

May 2010

Teaching Public Citizen Lawyering From Aspiration to Inspiration

Mae C. Quinn

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Quinn, Mae C. (2010) "Teaching Public Citizen Lawyering From Aspiration to Inspiration," *Seattle Journal for Social Justice*: Vol. 8: Iss. 2, Article 9.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol8/iss2/9>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

Teaching Public Citizen Lawyering: From Aspiration to Inspiration

Mae C. Quinn¹

INTRODUCTION

A longtime social justice activist and clinical professor, Douglas Colbert,² recently sought information from colleagues across the country³ for the second part of an important project examining a lawyer's ethical obligation to engage in pro bono work during a time of crisis, such as the aftermath of Hurricane Katrina or 9/11.⁴ He sent out surveys to learn which schools actually taught the Preamble to the ABA Model Rules of Professional Conduct in ethics or other courses.⁵ As Professor Colbert's letter explained, the Preamble states: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court, and a public citizen having special responsibilities for the quality of justice."⁶

I was thrilled to learn that Professor Colbert—a mentor to many newer clinicians like myself—was interested in an issue that I had begun to explore in my own work; that is, how the Preamble's public citizen lawyer message should be used in law school teaching.⁷ Indeed, I was surprised to find that while reams had been written about lawyers as representatives of individual clients and officers of the court, very little was said about the role and responsibilities of lawyers or law students as public citizens.⁸ Yet as Professor Colbert's inquiry suggests, the Preamble gives us a lot to talk about.⁹

My interest in the Preamble is not so much rooted in the concept of the delivery of pro bono representation as it is on the public citizen lawyer's affirmative responsibility to press for legal reform.¹⁰ And in contrast to focusing on catastrophic events as catalysts for change, this essay is concerned with teaching students about responding to the everyday

travesties and inequities they may encounter in our courts and legal system. Thus, it can be seen as a response to Professor Colbert's important call to action—providing one approach to Preamble teaching—and supporting him in his curricular reform efforts.

This essay outlines the ways in which I have tried to convey to students the importance of the Preamble's message of lawyer as public citizen. In it I share my view that law schools—not only in traditional professional responsibility courses—should encourage students to grapple with this ethical concern which is not fully captured by the “black letter” rules. For instance, in my prior teaching at the University of Tennessee, I tried to encourage students to consider how they could improve the justice system. I urged them to not only accept individual pro bono cases upon graduation, but to take on problematic systemic issues that might call for nontraditional advocacy efforts in order to be meaningfully addressed. Now as a professor at Washington University School of Law in St. Louis, I intend to continue with, and build upon, this agenda. However, I hope to more deeply explore what it means for clinicians and their students to be public citizen lawyers in a given community.

Proceeding in four parts, this essay begins that exploration. Part I of this essay outlines the Model Rules' Preamble.¹¹ Part II looks at ABA Model Rule of Professional Conduct 6.1 as the single black letter guideline attempting to address a lawyer's special responsibility for the quality of justice.¹² Unfortunately, this rule tends to privilege traditional pro bono client representation as the preferred route for meeting this responsibility.¹³ Yet pro bono publico representation is not required; it is merely aspirational.¹⁴ In Part III, I share some ideas for conveying the importance of the Preamble and public citizen lawyering to law students by offering examples from my teaching at Tennessee—in our clinical program, in a practicum course, and in others places across the curriculum. In Part IV, I conclude by offering some lessons learned, as well as discussing challenges I face while helping to launch a new youth advocacy clinic at Washington

University. In the end, my hope is to inspire students to look beyond the rules' aspirational goals and to serve as public citizen lawyers in law school and beyond.

I. THE PREAMBLE: A LAWYER'S RESPONSIBILITY

The Preamble of the ABA's Model Rules of Professional Conduct sets forth three primary responsibilities for lawyers: to serve as a representative of clients, to serve as an officer of the legal system, and to serve as "a public citizen having special responsibility for the quality of justice."¹⁵

The Preamble goes on to describe the components of these three responsibilities.¹⁶ As to the representational and court officer components, the Preamble offers commonly understood guidelines—those perhaps most frequently discussed in ethics and other law school courses.¹⁷

With regard to serving as a public citizen, the Preamble explains:

A lawyer should [also] seek improvement of the law, access to the legal system, in the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education.¹⁸

It further provides:

A lawyer should 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. Therefore, all lawyers should devote professional time 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. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.¹⁹

After the Preamble, the drafters offer notes on the "scope" of the rules.²⁰ These notes explain that the ABA Rules of Professional Conduct are rules

of reason to be interpreted in light of the purposes of legal representation and the law itself.²¹ Some rules, the scope says, are “imperatives, cast in the terms ‘shall’ or ‘shall not.’”²² Thus, they define proper conduct for purposes of professional discipline and are obligatory.²³ Other rules, using terms like “may” are permissive in nature, and thus no discipline will follow when a lawyer exercises appropriate discretion under such rules.²⁴ A third set of rules “define the nature of relationships between the lawyer and others.”²⁵ Together, the rules are partly obligatory in nature and partly “constitutive and descriptive in that they define a lawyer’s professional role.”²⁶

These introductory materials further explain that the commentary accompanying each rule, most using terms like “should,” are merely intended to provide explanation and illustration of the rules in action.²⁷ They “do not add obligations to the rules, but provide guidance for practicing in compliance with the rules.”²⁸

On the other hand, these same introductory notes state that the Preamble’s framework is intended to “provide general orientation” to the rules.²⁹ Although no further explanation is provided for what is meant by the term “general orientation,” the Preamble’s provisions are not expressly limited in the way that the comments are.³⁰ That is, the drafters did not expressly rule out the possibility that the terms of the Preamble are in fact obligations of every attorney.

