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TOWARDS A JURISPRUDENCE (AND PEDAGOGY) OF ACCESS:

A REFLECTION ON 25 YEARS OF THE PUBLIC INTEREST PRACTICUM

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## I. INTRODUCTION

The Public Interest Practicum (PIP), a course at the University of Georgia School of Law, fosters awareness among law students of the demand for access to justice. For more than 25 years, PIP has served many purposes: to explore a street level jurisprudence; to challenge students' professional identities; to generate new models of clinical legal education; to inculcate the habit of public service; and to help individuals with legal problems. Through its many iterations, PIP has consistently exposed future lawyers to ways of helping those in need.

An example illustrates PIP's characteristic approach:

A student in PIP meets a woman at a local homeless shelter. This woman asks an ostensibly straightforward question: how can she recover her impounded car? As the student talks with this woman, the complexity of the situation emerges.

A police officer had stopped the woman for a minor traffic violation a few weeks earlier. The officer found that her car insurance had lapsed because her automatic payment to the insurance company had come up short by a few dollars, so the company cancelled the policy. While the officer did not issue a citation, the woman could not continue to drive without facing the risk of arrest for operating an uninsured vehicle. She had to leave her car on the street while she sorted out her insurance. The car accumulated several parking tickets and was eventually towed. The combination of unpaid tickets, towing fees, and daily storage fees quickly turned into more than a \$1,000 debt. Without transportation, the woman lost her job, fell behind on her rent, left her apartment under threat of eviction, and came to live in a shelter with her children.

In PIP's regular weekly seminar, the student presents this woman's experience as part of "rounds," a teaching method that consists of carefully describing, assessing,

and finding solutions for problems.<sup>1</sup> Before rounds, the student researches the legal rules on impounding cars and finds that no laws were broken. But that does not end the discussion. The student, and by way of her presentation, the entire PIP class, are all vividly exposed to the client's world. Instead of housing, feeding, and caring for her children at above minimum wage, the woman and her children occupied a small space in a shelter while she worked a minimum wage job within walking distance. Rounds allow students to connect with the more general challenges facing single mothers who live in small towns without extended family support, and with limited public transportation and few unskilled jobs paying above minimum wage. Rounds enable the teacher to connect this situation to a portion of the assigned readings that noted how "[b]reaking away and moving a comfortable distance from poverty seems to require a perfect lineup of favorable conditions."<sup>2</sup>

Finally, later in the semester, the student uses the assigned task of reflective writing to deepen her insight into this woman's situation. The student recognizes how, because of her own personal and family resources, she might be better positioned to deal with a similar legal conflict. The student notes the availability of family resources or small loans at reasonable interest rates. Finally, the student reflects on how her legal training might make her more comfortable negotiating with the insurance and towing companies, avoiding the catastrophic downward spiral the woman encountered.

This illustration exemplifies the hundreds of people and situations that students have encountered throughout PIP's 25-year history at Georgia Law. PIP is a counseling clinic in which students interact with people in the community, research the applicable law,

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<sup>1</sup> "Case rounds" has been described as a signature pedagogy for clinical legal education. See generally Susan Bryant & Elliott Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

<sup>2</sup> DAVID SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* 4 (2005).

and develop advice with the help of the PIP teacher, a licensed Georgia attorney. Students meet in weekly seminars that place particular problems in a social, political, economic, and even spiritual context. Students engage in regular reflection through written journals and personal meetings with the PIP teacher.

This short article argues that PIP's unique combination of approaches fosters a distinctive and long-lasting awareness in law students of the human cost and opportunities posed to those who lack access to the law. Part II of the article offers a history and current description of PIP, in each of its three major iterations. Part III places PIP in the context of several important movements both in law and in legal education. Part IV concludes by noting the several ways in which the experience of PIP can stick with students, altering their sense of their public role and encouraging them towards steps that can improve access to justice.

## II. HISTORY OF THE PUBLIC INTEREST PRACTICUM

PIP has gone through three major phases of development: an initial four-year period of creation and definition under Professor Milner Ball; a subsequent twenty-year period of development under Professor Alexander Scherr; and a new phase of transformation and refocusing under Professor Elizabeth Grant.

### A. THE ORIGINAL DESIGN

Professor Milner Ball started PIP in the fall of 1992.<sup>3</sup> When he described the experiment in a speech two years later, he referred to it as an effort “to take seriously what [he] had written” about “law as a medium of community and about action—performance—as fundamental to making law make sense.”<sup>4</sup> The course he laid out had students engaging in projects within the community, with a syllabus that included an unusual selection of texts.<sup>5</sup> As described in the speech, the course sought to press students to ask, “Who am I as a lawyer?” and “What am I doing when I do law?”<sup>6</sup>

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<sup>3</sup> Milner S. Ball, *Jurisprudence from Below: First Notes*, 61 TENN. L. REV. 747, 751 (1994).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 752.

<sup>6</sup> *Id.*

The course had a distinctive structure. Students read and met for class weekly as in any seminar on jurisprudence. At the same time, with Professor Ball's guidance, students went into the community, reflecting his conviction that "[his] students would have to become involved in Athens, where the law school is situated."<sup>7</sup> What students did in the community defied easy explanation: was it "social work, or business, or organizing . . . instead of law"?<sup>8</sup> The projects included meeting with people at a local soup kitchen, attending arraignments in the local magistrate court, observing truancy hearings in the local juvenile court, talking with people referred to PIP by other helping agencies in Athens, and negotiating with the University over the disposal of excess food. Students talked with people about problems with "social security, health, mental health, housing, birth certificates, IDs, landlord-tenant disputes, child support payments, and clothes left at a laundry for washing but no money to redeem them."<sup>9</sup> Students were required to take the course for two semesters and had the option of continuing for up to four semesters.

