



# 1. Legal Education & Access to Justice

Interview with Prof. Carol Suzuki

*Prof. Suzuki, has been teaching Clinical Legal Studies at University of New Mexico School of Law and is a mentor and advisor to the Access to Justice Index project.*

*Q. 1. The term 'access' within the conceptual phrase 'Access to Justice' has undergone dynamic changes in the recent years; it is no more confined to mean access to judicial infrastructure alone, but has navigated further-in to the realm of reducing case pendency and raising legal awareness. In this light, how would you define this term and its essential components? You may contextualize the same within the broader contours of the movement to secure rights to the marginalized, undertaken by the faculty and (law) students.*

A: "Access to justice" has so many facets, including having competent legal representation in relevant situations, education to know one has the right to go to court and obtain legal relief, fee waivers for poor persons, language-appropriate assistance, and the availability of fair bond when detained. The State Bar of New Mexico encourages pro bono service. The Rules of Professional Conduct for New Mexico have an aspirational standard for pro bono service.

The New Mexico Supreme Court adopted a rule which sets forth minimum *pro bono* goals and reporting requirements. The University of New Mexico School of Law requires that each student participate in a six-credit clinical law course prior

to graduation, where students represent low-income clients in our community. The law school offers other opportunities to serve underrepresented communities through its externship program, and practicum courses such as the *Innocence and Justice Project* seminar where students work to provide post-conviction relief for inmates who have been wrongly convicted and who have a credible claim of factual innocence of the charged offenses. While enrolled in the University of New Mexico School of Law Clinical Law Programs, law students develop competent lawyering skills while assisting in individual client matters; provide education to community members about their legal rights; train professional collaborators, such as medical staff who make referrals, to be able to identify legal needs of their patients; advocate for legislative change, such as the removal from the New Mexico constitution the provision that prevented individuals who could not nationalize from owning property. The Clinic follows an income guideline and provides language-appropriate competent legal services. Many of our clients would not have been able to obtain legal representation outside of the Clinic.

*Q. 2. If you were to choose the most essential components of 'Access to Justice,' what would those be? And which of these are significantly missing in Legal Education?*

A. The essential components of Access to Justice include providing competent legal services to those who cannot otherwise afford an attorney; providing community education so people know their rights; advocating for systemic change so that people can access the courts without a lawyer; and providing affordable legal services to those who are middle income. Law school clinics, along with other legal services organizations, cannot fill the entire need for legal representation among poor communities.

The need is too great. Providing language appropriate services and community education can be challenging, as translation and interpretation services can be expensive. In our clinic, there we need to balance student learning through individual cases, which most students will benefit from in their post-graduate work, and legislative advocacy and community education, which provide learning opportunities but generally not in as direct a way as client representation.

Legal representation in family court (dissolution of marriage, child support, custody, domestic violence) is a great need throughout the country. There are many people who are low income but not considered poor enough for clinic services under our income guidelines. Those folks are not able to obtain free legal services from us or other non-profit organizations, and "low bono" legal services, representation by an attorney who will charge a lower than usual rate, are hard to find. In terms of legal education, we try to instill in our students the moral obligation to provide pro bono services upon graduation. Non-profit attorney positions are hard to find, and students may have loan debt they need to pay off upon graduation.

Some schools can provide loan forgiveness to graduates who enter non-profit positions. UNM does not, but recently received a Kellogg Foundation grant through which four graduates will have two-year fellowships at non-profit organizations. Our students provide community education about individual rights. We also conduct legislative advocacy and education. Law schools may be able to represent individuals who might not qualify for services from the Legal Services Corporation offices because of

their immigration status. Law schools may also be able to take on legal issues that LSC offices and other non-profit organizations cannot or do not have funding to do. But law school clinics must balance the provision of competent legal services with provision of appropriate legal education to train our students to be competent lawyers. In terms of the clinical law program, one student learning outcome is related to appropriate client communication. We tend to represent clients who are available in person. This means that we are unable in some ways to provide individual legal representation throughout the entire state. If a person cannot come to Albuquerque, it is less likely we can help that person.

In a practicum such as the Innocence and Justice seminar, students represent prisoners who they might not have face-to-face contact with. But that is a separate situation, where the student learning outcomes may not be the same as in the clinical law program.

