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CREATING A LAW SCHOOL THAT EMPHASIZES PUBLIC INTEREST LAW

ERWIN CHEMERINSKY*

I had been a law professor for 28 years – at DePaul, the University of Southern California, and Duke – before taking my current position as a dean. At all of those law schools, I felt a frustration at how few students pursued a career in public interest law. A large number of students came to law school with that as their goal, but few ended up pursuing it. To be sure, some of this is because of the lack of public interest jobs for those right out of law school. Yet, those students committed to a public interest career, and willing to be flexible as to geography and field, often have found such positions. The lack of permanent positions does not explain why so few of my students were doing pro bono work during law school and why so few were doing public interest work during their summers. Something else is going on in law schools.

I saw that vividly at Duke Law School, by every measure a terrific law school and consistently ranked in or near the top 10 of all law schools in the United States. In the fall of 2002, I was a visiting professor there and taught first year law students constitutional law. Whenever I teach first year law students, I have lunch with them in small groups and, among other things, ask if they come to law school with specific ideas of what they wanted to do with their law degrees. A significant number of students said that they wanted to pursue careers in public interest law. Two years later, in 2004, I accepted a permanent position and returned to Duke. The students I taught two years earlier were

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now third year students, and I was teaching many of them Federal Courts. I again did lunches with small groups and would ask of their career plans. At lunch, virtually every student described going to a large law firm, with a number of students doing judicial clerkships first. Statistics showed that Duke was near the bottom of the top 15 law schools in placing its students in public interest jobs.

Maybe those students would turn to public interest work after stints at big firms. Perhaps they would do a great deal of pro bono work at their law firms. My sense, though, was that something happened while they were in law school to cause them to abandon the career goals they had in starting law school. I spent a lot of time thinking about it. Some of it likely was ease of path: a lot of big firms came to interview on campus each fall, and it was simple for students to sign up for these interviews. Public interest offices rarely participated in on-campus interviewing. Some of it was peer pressure. It is hard to watch all, or at least a very significant majority, of your classmates signing up for and doing interviews and having none. I recall my second year of law school having a grand total of zero interviews because I wanted to do public interest work, and no public interest offices were then interviewing at Harvard Law School. My classmates conversations were dominated by, and that is an understatement, talk of where they were doing call-backs, how they were treated, when they had to decide. I felt very alienated from them and from the law school that facilitated this. I watched my son go through the same experience when he was a second year law student at Duke and being dismayed by how little had changed in 30 years.

Some of it was the students' perception that there were not jobs right out of law school doing public interest work and that it was not worth trying. I always had the sense that the career services office was more oriented towards placing students in law firms and less interested in public interest work. Some of it, too, was a widespread sense among students that big law firms
provided the best training and that it was expected to go to a big law firm before doing anything else. I heard this so often that another professor and I, James Coleman, took to doing a program each spring titled, “You don’t need to go to a law firm.” Jim had been a partner at the Washington, D.C. firm then known as Wilmer, Cutler & Pickering and had special credibility in talking about the advantages and disadvantages of law firms. Some, too, of course, was the reality of loan repayments, though Duke had in place a loan repayment assistance program.

In 2007, I accepted the position to be the founding dean of the University of California, Irvine School of Law. I decided from the outset to create a law school with a strong emphasis on public service. The Chancellor, Michael Drake, and the Provost, Michael Gottfredson, who hired me agreed to the importance of this.

But this, of course, was not the only objective. Several other goals also affected what we could do. First, the primary goal articulated by Chancellor Drake and Provost Gottfredson was to create a law school that would be ranked in the top 20, by every measure, from the outset. They were terrific in providing the resources to allow us to pursue being a top 20 law school, but this required that our primary criteria in admission be focused on LSAT and GPA numbers. These are a substantial part of every law school’s ranking. Commitment to public service, of course, could be a plus in admissions decisions, especially among those with the requisite grades and test scores. But ultimately our admissions decisions would not be very different from other schools that wish to be in the top 20.

Second, we needed to cultivate close relationships with the large law firms in our area. I spent a great deal of time thinking about how to attract terrific students to a brand new law school. The law school hired 10 founding faculty, all stars from top 20 law schools, to arrive a year before the students. My hope was that this would send a message to prospective students of the quality of the new school. We obtained commitments from 75
employers – law firms, government offices and public interest organizations – that they would come and interview our students. This was to communicate to students that they would have job opportunities if they came. My best idea, though, was to offer a full scholarship for all three years of law school to every student in the inaugural class. This received national publicity, and we received about 2,800 applications for the 60 slots and had students turn down many top schools to come. The scholarship money came largely from large law firms in the area. Their incentive was to bring great students to Orange County with the hope they would stay and come to work at their firms. And, of course, we wanted to do all we could to help our students who wanted to go to large firms pursue this.