II. PRO BONO: THE LOW BAR OF ASPIRATION

Unlike the roles of attorney as officer of the court and client representative, there is no ABA Model Rule that squarely addresses the third prong of the lawyer’s duty trilogy: public citizen lawyering.³¹ Rather, the only ethical provision that even begins to address components of the public citizen lawyering concept is Rule 6.1, entitled “Voluntary Pro Bono Publico Service.”³²

Rule 6.1 is concerned primarily with increasing access to justice for those who cannot otherwise afford representation. The rule begins by stating that

a lawyer “has a professional responsibility to provide legal services to those unable to pay.”³³ Further, a lawyer “should aspire to render at least fifty hours of pro bono publico legal services each year.”³⁴ In fulfilling this responsibility, the lawyer should “provide a substantial portion of the fifty hours of legal services without fee or expectation of fee to . . . persons of limited means,” or charitable, or other organizations “in matters that are designed primarily to address the needs of persons of limited means.”³⁵

As a second possibility for meeting this responsibility, the rule states that a lawyer may provide “any additional services through . . . delivery of legal services at no fee or at a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights,” or to governmental or other public service organizations who would not be able to otherwise afford such representation.³⁶ Thus, the focus again is on traditional client representation for the public citizen lawyer.

It is only toward the end of rule 6.1—in subsection (b)(3)—that lawyers are told they can meet their pro bono responsibility through a third means that is not representation based.³⁷ It may also be satisfied through “participation in activities for improving the law, the legal system, or the legal profession.”³⁸ As examples of activities that might fall within this category, the comments offer “serving on bar association committees, . . . taking part in Law Day activities,” or engaging in legislative lobbying to improve the law.³⁹ These examples, also rooted in formal organizations and processes, seem to offer a limited conception of the public citizen lawyer.⁴⁰

Finally, and perhaps most damaging to any meaningful embodiment of the public citizen lawyer conception by rule 6.1, the pro bono rule is seen as a suggestion only and not an affirmative obligation—“should” language, rather than “shall” is used throughout.⁴¹ The comments explain that although provision of pro bono services is a professional responsibility, that responsibility “is not intended to be enforced through disciplinary process.”⁴² In light of this mere suggestion, it appears the Preamble has not been expressly operationalized by any mandatory provisions of the rules.⁴³

Yet, the public citizen lawyering considerations of the Preamble remain part of an attorney's ethical responsibilities.⁴⁴ Since the scope does not restrict the Preamble's impact, as it does with the commentary sections, lawyers must come to terms with what it means to be a public citizen lawyer. Law professors—particularly clinicians—are well positioned to help students make sense of the Preamble for themselves.

III. EFFORTS TO REACH FOR INSPIRATION: A TENNESSEE TEACHING AGENDA

Teaching as a clinician, I discovered students were not familiar with the Preamble and have not spent much time, if any, considering it in professional responsibility courses. Thus, I began teaching about public citizen lawyering, encouraging students to think about that role beyond mere pro bono representation. Doing so, I tried to move students away from mere aspirations and toward taking action to embrace their roles as reformers.

*A. Legal Clinics: Presence, Proximity, and Personal Growth*⁴⁵

1. General Advocacy Clinic

At Tennessee, I taught primarily in our general Advocacy Clinic. Under faculty supervision, students represented indigent Knox County residents in a variety of matters, including criminal cases, juvenile delinquency prosecutions, and unemployment benefits hearings. In addition to attending a ninety minute class twice each week, students kept office hours and met with faculty for formal supervision sessions. We usually enrolled twenty-four students per semester and team-taught the entire course. Each supervisor was assigned eight students, which divided the class into three different working groups—each working group then taking on its own flavor and focus depending on the individual supervisor.

Students investigated client cases, worked through discovery, drafted motions, and engaged in settlement discussions. When cases were not

resolved, the students represented their clients in hearings and trials. In all, students were expected to dedicate approximately twenty hours per week to the clinic, but they often put in more. Moving from the traditional classroom to the clinic environment, students had to move from the role of passive learner to active advocate.

The standard clinical mantra—planning, doing, and reflecting on individual lawyering tasks—was key.⁴⁶ Through the course of my teaching and supervision at Tennessee, I also tried to expose students to values that are core to clinical legal education. For example, I chose to focus on aspects such as respect for clients, empathy, concern for power imbalance and structural inequality, and achieving social justice. I told my students that they did not need to agree with my politics or leanings as a defense lawyer, but simply keep an open mind to all possibilities.