*Q. 3. What are the obstacles peculiar to the Legal Education Methodology being used at present, and do these act as barriers to access justice? (As a result of the unique geographical, sociological, economic and legal conditions of the country and its system of education).*

A. Because client communication is related to our student learning outcomes, we tend to not represent individuals who live in rural communities who cannot come in to Albuquerque. The Clinic gets more local referrals than it could possibly help. Hypothetically, if we had helped everyone in the local area with their legal problems, then we would make more of an effort to provide rural legal services in order to have enough clients. But I think in the long run, as the reality is we cannot serve all local individuals, the law school would like to train students who would work in those rural communities upon graduation.

I think video representation has been found to be not as effective as in-person representation. UNM values live client representation, individual representation, and direct supervision of a student by a tenure-stream faculty member. UNM believes this type of model to be a valuable model for clinical legal education. Not all clinical law programs, and not all clinics, follow this model. There are other models that provide excellent training and legal representation. The format also is influenced by the substantive area of the clinic. Also in terms of legal education methodology, each Clinic student does not take on as many cases as she would if she were in a

legal services office. We are intentional in our training and leave time for reflection. So, we do not represent everyone who asks for help; if a legal matter seems to not be appropriate for the Clinic, we will reject the matter.

Not all law schools value clinical legal education at the same level. The University of New Mexico School of Law has had a clinical law program requirement for forty years. Most law schools do not have mandatory programs. Some law schools do not guarantee a clinical experience to its students.

*Q. 4. In many jurisdictions, formal policy interventions have not really resulted in a positive outcome for the Access to Justice movement. The common man still finds it difficult to navigate through the rugged terrains of legal complexities. In light of this, what do you think are the best ways to address the issue of access to justice?*

A. The Legal Services Corporation is not funded at the relative funding levels it had in the past. There are fewer legal aid jobs than there used to be. Public defender offices are also under-resourced. Defendants in misdemeanour matters may not have a right to a public defender. More resources to civil and criminal defense legal services would

help. The right to an attorney in misdemeanour criminal cases; in civil abuse, neglect and abandonment cases, which in some jurisdictions do not attach to the right to an attorney; in domestic violence civil cases, for both the alleged victim and the accused, would help. Competent advice regarding immigration consequences in criminal cases is important; it is required, but so many criminal defense attorneys are not able to navigate the complexities of criminal law.

*Q. 5. Do you believe, that despite the explosive growth of law schools, they have failed to deliver the basic objective of rule of law, viz., access to justice. How do you integrate these two concepts: those of justice and legal education?*

A. Law students may graduate with a lot of debt; they might have families to support. They may come from a poor background and go into the law because of the possibility of a livable income. We need corporate lawyers and prosecutors in society as well as those who help the poor. Although law schools certainly talk to their students about *pro bono* obligations, the reality is most students graduate and do not work in the non-profit sector. Law schools are not growing due to more people wanting to go into non-profit work.

The U.S. is seeing the growth of for-profit schools, which I doubt have the public interest at heart. Those students probably graduate with significant debt. There is no relationship between the development of for-profit legal education and access to justice as “access to justice” is usually defined. I think a corporation should be able to get competent representation from a corporate attorney, but that is not what I think about when I consider access to justice.

*Q. 6. What role do you envisage for the Law faculty in diversifying access to legal resources? One of the components of our Index was ‘Faculty-civic engagement,’ which unfortunately has been dismal in its sub-category ranking. [Considering that most of the Bar Councils have not been forthcoming in addressing this issue of faculty involvement in pro-bono initiatives, nor do Universities consider pro-bono activities as a criteria while promoting a faculty].*

A. Most law schools look at teaching, scholarship and service when it considers tenure. First, not all U.S. law schools tenure their clinical law faculty (UNM does), so those three categories may not apply to a U.S. clinician. Second, the criteria may not be weighted the same at an institution, and

across institutions. I think every clinical law professor would be considered as engaging in service through clinical legal education. Not every non-clinician would meet that criterion through teaching. Non-clinicians will outnumber clinicians at most institutions, if you were to look at tenure-stream or long-term contract faculty, and not adjuncts, staff attorneys, fellows. There are many law professors, clinicians and non-clinicians, who provide access to justice representation as part of their service obligation.

*Q. 7. Do you believe that the Bar Councils should take a larger share in taking up the responsibility of providing legal aid to the needy? In what ways can the Bar engage with the faculty and students in facilitating accessibility?*

A. I am not sure whether you mean voluntary bar associations, or the governing body that administers, the bar examination for or admission to a bar of a jurisdiction. In terms of bar associations, although they have some resources for engaging attorneys in *pro bono* work, it may be part of the associations’ work but there may be no enforcement mechanism, meaning the obligation may be aspirational. In terms of governing bodies, states such as New Mexico and New York may

have aspirational *pro bono* requirements. I cannot see the requirements becoming mandatory, as resources would need to be used to create an enforcement mechanism. On September 14, 2012, the New York State Court of Appeals adopted a new rule requiring applicants for admission to the New York State bar to perform 50 hours of *pro bono* services. You would need to check with someone in New York about how well this new requirement is functioning as a method of providing access to justice.