Third, once the founding faculty arrived, major decisions about the school were made by them and then by the faculty who were subsequently hired. There was no assurance that they would share my vision of the school, especially with regard to an emphasis on public service. We were hiring a founding faculty that would make us a top 20 law school; their views on public interest law really did not play a role in the hiring process.

Within these constraints, though, there was a great deal of opportunity to create a law school that put more of an emphasis on public interest law. This essay is a description of some of the things we have done in this regard. It is too soon to know whether we have succeeded in producing law students who will pursue public interest careers. We have had only two graduating classes and a significant number of students are doing judicial clerkships. We have some students working full-time in public interest, some in government and many at law firms. We have a large number of students doing public interest work during the summers and doing pro bono work during the school year. We will need more time before assessing whether what we have done makes any difference. I know there is more that we can do. This essay describes what we have done in terms of our curricular decisions, our financial assistance, our pro bono program and
our career services office. These are not all of the components for designing a law school oriented towards public interest law, but they are certainly crucial aspects of doing this.

I. CURRICULAR DECISIONS

If students are going to pursue careers in public interest law, they must do public interest law in law school. They must have a sense of what it entails and the rewards (and drawbacks) that it offers. Law school clinics are key to accomplishing this because they are always providing legal services for those who otherwise cannot afford them. Clinics, too, serve a larger goal that benefits all students, whatever their career objectives: it provides essential training in being a lawyer. I often have remarked that it is hard to imagine a medical school where medical students never saw a patient and that its goal was just to teach students to think like a doctor. None of us would want to be treated by such physicians. Yet, most law students graduate never having met or represented a client. I would estimate that at the University of Southern California and Duke, the schools I taught at before coming to UCI, about a quarter of the students participated in the legal clinics.

From the outset, my goal was that we would require a clinical experience of every student. Of course, like all graduation requirements, this had to be approved by the founding faculty. There was some tension in the discussion about this as some faculty members felt that they had come to the school precisely because this was the plan, while other faculty members were much more skeptical about clinical education. After a thorough discussion, the faculty approved requiring participation in a clinic as a graduation requirement.

The plan was that virtually every student would fulfill this requirement in an in-house clinic taught by a full-time faculty member. Externships and field placements have many virtues—and we have created an extensive externship program—but they
would not serve our goals for the clinics. We wanted the students in the clinics to represent clients and be responsible for handling all aspects of their cases, of course, under the supervision of a faculty member. Externships and field placements usually could not provide that. Also, in-house clinics would allow much more control over the students' experiences. Thus, the goal was to have almost all students doing in-house clinics, with the only exception being instances where there were experiences we could not provide - such as prosecuting misdemeanors - and we were convinced that the experiences was comparable to that offered in our clinics. Students also could do externships with non-profit organizations, government offices and judges, but these do not fulfill the clinical requirement.

The commitment to clinical education required that we plan to devote a significant part of our faculty resources to clinical faculty. "Best practices" are that there should be no more than eight students per clinical faculty member. We plan to be a school of 180 students a class. We decided to allocate 10 of our faculty slots to clinical faculty. If each clinical professor teaches eight students a semester, we will be able to cover 160 students per year. We can supplement this with academic faculty occasionally working in the clinics. I, for example, take two students and one appellate case each year in our Appellate Litigation Clinic, where students brief and actually argue cases in the Ninth Circuit. Another professor, Katherine Porter, created a consumer law clinic in conjunction with her work as the California monitor of funds received from banks in connection with consumer mortgages. Also, we can supplement clinics through the use of adjuncts working under the supervision of faculty members (we have done this in our Appellate Litigation Clinic, our Domestic Violence Clinic and our Immigrants Rights Clinic) and fellows (we have done this in our Environmental Law Clinic).

To make this work, it was crucial that we attracted top clinical faculty. As soon as it was clear that I was going to be offered the
deanship, I reached out to Professor Carrie Hempel, from the University of Southern California Law School, and asked if she would come be the Associate Dean for Clinical Education and create our clinical program. To attract great clinical faculty and to correct what I always perceived to be a wrong at most top tier schools, I wanted us to give tenure to clinical faculty and give them full voting rights on the faculty. At USC and Duke, for example, clinical faculty members were on renewable contracts and could not vote on appointments matters. In my initial agreement with the Provost, there is a paragraph that says that our clinical faculty would be tenured (or tenure track) and that they would be able to vote on personnel matters. We also had to pay clinical faculty salaries comparable to academic tenure track faculty, something absent at many other schools. This commitment has allowed us to recruit terrific clinical faculty.

I also believed that clinical education could not just be a semester-long experience; we needed to find a way to have it present throughout the three years of law school. Carrie Hempel devised a program whereby our first year law students, as part of their Lawyering Skills course, would go to a legal services or public defenders office and do in-take interviews. Students first receive classroom instruction in interviewing, then watch experienced lawyers do interviews, and then they do interviews. Also, we created additional clinics taught by adjunct faculty, called “elective clinics,” which do not fulfill the graduation requirement but which provide more clinical opportunities.