During the last third of the semester, I generally used the Preamble of the Tennessee Rules of Professional Conduct to explore the concept of a lawyer as a public citizen. I expressly discussed with my student working groups their responsibility to do more than competently represent their clients and conduct themselves professionally. Through reading and considering the Preamble, students saw that lawyering best practices also involve seeking to improve the law and justice system where appropriate.

With this groundwork, we discussed recurring issues encountered over the course of the semester. The students brainstormed possible efforts that could be undertaken to press for reform beyond traditional litigation-based challenges in individual cases and then attempted to operationalize those efforts. One example of this involved the students, as a group, writing a letter to local law enforcement at the end of the semester expressing their concerns about ongoing treatment of youth during arrest processes and calling for reform.⁴⁷ Another student returned a year after his graduation to work with me to co-counsel a school-related juvenile prosecution for a former client who had been re-arrested.

2. Juvenile Justice Clinic Section

To enhance the special skills needed for representing child clients and persistent problems facing youths in Knox County courts and schools, I taught a specialized section of the Advocacy Clinic in the fall of 2007 as a pilot project that focused on youth advocacy and juvenile defense representation. I used a text, developed by experts at the National Juvenile Defender Center, to teach best practices in child advocacy within the delinquency system.⁴⁸ By focusing on juvenile issues in this way, students were able to see the need for systemic improvements and began to take steps to call for reform.

For instance, each group, in addition to individual cases, was assigned an unaddressed issue that the General Advocacy Clinic had identified as a persistent problem. These issues included the shackling of juveniles during court proceedings and underdeveloped educational services within our detention facility. The students were then asked to come up with an idea outside of the confines of individual representation to help address the issue. The efforts undertaken by the students ran the gamut.

The “shackling issue” group drafted sample motions that could be used by students and attorneys in the future to request that shackles be removed from their clients. As for education in the detention center, a group of students asked to have a meeting with the juvenile court judge at the end of the semester to reflect with him on their experiences and express their concerns with the current situation. This juvenile-focused pilot project taught me that systemic reform and outreach efforts led by students can provide rich educational experiences that complement representation in small, individual cases.⁴⁹

B. Juvenile Justice Practicum: Passion and Empowerment

Partly taking into account concerns raised by my Juvenile Justice Clinic students as we worked on a juvenile court transfer matter, I developed and taught a new practicum course, a mini-clinic of sorts, which looked more

carefully at the issues surrounding children standing trial in adult criminal courts. Dubbing ourselves as a “task force,” we examined transfer laws, procedures, and policies in Tennessee. We learned that these laws, procedures, and policies resulted in the incarceration of over eleven hundred individuals in Tennessee’s adult prisons. These incarcerations stemmed from crimes of their youth, and some individuals were serving life without parole.

Gathering statistics from the Department of Corrections and convening conference calls with experts like Professor Bryan Stevenson, whose work we read for the course, David Raybin, a well-known Tennessee parole and post-conviction attorney, and Patrick Frogge of Tennessee Association of Criminal Defense Lawyers’ Legislative Task Force, we explored possible avenues for advocacy and reform. For instance, we considered seeking sponsorship of state legislation to provide juvenile offenders sentenced to more than fifteen years in prison with the opportunity to at least seek special parole review at year fifteen.

In the end, we undertook representation of Jerry Anderson, a twenty-seven-year-old who is serving a sixty-year sentence for his non-triggerman role in a homicide committed in the course of a robbery when he was sixteen years old.⁵⁰ The students conducted investigative and other preliminary work in support of his commutation petition. I then carried Mr. Anderson’s case back into the General Advocacy Clinic the following semester to have other students continue with the representation. I finally finished and filed the petition once I arrived in St. Louis to join Washington University’s clinical program. Mr. Anderson’s application is currently under review by the Governor of Tennessee.

*C. Other Courses: Stretching Public Citizenship Across the Curriculum***1. Problem-Solving Courts Seminar**

During my time at Tennessee, I also developed and taught a seminar course that focused on the law in action and called upon students to play an active role in examining the modern problem-solving court movement in the United States. Through readings, classroom discussions, films, and guest lecturers, they considered legal, political, and other factors contributing to this phenomenon. They surveyed the various types of specialty courts that have been established over the last twenty years, examined their various features, and compared such institutions to earlier specialty courts that existed in prior decades.

Each student was expected to contribute to the ongoing conversation about problem-solving courts and justice by producing a publication-quality paper that addressed some issue or feature of the movement. Throughout the course of the semester, students were assigned readings from *Scholarly Writing for Law Students* to help them improve as true legal scholars.⁵¹

Encouraging students to find their voices and recognize the power of the pulpit, I had them present their papers at a three-day academic symposium that I hosted in our faculty lounge. Abstracts of their work were posted to the law school's website under a special page showcasing the innovative work of my student group. I also encouraged students to enter their written work into various contests and seek publication placement, and I talked with them about the impact that publication can have in raising awareness and sparking reforms. Although none of the works were published, at least one student wrote to me before her graduation to thank me for pushing her to recognize her potential as a true scholar.