Students also read an extraordinary range of topics and disciplines. Readings included "Greek tragedy, the Hebrew Bible, Icelandic sagas, and Shakespeare, as well as modern writings like *Black Elk Speaks*, *Billy Budd*, and *Maru*."<sup>10</sup> Professor Ball identified these and other readings as relevant texts, which he assigned as a way of moving "the materials of jurisprudence [from] the courts and agencies and into the streets."<sup>11</sup> Through classroom discussion, individual meetings, and project work, he prompted students to view law from below and to interrogate how their actions and choices affect both the people with whom they spoke and their own identities as future lawyers.

Consider the following example of the interaction between the seminar discussion and the students' experiences into the streets:

In one employment case, three women had quit working at a direct dial business when they became suspicious

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 753.

<sup>9</sup> *Id.* at 759.

<sup>10</sup> *Id.* at 753.

<sup>11</sup> *Id.* at 755.

about the legality of the operation. The owner had refused to pay the wages owing them when they left. They were afraid to go back and demand payment. They asked one of my students what to do. Before I could have thought through the various legal remedies, they already had their money. My student employed a simple, effective device. She sent them back to their former place of business but telephoned the police to meet them there in order to insure the public peace. Confronted by the women with their police escort, the owner paid up forthwith. Twice the amount owed. In cash.

That was an interesting bit of lawyering. But afterwards I had trouble getting the student, and the class when we talked about it as a group, to acknowledge the violence involved—justly employed but violence nonetheless. To me, police dressed in the garb of power and carrying sidearms are force, police force, whether or not an attorney has employed them for good.<sup>12</sup>

Professor Ball noted that “it is difficult generally for lawyers, especially public interest and poverty lawyers, to acknowledge that their work involves doing violence. It is a subject that eludes easy teaching.”<sup>13</sup> But experiences like this enabled students to better understand how their work—and the methods they employed—fit within the power dynamics that Professor Ball sought to consider and discuss through the seminar and through individual reflection.

Professor Ball expressed satisfaction with the results of the course.<sup>14</sup> He identified successes in the interaction between students and other people at the local soup kitchen,<sup>15</sup> in the actions that students took in the community, and in their reflection on what they encountered and how they related that to the content of the readings.

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<sup>12</sup> *Id.* at 758–759.

<sup>13</sup> *Id.* at 759.

<sup>14</sup> *Id.* at 757.

<sup>15</sup> *Id.* The Soup Kitchen Project remains one of PIP’s longest-lasting and most fruitful collaborations in the Athens community.

Ball also identified several weaknesses—what he termed “failures”—in the design of the course.<sup>16</sup> Some were unique and specific: he wanted students to observe him in his role as a magistrate court judge *pro hac vice*, but scheduling issues prevented that from happening.<sup>17</sup> He noted that he had “not provided adequate supervision” of student work, noting the “tension . . . between scholarship and supervision of legal services.”<sup>18</sup> Finally, he noted the difficulty of prompting change beyond the help that students could provide to individual clients: “we have not so far become effectively engaged in efforts at systemic change, nor to addressing the urgencies of profound economic restructuring.”<sup>19</sup>

These successes and failures would persist in the decades that followed for PIP. Yet, Professor Ball’s account leaves out much about the impact that PIP has had on students and on the Law School. As to students, a conversation with a member of the founding class of PIP adds valuable perspective.<sup>20</sup>

Christine Scartz, now a clinical professor at the University of Georgia School of Law, took the course for four semesters, starting in the fall of 1992 and continuing until she graduated. She describes the course, at least initially, as a way to find a grounding in the law after a disorienting experience with the first year of law school. She found a community of like minds in her fellow students. She found work that spoke to her in the contact with real people and the discussions of how their stories connected with the themes explored in the seminar. And she found that Ball’s belief in her and her choice to become a lawyer fostered confidence and inspiration that has stayed with her throughout her career. Her experience through PIP made the rest of law school snap into place and make sense.

In her words, PIP “layers into you and sticks with you,” affecting how she thought of herself as a lawyer and as a person. She cited the impact that PIP had on all of the students with whom she worked, becoming a part of their self-identification as people and as lawyers long after they graduated. Her comments confirm the

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 756–757.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Conversation with Assistant Clinical Professor Christine Scartz (Oct. 4, 2018) (notes on file with authors).

success of one of Milner's central goals: asking students to consider who they are as lawyers and what they do when they graduate.

#### B. DEVELOPMENT AND CHANGE

In 1996, one of the authors of this article, Professor Alex Scherr, a civil poverty lawyer with over a decade of experience, assumed responsibility for PIP as part of his new role as Director of Civil Clinics. The creation of his position was itself a notable event for the Law School. For several years, with prompting from the American Bar Association, the faculty had been considering how to create more clinical opportunities in civil law. At that time, Georgia Law had three criminal justice programs: a collaboration with the local public defender's office; a prosecutorial externship course; and a project focusing on the legal needs of prisoners.<sup>21</sup> The school also had an environmental planning and policy practicum, created and run by Professor Laurie Fowler with support from Professor Ball. In deciding to create the position that Professor Scherr filled, the faculty contemplated a series of separate, topic-specific courses, including both in-house clinics and externships, rather than a single law practice covering different topics.