The emphasis on skills training caused us to place a great deal of emphasis on teaching Lawyering Skills. We decided to create a six-unit first year course required of all students. We made the same commitments to our Lawyering Skills faculty: tenure (or tenure-eligible positions), equal faculty status including voting on appointments and salaries comparable to academic tenure track faculty. I strongly encouraged our Lawyering Skills faculty to use problems drawn from public interest practice and not only from corporate or business contexts. Grace Tonner, then at
the University of Michigan, came to be our Associate Dean for Lawyering Skills.

We created an innovative year-long first year course in the Legal Profession. It, of course, teaches professional responsibility, but it also is meant to provide students an in-depth examination of the profession that they will be joining. As part of this, the course brings in speaker panels of lawyers from every practice setting, including public interest lawyers, prosecutors and defense attorneys, government lawyers, legal service attorneys and so on.

The founding faculty decided to have no other requirements after the first year except for the need to participate in a clinic and the need to do a major paper. But we also have tried to create upper-level courses that will interest those wanting to pursue careers in public interest law.

II. FINANCIAL DECISIONS

Obviously, the curricular decisions described above have financial consequences in terms of allocation of faculty slots and salaries paid. But there also are significant expenses in facilitating students doing public interest work. There are five that we have faced: scholarships, summer funding during law school, bridge funding after graduation, loan repayment assistance and fellowships.

Scholarships. I wish that it were possible to give every student a scholarship for three years of law school. We did this for a year, but it obviously was not sustainable beyond that. For the second year, we guaranteed each student at least a 50 percent scholarship for all three years and for our third entering class promised every student at least a one-third scholarship. After that, though, we have given our scholarship money based on academic merit and need.

We have decided to set aside some of that money for “public interest scholarships.” These are scholarships for students who
already have demonstrated a serious commitment to public interest work. A hard choice is how many such scholarships to give and what to provide for the students receiving them. On the one hand, there is the desire to nurture their interest in public interest law and provide them special programs and mentoring. It also helps in recruiting public interest oriented students. On the other hand, we do not want to make it seem that just these relatively few students are the ones pursuing public interest careers; our hope is that a large number of students will choose to do so. This, of course, then lessens the desire to provide special things for a handful of students. We have tried to strike a compromise, giving the public interest scholars some special things, but generally making everything available to every interested student.

Summer funding. I strongly believe that if students are going to do public interest work in their careers, they need to be doing it during their summers of law school. It is in this way that they can get a sense of the work and be sure it is what they want; it also lets them make essential contacts. I have been committed from the outset that we should then be providing a stipend to every student doing public interest work during the summers. Many schools provide this for some of the students doing such work; some provide it after one summer, but not both. I wanted to be sure that we did this for every student and after both summers.

The problem, of course, is cost. I have tried to raise some of this money externally and have been greatly assisted by a donor who created a fund in memory of her late husband, Al Meyerhoff, who was a public interest lawyer. Students have had the burden of raising a significant part of these funds through a public interest law fund, which has included a donate-a-day's-pay campaign and an annual auction. Still, the funds raised rarely have been enough to pay all of these costs, and I have made up the difference using most of the funds in the dean's
discretionary account (money donated but without being earmarked to a specific use) for this purpose.

I struggle with how we will do this in the long term as we reach our full size. I have found it hard to convince donors to make funding summer fellowships a priority. The amount that students can raise through the public interest law fund is not enough to meet all of the costs. For now and for the foreseeable future, I am committed to using discretionary funds to make sure that every student who wants to do public interest work has a summer fellowship.

_Bridge funding._ We also have created a “bridge” program of paying students who are interested in a career in public interest law funds to work in a public interest organization between August 1 after the bar examination and January 1 of the year following graduation. The condition is that the student must spend 20% of his or her time looking for a public interest job. So far we have been able to provide such bridge funds to all students who have applied for it. This has led to some students finding public interest jobs and all of the participating students having the benefit of working in a public interest organization.

_Loan repayment assistance._ Perhaps the most significant cost of our support of public interest work, at least in the long-term, is for a loan repayment assistance program. Although we are a public university, like other University of California law schools, we charge approximately $42,000 for in-state residents and $52,000 for out-of-state residents. Other elite public universities charge similar amounts, and private law schools charge this much or more. This, of course, is just tuition and does not include living expenses or even books. Combined with their college borrowing, it is common for law students to graduate with enormous debts, sometimes upwards of $200,000 in student loans. For students going to large law firms, the debt is staggering, but manageable. For those wanting to go into public interest law, student loan obligations seem insurmountable. Thus, law schools have created loan repayment assistance programs where
the law schools will pay (some or all of) the student debts for those earning below a specified amount.