2. Criminal Law

Finally, in teaching criminal law, I attempted to build on my experience as a practitioner and began exposing students to the law, not just in theory

but in practice,⁵² and have them consider areas of criminal law possibly in need of reform.⁵³

Wanting to reach as many student learning styles as possible, I also attempted to use a range of teaching techniques—lectures, breakout groups, presentations, handouts, jury instructions, courthouse visits, films, skits, and songs—to work through the material. In doing this, students were able to see the law in action—outside the confines of their text book—and recognize various flaws in the system.

Court visits involved reviewing case files to get a sense of how charges are brought in real life (e.g., seeing firsthand the lack of notice and informality versus what they read in their books). Some students were able to observe trials, and all of the students had conversations with trial judges to hear about the good, the bad, and the ugly of courts in practice.⁵⁴ We watched the documentary, *Red Hook Justice*, exposing students to the work of a problem-solving court in Brooklyn that seeks to address low-level crime and to improve the quality of life for residents of the area.⁵⁵ After viewing the film, students were asked to do a take-home assignment, which consisted of writing a memo to a judge considering the ways the *Red Hook* model did or did not comport with traditional rationales for sentencing. To learn about the realities of the insanity defense, we watched portions of the PBS documentary *The New Asylums*, which examines the serious problem of warehousing the mentally ill in our nation's prisons.⁵⁶

IV. THE ROAD AHEAD: TEACHING PUBLIC CITIZEN LAWYERING IN ST. LOUIS

This somewhat rosy trip down memory lane is not intended to suggest that all of my adventures in public citizen lawyering at Tennessee were executed without a hitch. Nor do I mean to imply that I have created an army of effective reform-minded lawyers, ready to take on inequities in the world. In fact, both my teaching and my efforts to encourage public citizen lawyering are very much works in progress. I have learned some lessons,

but continue to struggle with the contours of challenges raised by such an agenda. Becoming a new faculty member in a new program, in a community that is new to me, provides an opportunity to reflect on such teaching and think more deeply about such an agenda as I move ahead.⁵⁷

A. Ownership and Authenticity

One thing I feel that I have learned along the way is that students generally take more ownership in a public interest lawyering project that they have helped to develop. So, comparing the enthusiasm of students who are assigned a set of issues with those who brainstormed and chose issues to address within a particular context, the latter definitely was a more authentic project with greater student investment.

But even this course of action raises questions. After all, should students feel that they can “own” such issues? Or rather, should we look to our clients as owners of the public citizen lawyering agenda?⁵⁸ And if this is the case, how should a clinical program determine which projects to undertake as part of that approach? What about the community in which the clinic operates or where its individual clients live? Should community members play a role in shaping the agenda? What if tensions exist between the needs and wants of a particular community and the needs and wants of an individual client? And as a new community member, what is the best way of going about getting involved with a community’s concerns as a public citizen lawyer?⁵⁹

As I continue with youth advocacy work at Washington University, I hope to explore with my students the possibility of ethically addressing legal needs of individuals and communities in light of concerns for the public citizen lawyer role. I began my representation work with our students by delivering direct services in delinquency matters at the local juvenile court. We chose this as one of our first steps, in part, because the juvenile public defender’s office was recently defunded, forcing the regular public

defender's office to handle all juvenile matters on top of its already overwhelming caseload.

This work is important and appears to be meeting a need, at least by providing zealous representation in a small number of individual cases. But what should a public citizen lawyer do in this context? Continue to help fill the gap, demand that the gap be otherwise filled, or perhaps both? Complicity seems less than appropriate. But where should we go from here?

Similarly, despite recent news accounts touting the Missouri juvenile justice system as a paragon of progressiveness, there are plenty of areas within this system that are in need of improvement.⁶⁰ The state's Department of Youth Services is engaging in promising treatment experimentation in its residential facilities. But alternatives to state placement in the first instance are limited. And the juvenile code and court systems are still characterized by a remarkable level of informality, the kind that *Gault* sought to stem decades ago.⁶¹ Our first set of youth advocacy clinic students have been quick to observe and critique these features, eager to react, and desirous to improve the system. But what is the best way to do that in a new clinic project that will remain a repeat player in the very institutions it seeks to improve? And how do we best harness, operationalize, and perpetuate the momentum created by our inaugural student group?

B. Tackling Problems Big and Small

Similarly, I continue to struggle with determining the size and complexity of issues we can and should take on through the clinic and my other classes. Some issues are too small or idiosyncratic, or seem inconsequential, or are too big or wide-reaching, and I may be expecting students to bite off more than they can chew. And I, too, may find myself overwhelmed by the task, such that my other teaching responsibilities could suffer.

Yet the recent invitation to clinicians, extended by John A. Powell, to begin to fundamentally rethink clinical education is well-taken.⁶² Overly

routine clinical structures may inhibit our ability to fully embrace our roles as public citizen lawyers to improve and inform the law and society.⁶³ Therefore, standard methods of operation may require reform and re-radicalization if we are to make further meaningful inroads toward dismantling structural inequality.⁶⁴ It is possible we have become too comfortable in the pedagogical frameworks we have created—ones that fit neatly within our own artificial constructs of necessary attorney skill sets, course syllabi, and the like. In doing so, we may be missing opportunities for real change.