Thus, PIP began at a time when only one other offering in civil law existed at Georgia Law. When Professor Scherr took on the course, he retained it as the primary way for students to gain experience working with individuals on civil legal issues. At the same time, he began a process that, over the next two decades, would lead to the creation of over fourteen additional civil law clinic and externship courses. During that time, Ball's vision evolved as both the design of PIP itself and its value to students changed.

Professor Scherr maintained the basic elements of the course design for PIP. Students continued to work with individuals and organizations in the Athens community. Students worked in teams on community-oriented projects. They also took the weekly two-hour seminar, the readings for which typically ranged far beyond primary legal sources. Students reflected on their experiences with

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<sup>21</sup> The Legal Aid and Defender Clinic; the Prosecutorial Clinic; and the Prisoner's Legal Counsel Project (PLCP) respectively. GWEN Y. WOOD, A UNIQUE AND FORTUITOUS COMBINATION: AN ADMINISTRATIVE HISTORY OF THE UNIVERSITY OF GEORGIA SCHOOL OF LAW 161 (1998). The first two remain part of the Law School's curriculum to this day. The PLCP lost its primary funding source and closed its doors in 1996.



people and with projects through class discussions, conversations with Professor Scherr, and reflective journals. The structure that Professor Ball created remained in place and many of the initial goals persisted, especially the focus on students' exploring their present and future roles as lawyers through encounters with people in the community.

For the next two decades, PIP's community-based projects diversified and expanded. PIP maintained a continuous presence at the local soup kitchen. PIP also developed long-standing relationships with homeless and day shelters in Athens, with the Athens Housing Authority, and with the local jail. Some projects proved transient, thriving and fading over the years. These included ties with senior citizen advocates, work with grandparents caring for their grandchildren, advice for struggling musicians, and outreach to undocumented day laborers. Other projects remained constant and then exploded; in recent years, PIP has been flooded with requests for landlord-tenant advice leading to a regular project group that works those cases. Several projects exposed students to teamwork with helpers from other disciplines, including social work in Project Healthy Grandparents, as well as financial counselors, therapists, and nutritionists from the Aspire Clinic in the University's School of Family and Consumer Sciences.

Several of these projects spun off from PIP and became clinical courses in their own right. During her time in PIP, Professor Scartz developed a proposal to advocate for victims of domestic violence under Georgia's then newly-passed Family Violence Act. With Professor Ball's assistance, she obtained funding from the National Association for Public Interest Law (NAPIL)<sup>22</sup> to create the Protective Order Project, which later became a separate in-house clinic.<sup>23</sup> In the mid-2000s, students began to work with the local magistrate court to help parties in debt collection actions negotiate repayment plans. With the assistance of now Associate Dean

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<sup>22</sup> Now known as Equal Justice Works.

<sup>23</sup> Professor Scartz returned to the Law School to pick up the reins of this course in 2015, retitling it the Family Justice Clinic and expanding its focus to address a broader range of legal issues affecting families and children. Kellyn Amodeo, *UGA Family Justice Clinic helps domestic violence victims*, UGA TODAY (June 5, 2018), <https://news.uga.edu/family-justice-clinic/>.

Eleanor Lanier, this project became the Mediation Practicum.<sup>24</sup> Most recently, a group of students began work on projects helping veterans in collaboration with the Military Legal Assistance Project, which eventually became the basis for the Law School's new Veterans Legal Clinic.<sup>25</sup>

At the same time, the stress placed on the different components of PIP began to shift. Professor Scherr focused on PIP as a vehicle for providing legal advice and law-informed solutions for people in need and for offering accessible education on legal concerns that affect people who lack access to lawyers. This shift in focus resulted in PIP becoming less a way to explore jurisprudential issues and more a means to deliver useful legal information, advice, and informal advocacy to those in need.

As part of this shift, Professor Scherr also clarified and defined his role as a supervisor working with students who might advise clients. PIP developed systems of case-tracking and file management, and students carried caseloads of individual clients with overall supervision from Professor (and Georgia attorney) Scherr. For better or worse, these protocols altered the relationship between teacher and student from the more fluid and autonomous model described by Professors Ball and Scartz to one more akin to traditional clinical supervision. Professor Scherr adopted a method of supervision that gave a student as much responsibility as possible, supporting a reflective style of practice that encouraged students to work through proposed solutions before seeking review from him. But the fact that a teacher-lawyer had to sign off on planned action changed the power dynamic between teacher and student and narrowed the student's jurisprudential inquiry from Professor Ball's original vision.

Similarly, the focus of the seminar shifted. Professor Scherr drew on his experience in civil legal services to prompt students to see the people they served in context and to recognize how legal problems intersected with other pressures in people's lives, whether social, cultural, political, or economic. Professor Scherr retained the practice, started by Professor Ball, of assigning multidisciplinary

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<sup>24</sup> For additional information about the Mediation Practicum course, see <http://www.law.uga.edu/mediation-practicum-i>.

