and I attend the Official Meeting of Creditors⁵ (known as the "341 meeting" after the Bankruptcy Code section under which it is held), where the debtor is examined by the trustee.⁶ Assuming all goes well, the debtor receives a discharge within a couple of months after the meeting. Almost all of the work is putting together the initial schedules, and my system has depended on the reliability of students in following through and completing that task. After the case is filed, the process is generally mechanical and involves little work other than attending the meeting of creditors.

IV. Volunteers and Training

At the beginning of each semester, I send out an e-mail announcement to all students soliciting interested volunteers for the pro bono bankruptcy program. I also explain the program briefly at an informational meeting set up by the law school's administration for pro bono opportunities, generally offered by the local bar association. Each year I have been overwhelmed by the student response. As many as 50 students volunteer for the program each year—more than half of the volunteers are first year students who are especially eager to be involved in real cases. For the past two years, I have limited the pro bono program to first year students (still more than 50 per year) because interest was becoming overwhelming.

Once I have a list of volunteers, I assign the volunteers to teams (generally two first year students and one upper division student "team leader"), create an e-mail list for the volunteers, obtain and assign client referrals, and schedule the training session. The training session is mandatory, and is taped for those students who cannot attend in person.

5. The Official Meeting of Creditors is required in every case by Section 341 of the Bankruptcy Code, and thus it is commonly known as the "341 Meeting." 11 U.S.C. § 341(a). At the 341 Meeting, the debtor is questioned under oath by the trustee and any creditors who wish to attend. If, after questioning the debtor, the trustee determines there are no valuable non-exempt assets to distribute to creditors, as is the case in most pro bono bankruptcy cases, the trustee will issue a "no asset report" to the court, and that will conclude the trustee's involvement in the case. If no objections to discharge are filed within 60 days after the 341 Meeting, the court will automatically issue a discharge order. Fed. R. Bankr. Proc. Rule 4004(a).
6. Although called a "meeting of creditors," and although technically creditors may attend the meeting and question the debtor, it is extremely rare to see a creditor appear at a 341 meeting in consumer cases.

The purpose of the training is not to teach a bankruptcy law course in three hours. The purpose is to give the students a big picture understanding of the bankruptcy process, and of the specific tasks that they must accomplish to complete the schedules. I spend only about an hour explaining the bankruptcy process: the debtor's property is put into an "estate," the debtor gets to keep the property that is exempt, everything else in the estate gets sold to pay creditors proportionally, and the balance of debts gets discharged. I also discussed the difference between a Chapter 7 liquidation and a Chapter 13 reorganization case (in which the debtor keeps his or her non-exempt property while using future earnings to pay creditors more than they would get in a Chapter 7 liquidation). That, in a nutshell, is the law. We then review the New York exemption statute, how to obtain a credit report for the client, the bankruptcy questionnaire, and the bankruptcy software. Frankly, the students do not learn very much in the training session—most of the learning comes when the students start gathering, organizing and trying to enter the information into the computer program, and from asking questions.

I also hold an initial informational meeting for the debtor clients. I explain how the bankruptcy process works, how a student team will represent them, how important it is to provide timely information and feedback to the students, and how to contact me if there are any problems.

The first few weeks of each semester are very busy for me. Not only am I handling my regular teaching load of new courses, but I'm also dealing with the administration of the pro bono program—getting client referrals, organizing students into groups and assigning them to cases, dealing with students who change their minds about participating or become non-responsive to their teammates. Once the initial referrals are made and the teams settled, however, all is quiet again on the western front. Too quiet.

V. Herding Cats: The Problem of Maintaining Control Over Cases

Although calm returns to my life following the initial assignments, the most difficult part of the process for me has just begun. The semi-trained students are now responsible for arranging meetings with each other and the clients, obtaining the necessary information from the clients to complete the bankruptcy schedules, entering the information into the software, and letting me know if they have any questions or special issues. Some teams organize themselves promptly and efficiently, and start the process of gathering and entering information in a well-regulated fashion. Other teams are almost instantly dysfunctional, arguing about meeting dates, generating resentment over assignments, and not communicating with each other, the client or me. Once in a while a dysfunctional team member will tell me about the problem, and I will call everyone into my office to hash it out and put them back to work. But most of these students just stop doing anything on the case without telling me about the problem. I send periodic e-mails asking how things are going, and sometimes get responses, but some students ignore their emails from me and effectively drop out of the program without telling me. On a few

occasions, I have received a call from a client asking me what was going on because they had lost contact with the students, and sometimes the students advise me that the clients have gone AWOL. Figuring out that there is a problem has been very difficult, and it is often months before I learn that something is amiss.

By the end of the fall semester, most of the teams have met with the clients, gathered some of the required information, organized it, and have gone back to the clients for additional missing information. With finals approaching, they stop working on the cases to focus on their exams, planning to work on the cases over the winter break. Few, however, actually do any work over the winter break. Instead, I need to shock them back into focus as the spring semester begins.

I ask each of the teams to provide me with a status report at the beginning of the spring semester. Then the first sets of schedules start coming in. Each team's first set of schedules is almost always in need of substantial revision. Some students fill out certain parts of the schedules and ignore the other parts. Some have way too much detail, including detailed itemized lists of dinnerware and clothes, while others fail to list obvious items of property (clothes, furniture, automobiles, etc.). Almost no one completes the information required for the means test correctly—gross income by month for the six months before bankruptcy. Most importantly, the students fail to carefully complete the list of creditors, with proper mailing addresses, and cross references for the numerous assignments. I review the drafts carefully, and send them back with detailed instructions for revision. Sometimes, I meet with the students and show them what has to be changed. We generally do three or four revisions before I feel the schedules are ready to file. Once they are ready to file, I meet with the clients and the team to go over the papers, make last minute revisions, obtain signatures, and electronically file the case.