C. Sputter and Stall

Reform efforts do not always go smoothly. For instance, in my practicum course, it was difficult to figure out how to distribute tasks and work when our projects did not lend themselves to neat division like small individual cases. We also found ourselves splitting our time between our clemency matter and the legislative project. As a result, our law reform efforts chugged along, sometimes having to take the backseat when our client's case needed attention. And because legislative calendars and the availability of various players do not always coincide with academic calendars and class schedules, accepting at the outset that you might move the ball only so far in a given semester is essential. Or perhaps it is time to rethink academic calendars and class schedules to fit the needs of the real world and real people with real problems.

D. Captive Audiences, Reluctant Disciples, and Measuring Success

I do not want to be seen as a supposed “progressive” who fails to account for the political interests of others. So I try not to force my reform agenda on students who have not self-selected to be part of a reform-based project. Thus, while I might be quite direct about my criticisms of the juvenile justice system in my task force group, in my criminal law course I tend only

to present issues—for example, through films—and explore various points of view about them.

Similarly, not all students like “nontraditional” teaching methods—particularly in first-year courses. However, I was tremendously pleased that the students who came forward after class to thank me for my innovative efforts (those who I apparently “reached”) were mostly those who historically have been left out of the legal profession and academy. Perhaps for these students—women and students of color—consideration of real-world public citizen lawyering concerns beyond the holdings of appellate cases feel most important.⁶⁵

Yet, I am at a loss for determining any clear measure of success for such a teaching agenda. Is it in helping, in some small way, a historically disenfranchised group? Or does success mean something more? Do we succeed by merely getting the attention of students who might not otherwise be concerned with the disenfranchised? Or do we need to do more to get their attention in order to succeed? These, too, are big questions that I will explore with students in the days ahead.

E. Maintaining Your Own Inspiration

The final ongoing challenge I face—and frankly a concern I flag for others—is keeping the tank full on the public citizen lawyering road. While I am passionate about my work, pushing for change uses a lot of fuel. And for me—particularly in the face of disappointing outcomes—the work can be downright exhausting sometimes.

As many of us in clinic teach our students, we cannot help clients if we cannot help ourselves. Therefore, we must strive for quality and justice in our own lives too. This is a caution I try to heed, so that, like Douglas Colbert, I can stay the course of seeking to inspire law students to embrace their roles as public citizen lawyers in clinics and beyond for years to come.

¹ Copyright © 2010 Mae C. Quinn, Professor of Law and Co-Director, Civil Justice Clinic, Washington University School of Law, St. Louis. This essay is based upon

remarks delivered at a January 2009 faculty workshop at the University of Akron School of Law. My sincere thanks to Professor Tracy Thomas, Dean Marty Belsky, and Associate Dean Elizabeth Reilly for their kind invitation to the workshop. Thanks also to my discussion group at the 2009 Midwest Clinician's Conference, and my colleagues Annette Appell, Ben Barton, and Bob Kuehn for their helpful insights. I am also grateful to Kevin Roberts for his fine editorial and other contributions to this essay, and Nick Lee for his research assistance. For inspiration, I am indebted to the fall 2009 Washington University School of Law Civil Justice Clinic students—our inaugural youth advocacy project group.

² For over twenty-five years, Professor Colbert has been working with law students across the country to deliver quality representation to indigent defendants while engaging in systemic reform efforts. For more about Professor Colbert's work, see University of Maryland, Douglas Colbert, in Faculty Profiles, <http://www.law.umaryland.edu/faculty/profiles/faculty.html?facultyid=029> (last visited Apr. 9, 2010).

³ Letter from Professor Douglas Colbert, University of Maryland School of Law, to author (June 18, 2008) (on file with author).

⁴ The first part of Professor Colbert's project involved his symposium article, *Professional Responsibility in Crisis*, 51 HOWARD L. REV. 677 (2008). It provides an important account of the work done in New Orleans by law students across the country, including University of Tennessee students who traveled with me to join the efforts of Tulane Law Professor Pam Metzger aided by Professor Colbert. See also *UT Law Students Aid Post-Katrina Indigents*, TENNESSEE LAW (University of Tennessee Knoxville) Fall 2007 at 18 (describing the work of University of Tennessee Law students who volunteered post-Katrina).

⁵ See Faculty Profiles, *supra* note 2.

⁶ *Id.*; see also MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2009).

⁷ In fact, I was so excited that I called Professor Colbert and left a long message on his answering machine recounting my interest in and enthusiasm for his project, as well as my use of the Preamble in my teaching. In all of my excitement, I fear, however, that I may have failed to ever complete and return the survey form. Sorry, Doug.