<sup>25</sup> *School of Law opens Veterans Legal Clinic*, UGA TODAY (June 18, 2018), <https://news.uga.edu/uga-school-of-law-opens-veterans-legal-clinic/>.

readings: fiction, music, social sciences, journalism, and political theory, to name a few. Whole semesters focused on topics that students encountered in community work, such as mental health, race (including consumer racism), homelessness and housing, disability advocacy, and access to justice. But the overarching question became how students could come to grips with their inevitably public role as lawyers and how their answers might affect the kind of lawyers they choose to become.

Scherr also introduced a more consistent rounds methodology into the PIP class. The use of rounds helped students to develop better habits of working methodically through the problems they encountered with the people they met: identifying known and missing facts; assessing influences and pressures; analyzing legal rules; and formulating solutions that integrated legal rules into pragmatic realities. This methodology necessarily shifted the focus of discussion from the broader jurisprudential questions described by Professor Ball to ones in which students sought answers to questions using the materials of jurisprudence to inform their understanding of how law did, or did not, provide for durable, satisfying solutions.

This shift to a greater focus on lawyering and problem-solving occurred at the same time the Law School began creating new opportunities for clinical education. Enrollment in PIP peaked at roughly 15-20 students per semester in the early 2000s, with a high of nearly 25 students. Opportunities for other civil clinical work increased. Slowly, students stopped taking the course for four semesters; eventually the course stopped requiring more than one semester. Enrollment began to decrease, to a low of two students in the mid-2000s. At that point, Professor Scherr recast the class as a course that provided foundational experiences in law practice, including interviewing, counseling, and informal advocacy. The course would also allow students the chance to explore their own commitment to a public role as a lawyer. Enrollment rebounded and has since stayed steady at between 10–15 students each semester.

### C. PIP IN THE PRESENT

In 2016, the Law School hired an alumna of Georgia Law's criminal defense clinic, Elizabeth M. Grant, to direct PIP. As a former public defender, Grant's experience with poverty law came

not from civil legal work, but from dealing with civil issues facing her clients in criminal practice, including problems with housing, employment, debt, licensing, disability services, and access to public benefits. In its current state, PIP has maintained its traditional pillars of client work, collaboration in projects, a weekly seminar with themes that change each semester, and student reflection. Professor Grant's background prompted her to expose students to the quasi-criminal nature of some civil and administrative laws such as driver's license suspensions that aggravate existing poverty, municipal "quality of life" ordinances that threaten jail time for non-compliance, and recent Georgia legislation that seals non-conviction arrest records from public view.

In addition to maintaining the partnerships Professor Scherr established with local non-profits, Professor Grant has connected her students with other public interest lawyers in Athens and from around Georgia. Each semester students hear from at least one public interest attorney about a model for providing civil legal services, including attorneys from Georgia Legal Services, the Georgia Justice Project, and the Georgia Heirs Property Center. During the current Fall 2018 semester, the seminar theme of "Access to Justice" has exposed students to monthly "pop-up clinics" staffed by volunteer lawyers, the State Bar of Georgia's "Free Legal Answers" website, an arrest records restriction event hosted by the Athens Solicitor-General and the Georgia Justice Project, and the State Bar's Access to Justice Committee's "Pro Bono Roadshow" held at the Law School in November. The seminar creates an environment where students feel free to discuss both the benefits and limitations of various legal service delivery models. The ultimate goal is for the students to consider how they can increase access to justice in any area they practice, whether it be judicial, private practice, or public service.

Around the time Professor Grant was hired, the Law School changed its writing requirements for graduation in a way that included supervised writing of client letters. Professor Grant saw an opportunity for students to use PIP to satisfy this requirement while learning a form of legal research and writing that may be more common than memo writing, especially in smaller law firms and public service law practices. Students who wish to satisfy the writing requirement are assigned to client projects that are more

likely to generate written advice. If those projects did not produce enough opportunities, students would write letters for simulated cases to augment what regular case work might produce. The execution of quality client letters requires students to conduct thorough legal research, logically organize that research, and then synthesize that research into clear language a layperson can understand. All of this is done through multiple drafts that build on feedback provided by the PIP teacher.

Professor Grant has also sought to increase the use of new law practice technology in PIP. A need to protect confidential information, especially with a novice group of students, has required the students to complete their work at the Law School on computers connected to a confidential drive. PIP also requires students to work with paper client files, still the norm in many law offices, especially non-profit law practices. Yet PIP now has laptops to use at site locations and a cloud-based data management system that is being incrementally added to the curriculum. Borrowing ideas from some of the Law School's newer clinics, PIP will increase its use of secure cloud-based technology while continuing to teach students how to manage a paper file.

PIP has replaced some of its live educational programs in the community with programs that facilitate the students' creation of written self-help materials. For example, one of PIP's live educational projects was recently incorporated into the Family Justice Clinic, and another was ended when the pertinent community organization affiliated with its own lawyer. Meanwhile counties around Georgia are developing "self-help desks" through county clerks' offices, while legal services websites like GeorgiaLegalAid.org are attempting to educate *pro se* litigants in the civil justice system. The natural end to some education projects has led to the goal of increasing PIP's role in supporting these local, unbundled services and self-help models.