Those teams that have not sent me draft schedules within the first month of the spring term are called in for a group meeting to discuss the status. These meetings generally involve a lot of finger pointing, which I try to defuse and get the students back on track. The students leave with instructions from me, confirmed by email, stating who is supposed to do what and by when to get the schedules done. Although there may still be hurt feelings, the students seem to get the work done when they have clear instructions about what they must do. Learning to work together is an important part of what they must learn for the practice of law, and there are few opportunities in law school for the students to deal with real responsibility.

Two years ago, I had three cases that were not completed by the end of the spring semester, and I had a difficult time completing the cases during the summer because the students had left town without providing me with the information they had collected, and because the clients were not sufficiently responsive. Upon reflection, I decided that I needed a better way of keeping in touch with the students on a more regular basis during the semester to keep track of the cases and to make sure they are proceeding with the work.

VI. Moving Towards a Hybrid Pro Bono Bankruptcy Clinic

Credit is the key distinction between a clinic and a pro bono program. By definition, pro bono work is community service rendered without compensation. Academic credit is, of course, a form of compensation. At the start, I steadfastly avoided giving any credit for participation in the pro bono bankruptcy program, and I ran the program autonomously, entirely outside of the formal clinic structure. However, in the fall of 2011 I decided that I needed a formal class structure of some kind, with regular meetings, in order to monitor the teams' performance and to make it a better educational opportunity.

On the other hand, converting to a formal clinic would come with its own problems. A pro bono program will attract many first year volunteers who are eager to work on a real case. First year students are not eligible for a clinic. A traditional three or four credit clinic course would also give me an excessive teaching load, or require me to give up a doctrinal class (which I don't want to do).

After meeting with the clinic directors and thinking through the problem, I decided to create a hybrid program, part clinic and part pro bono. I offer a formal one credit clinic for 10 second and third year students who will act as the team supervisors. I meet with the clinic students once a week at night for a regular class to provide training in bankruptcy law and discuss the status of the cases. First year students continue to volunteer for the pro bono bankruptcy program, and work under the direct supervision of the clinical students. This will enable me to retain a strong pro bono aspect to the program for the first year students, while providing the necessary training and supervision through the upper division clinic that the program has lacked. It is also one of the few one credit courses in the curriculum, giving students who do not have the time or inclination for a full clinical experience the opportunity to obtain some skills training.

As the other papers demonstrate, law schools have a strong interest in expanding their pro bono efforts—in part from student and employer demands for more practical training, and in part from ABA pressure for instilling an ethic for pro bono service. I don't know if there are similar programs at other law schools combining doctrinal faculty supervision, pro bono work, and a low credit clinical experience. However, I believe this framework offers a promising alternative to the growing separation of specialized doctrinal and clinical faculty, the alienation of doctrinal faculty from the real world of law practice, and the need for students to develop an ethic for pro bono service.

After bemoaning the growing gap between the profession and the academy, virtually every study on legal education has stressed the need for more skills training rather than addressing what I believe to be the key reason for the growing gap—the hiring and proliferation of doctrinal faculty disengaged from the profession and disparaging of what practicing lawyers do. We need to address the root cause of the gap by encouraging doctrinal faculty to be involved in the real world of law practice. Faculty naturally put a high value on

what they do, and devalue what they do not. Legal education and scholarship will continue to move away from serving the needs of students, the profession and the community as long as insular theoretical scholarship is the gold standard in the professorate. If we want to address the growing gap, schools need to place a high value on faculty participation in the practice community.

VII. The Need for Faculty Incentives

The faculty at my school, as I suspect is the case in most if not all law schools, places an enormously high value on the writing of law review articles. Quantity of articles and quality of placement is the accepted currency in the law professor business. Despite common law school promotion and tenure policy language crediting “equivalent” work, a broad cross section of faculty accept no real substitute for law review articles. Actual pro bono legal work, no matter how scholarly, time-consuming, or valuable to the school and the profession will pale in comparison to an arcane law review article read by a couple dozen other like-minded academics.

The gap between the professoriate and the practitioner will not be narrowed by curricular changes alone. Faculty must understand and value the practice of law, and that will only come through engagement. Law schools must reconsider their reward structures if they want faculty in large numbers to engage with the profession. I believe that law schools, run by faculty and administrations largely comfortable with the status quo and likely threatened by the idea of crediting practical service by faculty, are only going to change the reward structure if pushed to do so by their constituents—the ABA as the accrediting agency, the bar associations who license attorneys, and *U.S. News & World Report*, which has become a de facto rating agency for law schools. Without a formal challenge to the existing structure, the ad hoc efforts of individual faculty members like me will affect only the individual students and faculty who choose to volunteer their time and energy. If the profession wants to change the growing gap between the practice of law and the academy, it needs to put pressure on the accrediting and rating agencies to require law schools to give, or reward law schools for giving, credit to faculty who engage in the uncompensated practice of law. Law school administrators need to recognize the value of involvement in the profession, and encourage doctrinal faculty to participate in law practice activities. Promotion and tenure committees need to recognize and credit scholarly work submitted to courts in the same vein as scholarly work submitted to student-edited law journals. Bar associations should facilitate faculty involvement with the profession by allowing temporary bar membership to faculty licensed in other states. A concerted effort is needed on all fronts to encourage doctrinal law faculties to engage with the profession on a regular basis. Only by changing the reward structure will we see large numbers of doctrinal faculty engaging with the profession, and only through engagement will faculty values reflect those of the profession.