California passed a similar requirement. I am not sure how the Bar could engage with the law school to provide more access to justice services than it already is.

*Q. 8. It is observable, and widely acknowledged that Law Schools/Universities are primarily located in urban centres, with very less outreach to the rural population. Don't you feel that such a disproportionate concentration in urban areas might affect access to justice for those in rural and backward areas? The very idea of evolving access to justice movement through legal education may become a mere policy document, without any pragmatic outcome, in such a case.*

A. Part of UNM's mission is to accept applicants from rural areas with hope they will return home upon graduation to work as lawyers. We train law students who we encourage to consider moving out of Albuquerque/Santa Fe to work in small towns where there will be work because there are few lawyers. Technology has not advanced yet, and I am not sure whether it will ever, to provide a consistent and equivalent level of service whether the attorney is physically present or virtually present through virtual reality.

New Mexico and New York developed a magistrate court system for more rural areas of the states. Magistrate judges have judicial training, but might not have law degrees. They hear and rule on cases at a local level so that litigants do not need to travel very far to access a court.

*Q. 9. Clinical Legal Education as a mandatory training provided by the law school: How effective is this in helping the local community get access to legal services? Can you bring about a systemic change in addressing the issue of access using this as a modus operandi?*

A. UNM provides competent legal services to individuals who might not otherwise access legal representation. I realize that despite the students' good work, there are more people who need help in the community than can be served. The need is so great in New Mexico.

*Q. 10. The concept of engaging students in practical education is gaining ground every year. It is also argued that clinical legal education is one viable modus operandi. What measures should be taken by clinics and law schools to facilitate access to justice?*

A. More law schools are engaging in expanding its experiential learning opportunities. Those classes might provide access to justice opportunities. The goals of those classes, and the intensity of training, may not rise to the level of clinical law programs. But development of experiential learning opportunities, and the expansion of clinical law programs at U.S. law schools, would help to assist those who seek legal services but cannot afford lawyers.

*Q. 11. As a follow up to the previous question. It has been argued by many practitioners, that legal aid clinics should now focus less on the financial ability of the client, and focus more on the diversity in their problem solving techniques, do you foresee a change*

*in the teaching methodology as a precursor to this argument? If so, what measures would you recommend be adopted by Universities in pursuance of the same?*

There are some clinical law programs that do not follow the low-income client model. But using the guidelines, UNM is able to provide appropriate training to its students on interesting problems that require creative problem solving while serving a community need for legal representation.

There is not a need to take on individuals who could otherwise pay for legal representation in order to find an interesting legal problem. Plus, if we were to take on cases of individuals who could pay for legal representation, we would be competing against our graduates for work. I could only see the clinic doing this if it were the type of problem with legal merit but for some reason no lawyer wanted to handle.

*Q. 12. How can the BRICS countries' access-to-justice system beneficially gain from policies employed by other countries?*

I do not know about the BRICS countries. But I do know that some countries, such as Japan, are developing clinical law programs. But Japan does not have a student practice order, so the student

can prepare for court but not appear in court on behalf of the client. A student practice order would be important to developing a clinical law program and engaging law students in providing access to justice. The judiciary should help in the training of lawyers by allowing students to appear in court under supervision. Based on what I know of some clinical law programs at non-U.S. law schools, I would add that in order to have a supportive and sustainable program,

Supervision, and school credit would be part of best practices. Supervision should be available, and professors who give the supervision should get paid or get other compensation for their work for the educational and supervisory work. Allowing students to obtain course credit instead of doing this work as a student club or organization would better ensure accountability, sustainability and consistency. There also needs to be a means of ensuring competent services, so clients have recourse if the legal services are not competent. UNM clinical law students are covered under malpractice insurance when they are in the clinic.

Q. 13. What role can the current Access to Justice Index™ play: in influencing policy and decision makers and in overcoming or at least ameliorating the various barriers to access to justice?

The Index in its current form deals with four institutions which are crucial in the accessibility movement; it is a mechanism to help organizations to reflect on their access to justice work and goals. The Index will ensure that we address problems holistically and comprehensively.

I hope that the Global Index in 2018 will take into account low-income countries and their priorities, as against a uniform norm which might not be appropriate. All said, I believe that this Index is a step in the right direction in computing and sharing best practices.

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