Finally, Professor Grant has kept the open enrollment model that PIP has maintained for more than 25 years. Any second- or third-year student may enroll for up to two, non-sequential semesters in PIP using the Law School's regular enrollment process.<sup>26</sup> The class has no pre-requisites, and within the first few

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<sup>26</sup> *Public Interest Practicum: Course Information & Requirements*, U. OF GA. SCH. OF L., <http://www.law.uga.edu/public-interest-practicum> (last visited Nov. 5, 2018).

weeks of the seminar students receive basic training in client interviewing, case assessment, file management, and the ethical representation of clients.<sup>27</sup> This model permits students at any level of development to enroll in the course. Student interest in the course varies from the desire to make a career in public interest law to checking off a writing or practical skills graduation requirement. Regardless of the motivation, PIP has proven to be a dynamic method for exposing law students to issues of access to justice facing the most vulnerable in our legal system, while at the same time urging students to examine legal problems in a broader context than cases and statutes.

### III. FRAMES OF REFERENCE

This section locates PIP and its distinctive approaches in the context of three movements in modern legal education and law practice: the proliferation of clinical courses in law schools; the rise and refinement of the access to justice movement; and the movement towards unbundled legal services.

#### A. CLINICAL PEDAGOGY

Clinical pedagogy has grown in scope and methodology since clinical education first appeared in law schools in the 1920s. Initially, clinic students worked primarily as untapped sources of representation for underserved populations unable to afford legal assistance.<sup>28</sup> Over the decades, however, clinical faculty refined their pedagogies and deepened the connections between clinics' work and the work of the university.<sup>29</sup>

As clinical education continued to grow in the midst of competing viewpoints, law schools around the country adopted their own distinct approaches.<sup>30</sup> During this evolutionary process, certain tensions emerged.<sup>31</sup> One in particular concerned the risk that

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<sup>27</sup> *Id.*

<sup>28</sup> See Nantiya Ruan, *Student, Esquire?: The Practice of Law in the Collaborative Classroom*, 20 *CLINICAL L. REV.* 429, 434 (2014); see also Deborah Maranville et al., *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lauyering*, 56 *N.Y.L. SCH. L. REV.* 517, 521 (2012).

<sup>29</sup> See Ruan, *supra* note 28, at 434; Maranville, *supra* note 28, at 522.

<sup>30</sup> Maranville, *supra* note 28, at 522.

<sup>31</sup> *Id.* at 523.

clinical education's academic development would value clinics primarily for their skills training and ignore clinical education's connection to public service and education about systemic injustice.<sup>32</sup> Additionally, two assessments of legal education published in 2007 offered critiques of the perceived chasm between legal education and the legal profession. Both *Best Practices for Legal Education*, a collaborative report by the Clinical Legal Education Association, the American Bar Association, and the Association of American Law Schools, and *Educating Lawyers: Preparation for the Profession of Law*, a report by the Carnegie Foundation for the Advancement of Teaching, emphasized the need to both incorporate additional teachings of "lawyering skills" at law schools and cultivate law students who "think within and about the role of lawyers."<sup>33</sup> Each critique viewed the reflective, context-based experiences offered by many clinics as a way to achieve those goals.<sup>34</sup>

Professor Ball's original design for PIP anticipated and embodied much of the later developments in clinical legal education. In particular, PIP's focus on student autonomy in working on problems, its client-centered law practice systems, and its prompt for students to use those encounters to foster their professional and civil identities fall squarely within the mainstream of thought about clinical pedagogy. Additionally, the introduction of rounds and reflective writing assignments by Professor Scherr, together with the increased focus on community-based collaborations, represent common phenomena in clinical courses nationally.

At the same time, PIP has certain features that mark it as an outlier in clinical education. First, its objective of serving individual clients cuts across many strands of systemic advocacy in clinical courses at other schools. Second, its use of a limited representation model of service is more restrictive than the litigation or transactional services provided by other clinics both at Georgia Law and nationally. Finally, the persistent and pervasive focus of the PIP seminar on cross-disciplinary readings and jurisprudential

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<sup>32</sup> See *id.* (citing Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31 (1993)).

<sup>33</sup> *Id.* at 525 (citing Anthony G. Amsterdam, *Clinical Legal Education – A 21<sup>st</sup>-Century Perspective*, 34 J. LEGAL EDU. 612 (1984)).

<sup>34</sup> *Id.*

themes varies from the common focus on law, legal process, simulated exercises, and skill-building by other clinical courses.

#### B. ACCESS TO JUSTICE

The right to legal representation is deeply rooted in American law. The right to counsel in federal prosecutions was enumerated in the Bill of Rights under the Sixth Amendment. In 1963, the Supreme Court incorporated that right to counsel to felony state prosecutions in the landmark *Gideon v. Wainwright* decision.<sup>35</sup> Since *Gideon*, the Court has extended the right to counsel to other areas of law, but has made clear that the right does not extend to civil litigation.<sup>36</sup>

While the courts appear settled that citizens are not afforded guaranteed legal representation in all matters, many people and institutions advocating for greater access to justice continue to fight for a modern day “civil *Gideon*.”<sup>37</sup> In fact, the ABA House of Delegates unanimously approved a report calling for a national civil *Gideon* in 2006.<sup>38</sup> However, poverty law scholar Benjamin H. Barton argues that such an approach for addressing access to justice for those in poverty is misguided.<sup>39</sup> He suggests that the *Gideon* decision has largely proven to be a disappointment, and its deficiencies would transfer to a civil *Gideon* system.<sup>40</sup> Instead of seeking a silver bullet solution, Barton proposes a renewed focus on *pro se* court reform.<sup>41</sup>

No matter the approach, providing access to justice to the nation’s most vulnerable will continue to be a critical issue for the foreseeable future. Many bar associations, including the State of Georgia, have dedicated considerable attention to access to justice,<sup>42</sup>

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<sup>35</sup> 372 U.S. 335 (1963).