⁸ Prior to Professor Colbert's work examining the role of lawyer as public citizen, very few had addressed the issue other than in passing. See, e.g., Cruz Reynoso, *The Lawyer as Public Citizen—Eleventh Annual Frank M. Coffin Lecture*, 55 ME. L. REV. 336 (2003) (remarking on the lack of existing guidance about the meaning of public citizen lawyer as described in the Preamble and offering a four-point proposal for fulfilling that obligation); Irma S. Russell, *The Lawyer as Public Citizen: Meeting the Pro Bono Challenge*, 72 UMKC L. REV. 439, 443–44 (2003) (discussing the revision of the ABA Model Rules as a catalyst for discussing the lawyer's public service obligation); see also Robert E. Scott, *The Lawyer as Public Citizen*, 31 U. TOL. L. REV. 733, 733–34 (2000) (discussing the public citizen lawyer in terms of professionalism); Timothy L. Bertschy, *The Lawyer as Public Citizen*, 87 ILL. B.J. 236, 236 (May 1999) (discussing the importance of lawyers as agents for social change).

⁹ While presenting this paper at the University of Akron School of Law in January 2009, I was informed that just days before, the Preamble also served as the focal point for the opening remarks given at the AALS Annual Meeting in San Diego, California. See

Rachel Moran, *The President's Message*, AALS NEWS, Mar. 2009 at 1–3, 7, 12–13 (noting that “[t]he image of the citizen-lawyer, whose training can be used to advance the common good, has so thoroughly disappeared from the popular imagination that those who pursue this path are no longer centrally defined as lawyers” and calling upon citizen-lawyers to become “Architect[s] of Transformative Law”). Even students are beginning to ask about the lack of teaching around the public citizen lawyer role. See Matthew E. Meaney, *Lawyer as Public Citizen: A Futile Attempt to Close Pandora’s Box* (2010) (unpublished manuscript), available at http://works.bepress.com/matthew_meany/1/.

¹⁰ Examining the importance of the Preamble obviously presupposes the continuing applicability of Rules of Professional Conduct and the requirement that lawyers comply with them. There is certainly room to question the continuing efficacy of the rules and whether they allow for sufficiently robust or nuanced conceptions of attorney, client, and court. See, e.g., Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 818 (2008); Stephen Ellman, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103, 1104 (1992). Until the rules are revisited in any meaningful way—which perhaps should occur—they remain controlling standards. See, e.g., Mae C. Quinn, *An RSVP to Professor Wexler’s Warm Therapeutic Jurisprudence Invitation to the Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged*, 48 B.C. L. REV. 539, 543–51 (2007) (noting that the therapeutic jurisprudence may be seeking to displace traditional lawyering ethics norms). The question for many clinicians, therefore, is how to teach and operate within existing rules consistent with a desire to transform existing systemic inequities and structural injustice.

¹¹ See *infra* note 41 and accompanying text.

¹² See *infra* note 31 and accompanying text.

¹³ *Id.*

¹⁴ See *infra* note 41 and accompanying text.

¹⁵ See MODEL RULES OF PROF’L CONDUCT pmbl. ¶ 1 (2009). The Preamble to the Tennessee Rules of Professional Conduct, important to my teaching at the University of Tennessee, sets forth the same three responsibilities. TENN. SUP. CT. R. 8, RULES OF PROF’L CONDUCT pmbl. (2003). As noted by Professor Colbert, the vast majority of states have adopted some version of the Model Rules and its Preamble. See Colbert, *supra* note 4, at 684. Some states, however, have not embraced the Preamble’s message that lawyers should serve as “public citizens” who have a “special responsibility for the quality of justice.” Ohio, for instance, recently superseded its former Code of Professional Responsibility with the Ohio Rules of Professional Conduct. But the Ohio Preamble does not use the term “public citizen.” Rather, in the first paragraph it provides merely that “[a]s an officer of the court, a lawyer not only represents clients but has a special responsibility for the quality of justice.” OHIO RULES OF PROF’L CONDUCT pmbl. ¶ 1 (2007). And although it does indicate that lawyers should seek the improvement of justice, ensure access to justice and the like, it does not talk about such issues as relating to lawyers serving as public citizens. See *id.* at ¶ 6.

¹⁶ MODEL RULES OF PROF’L CONDUCT pmbl. ¶ 1 (2009).

¹⁷ See *id.*; see, e.g., RICHARD ZITRIN, CAROL M. LANGFORD, & NINA W. TARR, *LEGAL ETHICS IN THE PRACTICE OF LAW* (3d ed. 2006) (describing in detail the attorney-client

relationship and court officer components of the Preamble without similarly addressing the public citizen lawyer provisions, also a popular professional responsibility text).

¹⁸ MODEL RULES OF PROF'L CONDUCT pmb. ¶ 6 (2009).

¹⁹ *Id.*

²⁰ MODEL RULES OF PROF'L CONDUCT scope (2009).

²¹ *See id.* at ¶ 14.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* The Tennessee Rules add that the rules do not “make suggestions about good practice, which lawyers would be well-advised to heed even though the rules do not require them to do so.” TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT scope (2003).

²⁹ MODEL RULES OF PROF'L CONDUCT scope ¶ 21.

³⁰ *Id.*

³¹ *See* ABA MODEL RULES OF PROF'L CONDUCT (2009).