We created a loan repayment assistance program modeled on other University of California law schools, especially Berkeley and UCLA. It is a generous program for those who pursue careers in public interest law. But it also is a program whose costs increase every year, and the ultimate financial burden on the law school will be significant. We have built it into our budget as a permanent part of our operating budget, but it is a very substantial cost. My hope, over time, is to find donors to subsidize this, in whole or in part.

Fellowships. Another way for law schools to help facilitate their students doing public interest work is fellowships for recent graduates, paying them to work for public interest organizations or within the clinics at the law school. We have not yet created such fellowships, though our graduating classes have designated their class gifts to creating such positions. We will be looking for the opportunity to expand our fellowships in the future. Again, the limit is cost and resources.

III. Pro Bono Program

I believe it is the responsibility of every law student, law professor and lawyer to do pro bono work. The question we faced was whether to create a pro bono requirement for students or whether to make it voluntary, but with every effort to facilitate and reward such work. I confess to being uncertain on this issue. I want every student and faculty member to do pro bono work, but I worry that requiring it will be less effective than encouraging it. Might mandating pro bono work build resentment towards such efforts by students who dislike the compulsion? Might students perform less well if they are working by compulsion rather than by choice? Can we get enough participation by incentives?
After debating these issues, the faculty decided to adopt a policy saying that all students and faculty are expected to do at least 50 hours of pro bono work every year (for first year law students it is 25 hours). But this is not a requirement for graduation. The hope is that we can inspire students to do this without mandating it. So far this approach has been successful. Of the students who graduated in 2012, 98 percent did pro bono work. Of those who graduated in 2013, it was 91 percent. The students in both classes averaged over 100 hours of pro bono work each.

Key to achieving this goal was hiring an outstanding pro bono coordinator, Anna Davis (Her title now is Director of Public Interest Programs.) Her responsibility is to find pro bono opportunities for our students and to inspire and encourage them to take advantage of these chances. She has done a superb job of finding a multitude of opportunities of all sorts for our students to do pro bono work. We also try to reward such behavior: we have an awards ceremony each spring, and awards are given to all students who do more than the recommended number of pro bono hours. The only recognition at graduation – it is in the program and in special ribbons that the graduates wear – is for students who have done exceptional amounts of pro bono work. We look for opportunities to encourage students to do pro bono work and then to reward them for doing this. So far this has succeeded wonderfully for us, and in the last few months, the Law School has won honors for pro bono projects done by our students.

IV. Career Services

Crucial to facilitating students pursuing public interest work is having a career office committed to this. In looking for a director of career services, we have emphasized someone with a public interest background. Our initial director of career services, Elizabeth Schroeder (now our Assistant Dean for Student Affairs), had been an Associate Director of the ACLU of Southern
California for 15 years. Our current Assistant Dean for Career Services, Ann Chernicoff, has a strong public interest background and commitment to public interest work. It also is essential to have a close relationship between our director of public interest programs and our career services office. We have always had them in adjacent offices to facilitate collaboration. Additionally, within the career services office we have hired a person to focus on public interest placements and fellowships.

One of the things I had hoped was to increase the presence of public interest organizations during on-campus interviewing. I always have felt that one of the things that channels students to law firms is the ease of signing up with them for on-campus interviews and the relative difficulty of reaching public interest or government organizations. I was committed to doing all possible to have more public interest organizations at OCI, including paying their expenses to have them attend. Unfortunately, this has not been particularly successful. It is not the way most public interest organizations are used to hiring. I think we need to find other ways to make public interest and government organizations visible to students at the time that OCI is going on.

There are public interest job fairs, and we want to do all we can to help students participate in these, including helping to pay the costs for students to attend the Equal Justice Works conference in Washington, D.C. A number of our students have obtained summer positions through these events.

It has been important for career services to have a visible and vocal public interest focus, including with many programs devoted to advising students how to pursue public interest during the summers and after law school. Also, we have created a faculty committee to help students apply for fellowships, such as Skadden, Equal Justice Works and Soros fellowships. Here, too, a key has been making students aware of them and then doing all we can to facilitate the application process.
CONCLUSION

I am sure that we can do much more to facilitate our students doing public interest work during law school and after graduation. I write this article not as a description of all that can and should be done, but as a description of what we have done as a new law school with a strong desire to emphasize public service. Too often, I have seen law schools where public interest and pro bono work are mentioned in the dean’s welcome at orientation and in the commencement speech but with not nearly enough in between.

Many law students come to law school with the desire to use their legal training to make society better and to pursue public interest work. Law schools have the responsibility to nurture and reinforce this and to do all they can to facilitate it. We are a new law school, in just our fifth year of having students. This article describes some of what we have done. I hope we will do much more in the years to come.