<sup>36</sup> See *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18 (1981) (holding that the termination of parental rights, a particularly strong “civil” liberty interest, does not fall under *Gideon* protections).

<sup>37</sup> “Civil *Gideon*” is a shorthand name for a constitutional civil guarantee to a lawyer to match the criminal guarantee from *Gideon v. Wainwright*. See Benjamin H. Barton, *Against Civil Gideon (And for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1227 (2010).

<sup>38</sup> See *id.* at 1229.

<sup>39</sup> *Id.* at 1228.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Committees, STATE BAR OF GEORGIA, <https://www.gabar.org/committeesprogramssections/committees/> (last visited Nov. 5, 2018).



while the nationwide push for criminal justice reform generally indicates that policymakers will keep the issue in the public spotlight.

At first blush, the “jurisprudence from below” that formed the core of Professor Ball’s initial design seems more global and general than the specific concern to provide lawyers to those facing severe civil legal issues. The emphasis on developing student awareness and encouraging the conscious formation of a professional identity never sought to force students to become lawyers for the poor. PIP has always accepted the diversity of its students’ career paths.

And yet, the choice to have PIP students meet clients where they gather in the community has the inevitable effect of showing students what it means to lack access to the law as a way to solve problems and resolve conflicts. Even PIP’s limited representation model causes students to ask “what would or could a lawyer do?” for the people with whom students meet and talk. The answers to these questions are often that lawyering is essential and that the lack of lawyers is an injustice. Yet, as the stories from Professor Ball’s speech illustrate, the answer may also be that human interactions through informal conversation can solve problems that would take many months and a tangle of processes for the legal system to resolve. Indeed, students often encounter the reality that people may require only accurate legal information to solve problems on their own.

### C. UNBUNDLED LAWYERING

Unbundling is a method of legal service delivery in which lawyers break down the tasks associated with a client’s legal matter and provide representation only pertaining to a clearly defined portion of the client’s legal needs.<sup>43</sup> Frequently, unbundled legal services include document review, negotiation, conducting legal research, and drafting pleadings.<sup>44</sup> Many factors—such as the cost of legal representation and the disruptive tendencies of the “gig economy”—have led the legal industry to embrace the concept of unbundled

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<sup>43</sup> Unbundling can also be referred to by other names, including as limited-scope services, a la carte legal services, discrete task representation, or disaggregated legal services. See Stephanie L. Kimbro, *Law a la Carte: The Case for Unbundling Legal Services*, 29 GPSOLO 30, 32 (2012).

<sup>44</sup> *Id.*

lawyering.<sup>45</sup> Indicative of the legal industry's embrace of this unbundling concept, the ABA's Model Rules of Professional Conduct formally allowed the unbundling of legal services in 2002.<sup>46</sup> Rule 1.2(c) has subsequently been adopted by at least 41 jurisdictions.<sup>47</sup>

According to David L. Hudson Jr., unbundling can result in a mutually beneficial relationship for both lawyer and client.<sup>48</sup> On the one hand, lawyers can expand their client base because the cost *per* case is more affordable, and also more effectively compete with document preparation services.<sup>49</sup> On the other hand, clients receive assistance directly from a lawyer that they had not previously been receiving.<sup>50</sup> To facilitate an effective relationship, Hudson emphasizes the significance of aligning the client's expectations with the unbundled service.<sup>51</sup> To achieve this, lawyers must have a process in place to evaluate whether unbundling would be appropriate.<sup>52</sup> Then, the parties should agree to and sign a limited-scope engagement agreement where the client gets some form of checklist to know what the lawyer is responsible for.<sup>53</sup> Finally, lawyers should know what legal matters (i.e., certain criminal cases, complex litigation) are "off-the-menu" in limited representation relationships.<sup>54</sup>

PIP has long used a limited representation model that focuses on investigation, counseling, and informal advocacy to avoid litigation or complex transactional solutions. This limitation fits neatly within one model of "unbundled" services and limits the scope of the lawyer-client relationship to the provision of advice and referrals to other resources. PIP's focus on community education, and more recently on self-help materials, embodies another limitation in the unbundling of legal services.

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> David L. Hudson, Jr., *A Boost for Unbundling*, 99-JUN A.B.A. J. 22, 22 (2013).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Kimbro, *supra* note 43, at 32. Model Rule 1.2 requires that the client gives "informed consent" to the limited representation and that "the limitation is reasonable under the circumstances." *Id.*; MODEL RULES OF PROF'L CONDUCT r. 1.2(c) (Am. Bar Ass'n 2015); *see also id.* r. 1.0(e) (defining "informed consent").

<sup>53</sup> Kimbro, *supra* note 43, at 32.

<sup>54</sup> *Id.*

#### IV. PIP AND FOSTERING ACCESS TO JUSTICE

This article has detailed the changes in the original vision of PIP through gradual growth and development of the program over the years, and now into new directions for the more recent years. The article has also placed PIP in the context of several broader movements, including the effort of major legal institutions to foster access to justice. The argument for PIP has always focused on the law students' experiences in the seminar and on their reflections. PIP's instructors have never sought to justify the value of the course only on the volume of services provided.