³² *See* MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009) (part of “Chapter 6” of the rules, entitled “Public Service”). The Tennessee Rules have changed recently. Until January 2010, Tennessee’s version of this Rule was entitled “Pro Bono Publico Representation,” reflecting a much more limited description of the public citizen lawyer than the one offered in the Preamble—one rooted in the idea of individual client representation. *Compare* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (2003).

³³ MODEL RULES OF PROF'L CONDUCT, R. 6.1 (2009). Until recently, Tennessee’s Rule 6.1 began by stating that a lawyer “should render pro bono publico services.” TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (a) (old version effective through December 31, 2009).

³⁴ MODEL RULES OF PROF'L CONDUCT R. 6.1. (effective January 1, 2010), *accord* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1(a) (new version effective January 1, 2010). This amendment was seen as highly controversial, with the Tennessee Supreme Court taking under advisement until a further date the Tennessee Bar Association’s request that lawyers actually report the number of hours they devote to pro bono activities. *See In Re Pro Bono Service Rules Amendments*, No. M2008–01403–SC–RL1–RL, available at <http://www.tba.org/ethics/index.html>.

³⁵ MODEL RULES OF PROF'L CONDUCT R. 6.1(a) (2009). The Tennessee Rule uses the less specific term “substantial portion” versus “substantial majority of the (50) hours” used in the Model Rules, perhaps suggesting less focus on the kinds of individual representation outlined in subpart (a) of the Rule. However, it is still quite clear that client representation is seen as the norm in Tennessee for purposes of pro bono work. *Compare* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1 (2009).

³⁶ MODEL RULES OF PROF'L CONDUCT R. 6.1(b) (2009). The language in the Tennessee rule is the same in both the old and new rule regarding the remaining provisions discussed. *See* TENN. SUP. CT. R. 8, RULES OF PROF'L CONDUCT R. 6.1(b) (2003).

³⁷ MODEL RULES OF PROF'L CONDUCT R. 6.1(b)(3) (2009).

³⁸ *Id.*

³⁹ MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt. (2009).

⁴⁰ Interestingly, Rule 6.4 explains that attorneys may serve on the boards of organizations "involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer." MODEL RULES OF PROF'L CONDUCT (2009). Thus, it provides guidance for those attorneys who do engage in reform efforts without affirmatively mandating or encouraging such behavior.

⁴¹ MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009).

⁴² *Id.* The Tennessee Rule states more specifically that this is "[b]ecause [Rule 6.1] states an aspiration rather than a mandatory ethical duty." TENN. SUP. CT. R. 8, R. 6.1 para 12.

⁴³ See Reynoso, *supra* note 8, at 337 (explaining that the record of the deliberations surrounding the adoption of the ABA Rules of Professional Conduct in 1983 contains no reference to the meaning or limits of the Preamble's "lawyer as public citizen").

⁴⁴ Russell, *supra* note 8, at 439 ("The placement of this statement as the first sentence of the Preamble suggests that the concept is a foundational or 'core' principle of the legal profession. Nevertheless, the rule on pro bono services has never been made a mandatory, enforceable obligation.").

⁴⁵ Professor Bryan Stevenson has powerfully articulated the importance of student proximity to inequity to inform and inspire their work. He has shared this message with law faculty and students around the country, including at the University of Tennessee's 60th Anniversary Conference. See, e.g., Chloe Akers, *This Year at the University of Tennessee College of Law*, 3 TENN. YOUNG LAWYER 3 (Spring 2008), available at http://www.tba.org/lawstudent/archive/ut_08.pdf (law student Akers describing being moved by Stevenson's compelling words). I have used online videos of Stevenson's talks, like his New York University Law School, Confronting Injustice program, in the seminar component of my clinic course. See, e.g., Video: Confronting Injustice, A Lecture by Professor Bryan Stevenson (NYU School of Law 2009) available at <http://www.youtube.com/watch?v=EVD9Zdz8Nbo>.

⁴⁶ See generally Susan Bryant & Elliott Milstein, *Rounds? A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 195 (2008) (focusing "on the learning opportunities that rounds can maximize this learning"). See also Philip M. Gentry, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 278 (2000); Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOWARD L.J. 31, 32 (1993).

⁴⁷ See Mae C. Quinn, *A New Clinician's Ways of (Un)knowing: Forgetting to Remember, Remembering to Forget, and (Re)constructing Identity*, 76 TENN. L. REV. 425, 430-31 (2009).

⁴⁸ Elizabeth Calvin, Sarah Marcus, George Oleyer & Mary Ann Scali, *JUV. DEFENDER DELINQUENCY NOTEBOOK* (2d ed. 2006), available at http://www.njdc.info/delinquency_notebook/interface.swf.

⁴⁹ See Juliet Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 378 (Spring 2009) (describing "middle ground" clinical work as that which "hovers between the extremes, with an emphasis on direct service work, but delivered in a

strategic way and in response to a particular community's articulated priorities"). See also Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to my Clinic*, 13 CLINICAL L. REV. 573, 595–96 (2006) (describing choices made in limiting clinical work to small, individual cases as opposed to taking on additional community or systemic issues).