At the same time, many features of the PIP experience are distinctive and offer a unique method to foster access to justice. The course takes advantage of several powerful experiences to inculcate an awareness of the need for legal services not only for the students at present but also for their future as lawyers and citizens.

##### A. ENCOUNTERS WITH INJUSTICE

PIP places students in direct contact with people whose stories convey injustice in immediate and compelling terms. Students come to PIP with a wide range of political values, from those who believe in the myth of self-sufficiency to those who ascribe to the anti-myth of systemic and structural oppression.<sup>55</sup> Yet the stories that students encounter in PIP often merge myth and anti-myth in the experience of a specific, concrete unfairness. Regardless of what preconceptions they hold, almost all students in PIP encounter a person whose situation prompts them to say, "That is wrong!" Students may also encounter injustices that go without a remedy in law. In many cases, that lack of remedy results directly from the lack of availability of full-scale legal services beyond the limited scope of the service PIP can provide. By placing students in authentic encounters with injustice and giving them both practical and theoretical tools for understanding those encounters, PIP fosters a rooted moral awareness of the impact that lawyers have in helping those who encounter injustice.

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<sup>55</sup> DAVID SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* 4 (2005).

#### B. EXERCISING AUTONOMY

PIP also asks students to examine the value of autonomy and self-determination in two critical ways. First, students have extraordinary responsibility for the work they do with the people who come to PIP. The primary contact with those that PIP serves rests with the students. The methods of supervision used by Professors Ball, Scherr, and Grant encourage students to work out solutions based on their own understandings of the human situation and their own skills as future lawyers and problem-solvers. This experience of autonomy provides students with a deeper awareness of the responsibilities they will carry as practicing lawyers.

Second, and less obvious, students also encounter their clients as autonomous actors. One of the persistent conversations in PIP circles is the question of client-centeredness: What are the client's goals, needs, and values? Why is the client making a particular set of choices? How will the client survive the situation they are in and move in a direction they choose? These questions nudge students towards an awareness of their client's autonomy and capacity for self-determination. Students become attuned to their own judgments about client choices. They acclimate to solutions that rely on the resilience of the human being who happens to find a law student as a source of assistance. Students must ask whether to help the client directly or to provide advice that would allow the client to help herself. Answering these questions fosters an important perspective on the limits of legal solutions in the context of the client's life.

#### C. PEOPLE IN FULL

PIP also fosters an awareness that the people with whom a student works exist in a world and a culture which that student may never have encountered. Part of this awareness involves appreciating the complexity of the pressures that operate on even the simplest of decisions, a complexity illustrated by the example at the start of this article. Through readings, seminar discussions, individual supervision, and reflection, students begin to see around the four corners of their legal training into the full range of human realities that influence decisions. Materials drawn from other disciplines strengthen this expansion of insight. Reading fiction,

social sciences, and journalism help train the student's ability to imagine another person's life, a critical capacity for those dedicating themselves to a service profession with profound impact on the lives of others.

Another part of this awareness involves appreciating the capacity for human resilience in the most strained of circumstances. Consider these anecdotes from Professor Ball:

The students keep journals, and this is what she wrote in hers about one visit to a senior citizens' center: 'I introduced myself to a woman I hadn't seen before. She told me she was 'stress free.' She had hitchhiked from California, didn't have a job, didn't know anybody, and was completely content.'<sup>56</sup>

Not everyone comes to the soup kitchen for food. There is a core of repeat guests who seem to come mainly for each other's company. In the winter some people come to get warm. In the summer an elderly couple that I have never seen eat come to bring a pickup load of neighborhood children, many of whom still have light and fun in their eyes and leave with food all over themselves.<sup>57</sup>

Stories about thriving in dark times find their match in stories about desperate solutions in the face of hopelessness:

There are presently enough indoor beds in Athens for everyone, but the bridges and trees have to accommodate some people whose psychological, alcohol, and drug problems render them ineligible for other shelter. Last year a man came to the soup kitchen with a circular wound to the middle of his forehead. He told one of my students that he had fallen. Later, the Methodist minister explained that the man could not

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<sup>56</sup> Ball, *supra* note 3, at 756.

<sup>57</sup> *Id.* at 758.

afford alcohol or drugs and had attempted instead to knock himself unconscious against a tree.<sup>58</sup>

Encounters of this kind characterize the student experience in PIP. These stories ask students to think beyond their legal training to grapple with the reasons why people act as they do, why some thrive while others do not, and how the law may only be a part, often a small part, of durable long-lasting solutions to client concerns.

#### D. COLLABORATIONS

Students in PIP learn from collaboration with one another. This occurs in part because the course asks students to work in teams. For many students, this represents the first experience of working with peers in law school. It brings them to terms both with the promise of shared talent and energy as well as the challenge of differing personalities, motivations, and schedules.

Students also learn collaboration through PIP's relationship with the Athens community of service providers. All PIP projects rely on connections with other providers, including shelters, soup kitchens, food banks, mental health clinics, jails, housing authorities, senior centers, and courts. These collaborations often work well; but just as likely, students encounter difficulties such as persuading a service provider to allow entry, coordinating schedules and access, and accommodating disparities in goals between a team of law students and outside providers. Learning the dynamics and the mechanics of collaboration between community service providers represents an important aspect of ensuring access to justice.

Finally, students collaborate with the person whom the student has encountered. That person could easily be described as a "client," but that word may not capture the full dimensions of the interaction between them. Professor Scartz described how Professor Ball encouraged her to see her "clients" as full collaborators. This included researching alongside the "client," reading primary legal texts, sifting their meaning, and working out solutions together.<sup>59</sup> PIP may well have lost this early vision of the client as a full participant in formal legal analysis, but it continues to stress the

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<sup>58</sup> *Id.*

<sup>59</sup> See Conversation with Christine Scartz, *supra*, note 23.

student's role with another person (transiently labeled a "client") as collaborators in problem-solving. Students come to terms with the fact that the people with whom they work in PIP (and with whom they will work as lawyers) are equal participants in the problem-solving process in ways that can make solutions more durable and effective.

E. "A WORLD IN A GRAIN OF SAND"<sup>60</sup>

Professor Ball's speech in 1994 described an unrealized expectation: PIP had not "become effectively engaged in efforts at systemic change, [nor to] addressing the urgencies of profound economic restructuring."<sup>61</sup> While this undersells the local impact of some of PIP's later efforts, it remains accurate to describe PIP as a service-oriented program focused on rendering service to individuals in the community. Students in PIP are miniaturists, working on problems specific to particular people. Through careful supervision, students learn the mechanics of problem solving on a one-person scale, sorting out relevant legal principles (if any), and working towards a solution that will best address the questions posed by that person's situation.

At the same time, from the start, PIP has sought to introduce students to systemic thought. Professor Ball's original design focused on large-scale jurisprudential themes. Professors Scherr and Grant have continued the practice of assigning readings or bringing in speakers who introduce students to the broader realities that students encounter through individual service. The fact that the PIP seminar does not focus on primary legal texts but instead asks students to explore thinking from other disciplines reinforces a fundamental message that the purported distinction between "service work" and "impact work" is a false dichotomy.<sup>62</sup> The structure of PIP asks students to integrate the larger scale ideas

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<sup>60</sup> See William Blake, *Auguries of Innocence*, Poetry Foundation (1950) <https://www.poetryfoundation.org/poems/43650/auguries-of-innocence> ("To see a World in a Grain of Sand, And a Heaven in a Wild Flower, Hold Infinity in the palm of your hand, And Eternity in an hour . . .").

<sup>61</sup> Ball, *supra* note 3, at 757.

<sup>62</sup> See Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, NLADA Briefcase, August, 1977, at 106; Peter Margulies, *Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate*, 3 MICH. J. GENDER AND L. 493, 494 (1996).

presented in the seminar with the realities of the individuals with whom the course has brought them into contact.

PIP continues to exclude litigation, appellate work, and administrative or legislative advocacy. But by exploring individual problems in a broad context, PIP encourages students to see the world that exists within the ingrained realities of individual problems. The story relayed at the start of this article illustrates one aspect of this reconciliation between large- and small-scale thinking: relating the cascading problems a single mother faces when her car has been impounded allowed for a broader discussion of the realities facing single parents living at the borderline of poverty, without the buffer of a comfortable income.

No other systemic problem has been closer to the heart of PIP than the lack of access to justice posed by the cost of legal services. As already noted, working in a limited representation setting forces hard questions: what could a lawyer do with this problem; why don't lawyers handle this kind of problem; and is law the right source for a solution? This interplay between the larger themes of the access to justice movement and the particularized solutions that students work out with their clients represents one of PIP's strongest contributions to future work by its graduates.

#### F. IRRETRIEVABLY PUBLIC

Finally, PIP has long posed the question to students: what should they do as a lawyer, if anything? Professor Scartz reported that Professor Ball's belief in her and in her commitment to law school taught her that she could do a lawyer's job and that, through it, she could make change happen.<sup>63</sup> Her comment describes the first step in a two-step process: developing a belief that you can act as a lawyer; then deciding what you will do. Many PIP students have gone on to be public servants, working in non-profit, government, or political life to pursue both individual and systemic solutions. Others have moved away from law entirely, to business, politics, teaching, or other helping professions. Most PIP students have gone into private practice, as is still true for most law graduates from most law schools.

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<sup>63</sup> See Conversation with Professor Scartz, *supra* note 23.



Throughout its several decades, the pedagogy used in PIP has circled around a central proposition: all lawyers are public interest lawyers. Lawyers work with a license (and a monopoly) granted by the public; lawyers work with a set of tools, in the form of legal rules and legal processes, that are created and used by the public; and the actions of lawyers invariably have an impact on more people than their clients, with ripple effects spreading out of sight. Even the most private of lawyers within the most private of practices works in this public context. The only real question is the degree to which any lawyer acts with an awareness of this public role or chooses to ignore the public dimensions of their work.

PIP's combination of individual service, collaborative action, intellectual and moral exploration, and reflective practice seeks to foster that awareness and to challenge students to make conscious decisions about their public roles. PIP never sought to create a generation of lawyers working solely in traditional public interest or public service practices. To borrow from Professor Scartz, PIP seeks instead to "layer into and stick with" its students, to change the range and scope of their vision of the communities that they occupy. At its core, the Public Interest Practicum seeks to change how students see their community, to enhance their awareness of their public role, and thus to encourage them to increase access to justice in their future work.