⁵⁰ Mr. Anderson's case was referred to the UT Clinic by Georgetown University's Juvenile Justice Clinic. For more about Mr. Anderson's life and case, see *State v. Anderson*, No. M2006–01045–CCA–R3–HC, 2006 Tenn. Crim. App. LEXIS 809 (Oct. 10, 2006).

⁵¹ ELIZABETH FAJANS & MARY FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* (3d ed. 2004). I am grateful to my colleague, Jennifer Hendricks, for introducing me to this text.

⁵² Obviously I am not the first to try to infuse substantive criminal law with greater concern for practice, policy, and real-world problems. For an excellent discussion of such an approach, including teaching suggestions, see Miguel A. Mendez, *On Teaching Criminal Law from a Trial Perspective*, 48 ST.L.U. L.J. 1181 (2004); Emily Hughes, *Taking First-year Students to Court: Disorienting Teaching Moments as Catalysts for Change*, 28 WASH. U. J.L. & POL'Y 11 (2008).

⁵³ Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.–C.L. L. REV. 595, 597 (2008) (noting the “false dichotomy” of claiming skills training is “the opposite of teaching theory and interdisciplinary perspectives”); Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1073–74 (2009) (“the animus of theory-centered traditions toward practice obscures the interdisciplinary breadth, empirical richness, and moral import of lawyer roles and relationships” and contributes to an “academic caste hierarchy”).

⁵⁴ This wonderful idea of having first-year students visit court was inspired by my Washington University colleague, Emily Hughes. See generally Hughes, *supra* note 52.

⁵⁵ RED HOOK JUSTICE (Sugar Pictures LLC 2004), available at <http://www.pbs.org/independentlens/redhookjustice>.

⁵⁶ *Frontline: The New Asylums* (PBS television broadcast May 10, 2005), available at <http://www.pbs.org/wgbh/pages/frontline/shows/asylums> (last visited April 16, 2010).

⁵⁷ Indeed, as a very basic matter I needed to be sure that Missouri embraces the public citizen lawyer in its Preamble. It does. See generally MO. SUP. CT. R. 4 pmb., available at <http://www.courts.mo.gov/page.jsp?id=707> (follow “Preamble: A Lawyer's Responsibility” hyperlink).

⁵⁸ See generally Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109 (2009) (tracing the history of various progressive lawyering movements and warning that modern lawyers concerned with social change should be more mindful of political and other dynamics in supporting client activism).

⁵⁹ See Brodie, *supra* note 49, at 379 (noting the difficulty of ascertaining the wishes of “the community” and figuring out who “the community” is in the first place).

⁶⁰ See, e.g., Solomon Moore, *Missouri System Treats Juvenile Offenders With Lighter Hand*, N.Y. TIMES, Mar. 26, 2009, at A13.

⁶¹ See *In re Gault*, 387 U.S. 1 (1967).

⁶² Powell spoke to clinicians at a luncheon at the 2009 Midwest Clinician's Conference in Detroit, Michigan, addressing the issue of what clinician's can do to address racial discrimination in housing and other social justice issues. WAYNE STATE UNIVERSITY LAW SCHOOL, ONE BOOK, ONE COMMUNITY: 24TH MIDWEST CLINICIAN'S CONFERENCE (2009), available at <http://law.wayne.edu/pdf/onebookonecommunity.pdf>.

⁶³ Clinicians like Colbert have effectively resisted the myopia that can develop from teaching lawyering skills within individual cases without both taking account of the context and working to challenge systemic problems. See Brodie, *supra* note 49, at 374 ("social justice lawyers should continue filing lawsuits and representing clients in adversarial contexts, but should not limit their activities to those conventional modes"); see also Dean Hill Rivkin, *Legal Advocacy and Education Reform: Litigating School Exclusion*, 75 TENN. L. REV. 265, 267 (2009) (describing some of the challenges of engaging in "systemic, long-term reform" efforts within the clinical education construct and calling for greater sharing of information and expertise among all players, as well as greater creativity from those involved in such work).

⁶⁴ Some have called for new approaches for quite some time, see, for example, Ellman, *supra* note 10, at 1107 (calling upon clinicians and others to radically rethink individual client representation models to properly undertake representation of groups), and a lot of exciting re-conceptualizations of the public interest clinical model are beginning to emerge. See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 355-60 (2008); see also Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065 (1997). But perhaps our re-radicalization should begin with the ways in which we conduct conversations at clinical conferences and beyond. Some believe these gatherings fail to offer sufficient space for new and minority voices to be heard. Time should be dedicated to listening more carefully to emerging concerns in the clinical world—particularly as seen by clinicians of color—to help inform our agendas and enrich our community. That is, perhaps we should be more thoughtfully practicing at our professional gatherings what we preach in our professional lives. See Mae C. Quinn, *More Than Mindful: A Call to Practice What We Preach in the Clinical Community* (work in progress; on file with author).

⁶⁵ See, e.g., Rachel Anderson, Marc-Tizoc Gonzalez, & Stephen Lee, *Toward a New Student Insurgency: A Critical Epistolary*, 94 CAL. L. REV. 1879, 1880-81 (2006). See generally Luz E. Herrera, *Challenging A Tradition of Exclusion: The History of An Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51 (2002).